

**New DEP Beach and Waterway Access Rules Impact Storm Reconstruction and New Commercial and Industrial Development**

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DEP today published its new Beach and Waterway Access Rules. The rules aim to maintain existing public access to tidal waterways and provide opportunities for public access to tidal waterways at new developments. They will impact commercial and industrial development in New Jersey.

The massive destruction caused by Hurricane Sandy and the subsequent need to rebuild make these rules particularly relevant. Significantly, the rules do not require additional public access at existing commercial and industrial developments where proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development. No public access is required if there is no existing public access. However, existing public access must be maintained or equivalent public access provided onsite. Equivalent public access must provide opportunities to participate in the same activities by the same number of people as participated in the existing public access.

At new commercial developments, access must be provided onsite, at least during normal operating hours. New development includes the conversion of existing non-commercial use to a commercial use and any change in an existing development that would result in more than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving; or development on a parcel which was not included in the existing development.

For new industrial developments, including the conversion of any existing use to an industrial use, public access shall be provided onsite during normal operating hours. However, public access at industrial sites is not required if it is not practicable based on the risk of injury from proposed hazardous operations, substantial permanent obstructions, or a threat to public safety due to unique circumstances concerning the property. In such cases, equivalent offsite public access shall be provided on the same waterway and within the same municipality. If the applicant demonstrates that offsite public access within the same municipality is not feasible, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality.

Public access may include a public accessway parallel to the shoreline, a boat ramp, a pier, a waterfront park, public restrooms and public parking. To the extent practicable, public access should incorporate fishing access and associated parking that accommodates nighttime fishing. When determining whether proposed public access is appropriate, DEP will consider factors such as type of public access available, compatibility of the proposed public access with the proposed use of the site, square footage of the access area, and environmental impact. Public access must be provided in such a way that it will not create conditions that may be reasonably expected to endanger public health or safety, or damage the environment.

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The rules encourage municipalities to adopt Municipal Public Access Plans subject to the approval of DEP. Since these plans could increase or decrease public access requirements, property owners should monitor whether their municipality is adopting such a plan.

For the full text of the rules, see [http://www.nj.gov/dep/rules/adoptions/adopt\\_20121105a.pdf](http://www.nj.gov/dep/rules/adoptions/adopt_20121105a.pdf).

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