

5. Not enact or adopt ordinances or engage in activities in conflict with the Public Trust Doctrine, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

6. In addition to complying with (q)1 through 5 above, an applicant that is a municipality shall:

i. Prior to disbursement of Green Acres funding for a Green Acres project site, repeal any ordinance that limits access to and use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine; and

ii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance adopting the public access plan required at (q)1ii above and record the Public Access Instrument approved by the Department pursuant to (q)1 or 2 above, respectively;

7. In addition to complying with (q)1 through 5 above, prior to disbursement of Green Acres funding for a Green Acres project site, an applicant that is a county shall adopt an ordinance adopting the public access plan approved by the department pursuant to (q)1 and 2 above;

8. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide public access along the tidal waterway and its entire shore at the Green Acres project site;

9. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide at least one accessway to the tidal waterway, its shore and the project site across land held by the recipient of Green Acres funding. Additional accessways shall be provided as necessary given the size, location, and proposed use of the site;

10. Immediately upon disbursement of Green Acres funding for a Green Acres project site, install and maintain in perpetuity Department approved public access signs at each public accessway and/or public access area at the project site;

11. Immediately upon disbursement of Green Acres funding for a Green Acres project site, record a Department-approved conservation restriction maintaining the following areas for public access in perpetuity. All lands held by the municipality or county for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory for the municipality and county, respectively, as required by Green Acres as a condition of funding pursuant to N.J.A.C. 7:36.

i. The project site;

ii. The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument, including paths, trails, dune walkovers/walk-

ways, and piers and public accessways pursuant to (q)9 above; and

iii. All parking areas identified in (q)12 below;

12. Within 10 days of completion of a Green Acres funded development for a Green Acres project site or within 180 days of disbursement of Green Acres funding for acquisition for a Green Acres project site, provide public restrooms and parking for the project site as directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and

13. Any Green Acres funding recipient for a Green Acres project site that, after December 17, 2007, undertakes any action that is determined by the Department to be in conflict with the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with the Public Trust Doctrine. If the Green Acres funding recipient for a Green Acres project site does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

i. Withhold Green Acres funding;

ii. Terminate the Green Acres Project Agreement executed pursuant to N.J.A.C. 7:36; and/or

iii. Demand immediate repayment of all Green Acres funding that has been disbursed to funding recipient.

(r) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.  
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b)3-7 added.

Amended by R.1988 d.338, effective August 15, 1988.  
See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Deleted (b)7 and substituted new.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (b), inserted a new 9, and recodified former 9 through 13 as 10 through 14.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b)11, substituted "restriction" for "easements".

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Repeal and New Rule, R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Section was "Public access to the waterfront".

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c); in (f)3, deleted "or" preceding "military facility", inserted "or superhighway" and "at the site", and substituted "public access shall be provided in accordance with (f)3i or ii below" for a colon and inserted the final sentence; in (f)6iii, deleted "or" from the end; in (f)7, substituted "; or" for a period at the end; added (f)8; in the introductory paragraph of (j)1, substituted "except as provided at (j)1i below:" for a

semicolon at the end; added (j)1i; and rewrote (p)2 through (p)5, (p)7 through (p)9, and (q).

#### Law Review and Journal Commentaries

Resolving State Title Claims to Tidelands: Practice and Procedure. William E. Andersen, 168 N.J.Law. 8 (Mag.) (April 1995).

#### Case Notes

Department of Environmental Protection (DEP) had jurisdiction under the Coastal Area Facility Review Act (CAFRA) to determine the appropriate fee that beach club could charge the public for use of its private beach; boardwalk extension over the dune leading to the beach and waterfront that was maintained by club qualified as development and triggered the DEP's jurisdiction over all related issues of use and public access. Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc., 851 A.2d 19.

Beach club's minimum fee for access to private beach, which required the minimum seasonal payment of \$700 for up to eight household members, discriminated against individuals and small families by forcing them to pay an amount bearing no rational relationship to the cost associated with individual use of the property, and thus, the fee was exclusionary and undermined the objectives of the public trust doctrine by limiting public access to the beach; fee should be limited to expenses actually incurred by the club for reasonable management services in addition to reimbursement for other costs incurred for the services provided. Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc., 851 A.2d 19.

Regulation requiring coastal development to permit access to the waterfront to the maximum extent practicable, including both visual and physical access, did not impose absolute prohibition against oceanfront development which interferes with the view of inland property owners. Bubis v. Kassin, 323 N.J.Super. 601, 733 A.2d 1232 (N.J.Super.A.D. 1999).

Project promoting public access and water dependent uses of waterfront property complied with Waterfront Development Act. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992)

Shoreline development that limits public access and the diversity of shorefront experiences is discouraged (citing former N.J.A.C. 7:7E-9.12). Lusardi v. Curtis Point Property Owners Assn., 86 N.J. 217, 430 A.2d 881 (1981).

#### 7:7E-8.12 Scenic Resources and Design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet

in height measured from the existing grade of the site or boardwalk shall comply with the following, unless it meets the requirements at (e) below:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development as defined at N.J.A.C. 7:7E-1.8.

1. The development preserves the historic structure; and

2. The development will not detract from, damage, or destroy the value of the historic structure.

(f) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Enhancement of scenic resources required at (d).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In the introductory paragraph of (d), inserted "comply with the following, unless it meets the requirements at (e) below"; added new (e); and recodified former (e) as (f).

#### 7:7E-8.13 Buffers and compatibility of uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case by case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Deleted "policy" from (b).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Administrative change to (b)1.

See: 23 N.J.R. 1662(b).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b)1, amended N.J.A.C. reference; in (b)2, substituted "standards for" "rule regarding" and "is" for "are".

#### Case Notes

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at least one existing port. In Matter of Bridgeton Bulk Materials Handling Facility. 93 N.J.A.R.2d (EPE) 203.

#### 7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the

Amended by R.2007 d.340, effective November 5, 2007.  
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).  
Rewrote (b)3.

### 7:7E-8.22 Solid and hazardous waste

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitability, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;

ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26; and

iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

New Rule, R.2002 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

## SUBCHAPTER 8A. INFORMATION REQUIRED TO DEMONSTRATE COMPLIANCE WITH THE PUBLIC TRUST RIGHTS RULE, N.J.A.C. 7:7E-8.11; CONSERVATION RESTRICTIONS AND PUBLIC ACCESS INSTRUMENTS

### 7:7E-8A.1 Purpose and scope

(a) This subchapter sets forth information that shall be included in the public access plan developed in accordance

with subsections (p) and (q) of the public trust rights rule, N.J.A.C. 7:7E-8.11. N.J.A.C. 7:7E-8A.2 sets forth the information requirements for the public access plan that is required for municipalities to participate in Shore Protection Program funding or to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.3 sets forth the information requirements for the public access plan that is required for counties and nonprofit organizations to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.4 sets forth the requirements for the form and recording of conservation restrictions required pursuant to the N.J.A.C. 7:7E-8.11(n), (p) and (q). N.J.A.C. 7:7E-8A.5 sets forth the requirements for Public Access Instruments required pursuant to the N.J.A.C. 7:7E-8.11(p) and (q).

(b) When used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Green Acres project site" means the land that is the subject to an application for Green Acres funding that contains or is adjacent to tidal waterways and their shores.

"Held" when used with reference to land means owned, leased or otherwise controlled.

"Paper street" means the street shown on a recorded plan but never built.

### 7:7E-8A.2 Information requirements for public access plans submitted by municipalities to participate in Shore Protection Program funding or be eligible for Green Acres funding

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(p)1 and (q)1 for a municipality to participate in Shore Protection Program funding or be eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(p) and (q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan shall include the following:

1. A current tax map identifying:

i. All tidal waterways and their shores within the municipality and all lands held by the municipality adjacent thereto;

ii. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers, and other public dedicated rights-of-way held by the municipality;

2. Copies of all existing and proposed **conservation** restrictions required pursuant to N.J.A.C. 7:7E-8.11(p)7i and 8i, and (q)10;

3. A draft Public Access Instrument as described at N.J.A.C. 7:7E-8A.5 and required pursuant to N.J.A.C. 7:7E-8.11(p)1ii and (q)5i;

4. A fee schedule for use of bathing and recreational facilities and safeguards, at tidal waterways and their shores held by the municipality if fees are charged.

i. For shore protection projects, including beach nourishment, a fee schedule shall also be provided for lands subject to a conservation restriction at N.J.A.C. 7:7E-8.11(p)7i(1) and 8i, if a fee is charged;

5. Draft ordinances required pursuant to N.J.A.C. 7:7E-8.11(p)1i or (q)1i as applicable. The ordinances shall provide that they may not be modified or repealed without prior approval of the Department;

6. Copies of all ordinances addressing use of the beach, tidal waterways and their shores and parking proximity to tidal waterways and their shores; and

7. A compliance statement, including supplemental documents as needed, demonstrating how the municipality and the proposed project comply with N.J.A.C. 7:7E-8.11(p) or (q) as applicable.

(c) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(p) shall include the following:

1. Copies of prior State Aid Agreements;
2. For shore protection and beach nourishment projects located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a current tax map identifying:
  - i. All existing and proposed public restrooms within the municipality located within one-quarter mile of the landward edge of the beach or dune along the waterway on which the project occurs. The site plan shall provide that:

(1) There is at least one restroom facility every one-half mile within the municipality as measured generally parallel to the beach except in accordance with (c)2i(4) below;

(2) A restroom facility shall be located within one-quarter mile of each municipal boundary. The one-quarter mile from the municipal boundary can be increased provided the one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the one-quarter mile is increased and the distance from the municipal boundary is no greater than three-eighths mile;

(3) Each restroom facility shall be located within one-quarter mile of the landward edge of the beach or dune; and

(4) The one-half mile interval between restrooms required at (c)2i(1) above can be increased provided:

(A) The average interval between restrooms within the municipality is one-half mile, as measured generally parallel to the beach;

(B) The one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the distance between restrooms is increased; and

(C) In no case is the interval between restrooms greater than five-eighths mile, as measured generally parallel to the beach; and

ii. All existing and proposed parking for the public to access the project and the beach along the waterway on which the project occurs; and

3. For shore protection and beach nourishment projects located on or adjacent to waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a site plan identifying all existing and proposed parking for the public to access the entire shore protection project and/or nourished beach.

(d) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(q) shall also include a site plan for the Green Acres project site identifying:

1. All tidal waterways and their shores located on or adjacent to the Green Acres project site;
2. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers and other dedicated public rights-of-way located on the site, and municipally held public accessways within one-quarter mile of the Green Acres project site; and
3. All existing and proposed restrooms and parking held by the municipality for the public to access tidal waterways and their shores on and within one-quarter mile of the Green Acres project site.

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

In (b)4i, substituted "projects, including" for "and" and deleted "projects" following "nourishment".

### **7:7E-8A.3 Information requirements for public access plans submitted by counties or nonprofit organizations to be eligible for Green Acres funding**

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(q) for a county or nonprofit organization to be eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan under this section shall include the following: