

Parking is generally limited at “local” access sites. The PUBLIC ACCESS TABLE table details public parking lots and access opportunities by individual location. Restroom and handicapped accessible facilities are noted where facilities are available. Beach fees for Lower Township’s Ocean beaches are private fees, at “Diamond Beach” locations, and regulated by the New Jersey Department of Environmental Protection. Approved fee amounts for 2012 were not available at the time of this study. Motorized vehicles are not permitted on Lower Township beaches except where necessary for maintenance purposes.





LOCAL CONSTRAINTS TO PUBLIC ACCESS

Lower Township has a multitude of public access sites that enable the general public access to tidal waters. Restrooms are provided at high traffic locations or are available nearby. In the future, Lower Township plans to reevaluate the location of bathroom facilities as conditions change and to make adequate provisions for restrooms in all future facilities, as warranted by demand.

Signage, especially directional signage, can be very important to guide residents and guests to public access locations. The Lower Township Road Department maintains an “in

house” sign shop and is capable of producing public access signs as necessary for publically owned locations. At the present time, Lower Township is satisfied with the public access signage provided at the many access locations in the Township and does not want to create “sign pollution” with unnecessary signs. New projects will be required to include the proper public access signage to ensure that the general public is aware of the public access opportunity.

Safety concerns with public access are studied by the Police Department, Bureau of Fire Safety, Rescue Squad, Construction Department, Planning Department, Recreation Department, as well as the Township Manager, Mayor and Council. Lower Township has established a Safety Committee, that consists of representatives of all departments, and convenes at least six (6) times a year to discuss and evaluate all safety matters. The Safety Committee, in cooperation with the Joint Insurance Fund, is one additional important factor that enables Lower Township to address safety concerns, including public access, in an organized, creative fashion.

One type of barrier to public access is a structural barrier, related to the natural environment. The handicapped and many senior citizens with mobility concerns, may find inadequate public access, due to the poor quality of the substrate in the natural environment, at access points. (eg. sandy, muddy, rocky or loose soil, steep grades or unimproved trail(s).

While the Township realizes its responsibility to protect the natural environment, Lower Township desires to create a walkable environment for all of the public.

Lower Township plans to reduce this type of barrier to public access and to construct a assessable MUNICIPAL “FISHING PIER” at the end of Lincoln Boulevard on the Delaware Bay. The MUNICIPAL “FISHING PIER”, would represent a multi-use facility for fishing, sightseeing, walking and jogging along with an educational component. In cooperation with Lower Township Schools, children and adults alike, will be able to learn about our valuable marine environment in a natural, safe and enjoyable setting. Sunsets, wonderful experiences for both young and old, would become a fantastic event, to be enjoyed by all.

Lower Township has a long history of providing safe, convenient, access to the tidally flowed waters of our jurisdiction. It is our intent to continue to maintain the public access we presently have, reduce or eliminate local constraints to public access whenever possible and

provide additional public access as appropriate to meet the needs of all citizens.

Lower Township has a tremendous resource, in the abundance of public access, to the tidal waters of the great State of New Jersey. Our public access sites include the Delaware Bay, Atlantic Ocean, Cape May Canal, Cape May Harbor and the back bay areas. It is Lower Township's intention to continue developing public access to our waterways according to the Design Guideline Matrix. (The Public Trust Doctrine and Practical Steps to enhance Public Access; authored by NJDEP.) See Appendix I

In looking over the various public uses and “ways to incorporate/encourage/enhance public access,” Lower Township does an excellent job of providing public access in a majority of ways as detailed on the chart.



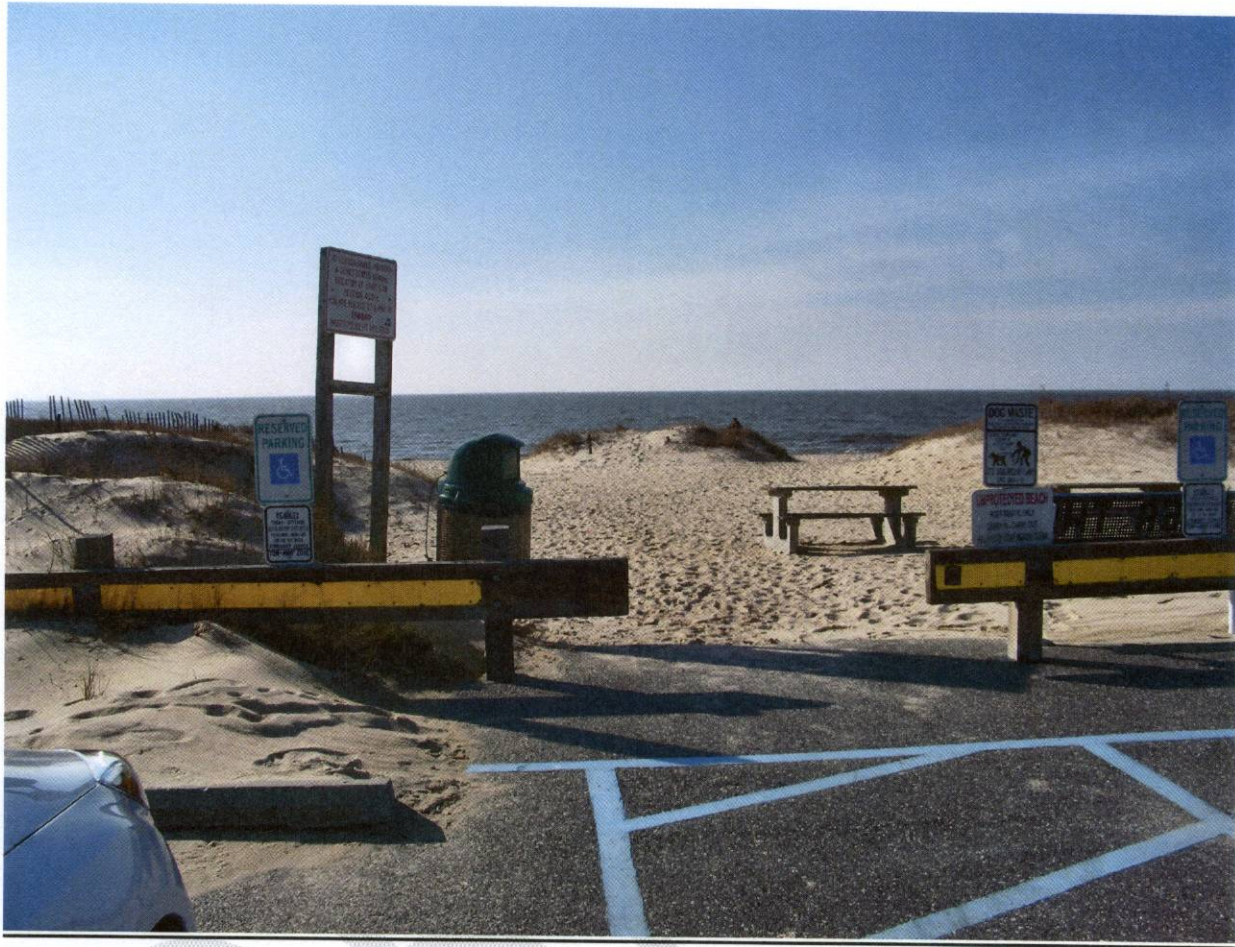
COMMUNITY NEEDS

- Fishing
- Fishing pier
- Beach access
- Swimming
- Congregation of solitude
- Boat launching
- Surfing
- Restaurants on the waterfront
- Commercial fishing observation
- Stores & shops located on the waterfront
- Delaware Bay access
- Handicapped public access
- Special needs of our senior citizens
- Marine education
- Safe access to tidal areas
- Walking, jogging & running
- Sightseeing

The above detailed listing of community needs for public access includes current and future access needs which have been met and will continue to be provided for into the future. The difference between the current and future need is the level of service provided to the general public. Lower Township plans to continue to provide public access at existing levels today, while planning for increased levels of service in the future. One of our main goals will be to increase the level of access for disabled persons and to meet the special needs of our seniors. The proposed Municipal "Fishing Pier" is our major project aimed at meeting all our communities needs.



DRAFT



OVERVIEW OF FUTURE PUBLIC ACCESS FACILITIES

Lower Township desires to provide increased public access to Delaware Bay for all residents and visitors, but most importantly for anyone who may have a physical disability that prevents them from accessing the waterfront. A MUNICIPAL "FISHING PIER" would provide the desired access.

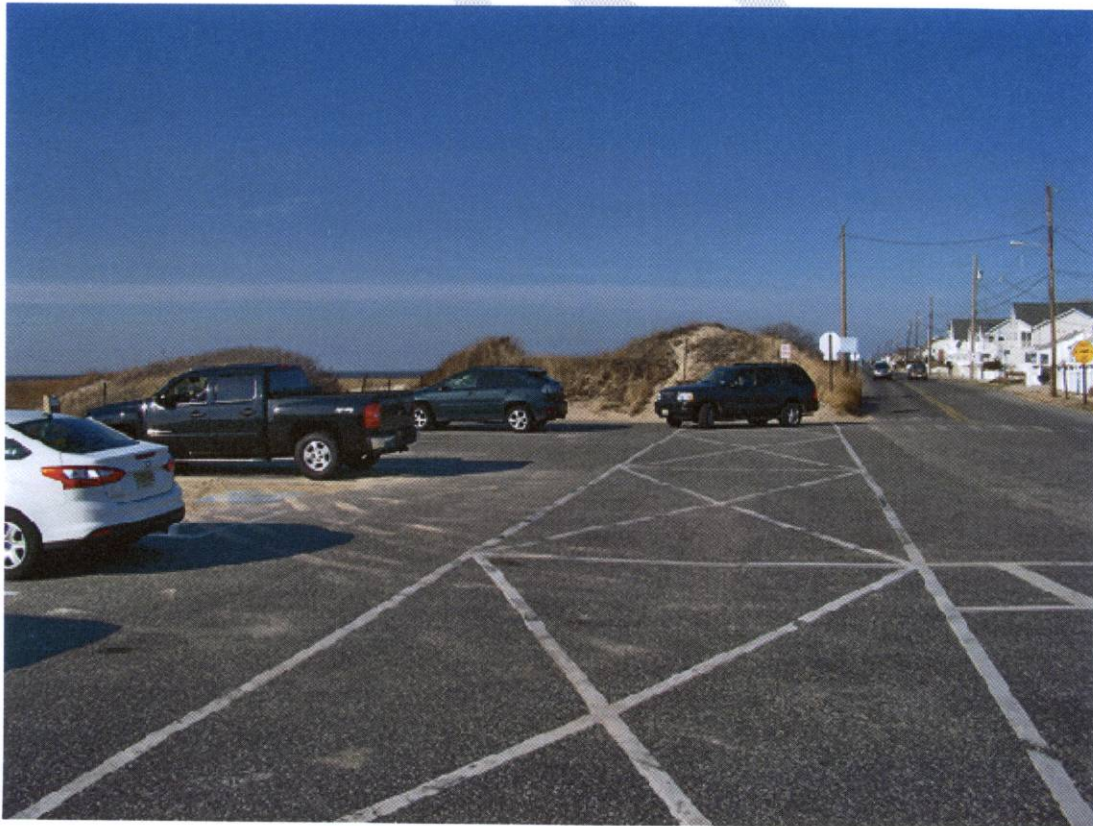
Location requirements for the proposed MUNICIPAL "FISHING PIER" include:

- a) Adequate parking
- b) Location close to population centers

- c) Storm protection
- d) Sufficient water depth
- e) Restroom facilities
- f) Security and lighting
- g) Availability of public water and sewer

The proposed location for the MUNICIPAL “FISHING PEIR” pier would be at Lincoln Avenue and the Delaware Bay. Although officially designated as a “fishing pier” many other uses from sightseeing, walking, crabbing to a possible municipal small craft launch for kayaks, stand-up paddle boards, and a boat ramp similar to the NJDEP Spicers Creek Boat Access is contemplated. Another advantage of this location resides in the fact that it comprises the western terminus of the Bayshore Heritage Byway, U.S. Route 9 and Delaware Bay.

Fabulous sunsets and warm summer nights would be enjoyed by all who visit this new facility. Lower Township wishes to open up a “mariners” experience to all in the proposed public access “fishing pier.”



RELATIONSHIP TO OTHER REGIONAL AND STATE PLANS

Lower Township's MPAP is consistent with the Lower Township Master Plan, especially the Open Space and Conservation area statement in the Master Plan. The MPAP is consistent with the Cape May County Comprehensive Plan and the State of New Jersey Coastal Zone Management Rules.



SECURITY AND MAINTENANCE

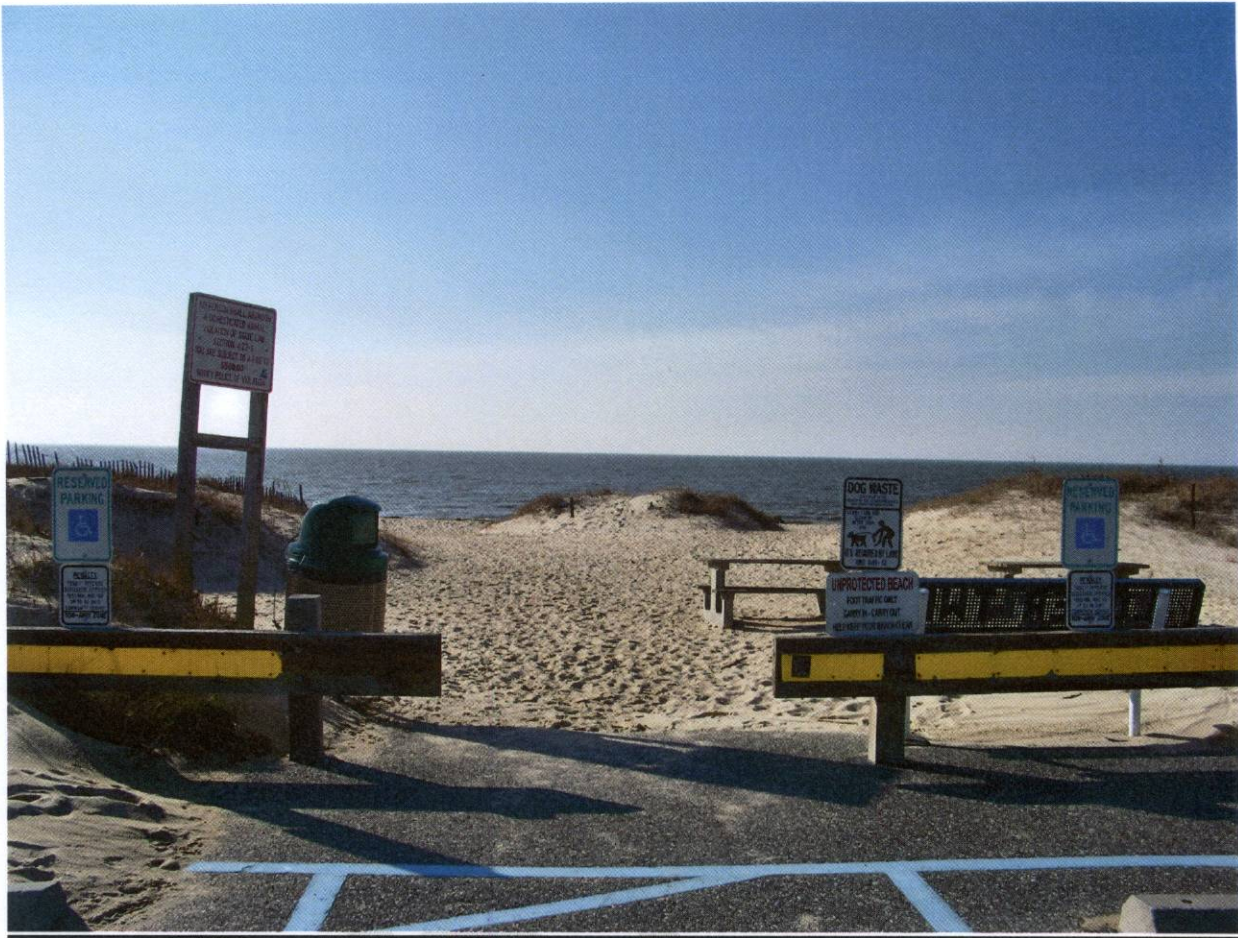
Maintenance is accomplished according to the ownership rights of the public access Location. Municipal local public access areas are maintained by the Lower Township

Department of Public Works. Federal, State, County and private access points are maintained by the appropriate entity according to ownership.

Emergency plans are formed, adopted and executed by the Lower Township Office of Emergency Management in coordination with the County of Cape May and State of New Jersey, the Lower Township Police Department, Lower Township Rescue Squad and the three Lower Township Fire Districts. Together they provide security for all locations in Lower Township, including the public access points.

Additionally, the New Jersey State “marine” police and United States Coast Guard patrol the Local tidal waters of Lower Township. Lower Township is unique in having the United States Coast Guard Base right here if and when we need them. This provides a welcomed added security for the general public when enjoying public access in Lower Township. In short, we feel that we have more than adequate maintenance and security in Lower Township for our public access to tidally flowed lands.





MUNICIPAL TOOLS TO ENHANCE PUBLIC ACCESS

A. “Identify future potential access”.

Lower Township provides a significant amount of public access to the general public. We believe that the current public access to tidal waters is sufficient to meet the needs of Lower Township residents and visitors now, as well as, long into the foreseeable future. Lower Township however, will continue to monitor the public access situation and provide for increased public access to the waterfront whenever possible, through new development of both public and private projects.

B. "Update zoning to require access levels and types".

Lower Township Council will initiate a working relationship with the Lower Township Planning Board, to update our Zoning Ordinance, to acquire public access to tidal areas as a condition of approval, for all major site plans and major subdivisions, when projects are adjacent to tidally flowed lands, and do not pose a safety or security threat to the general public, the Township or the State of New Jersey. Many types of public access will be included in the zoning plan and some of the most important ones are indicated below:

- Beach access
- Swimming
- Congregation of solitude
- Boat launching
- Fishing
- Surfing
- Kayaking - stand-up paddle board
- Restaurant on the waterfront
- Other public establishments on the waterfront
- Amusement piers
- Fishing piers

Public access levels to tidally flowed waters are guaranteed by the Public Trust Doctrine. Other public access rights are obtained through private property easements and by conditions of approval, provided voluntarily, or as mandatory conditions at the time of an application for development. The Public Trust Doctrine provides for linear or lateral access, up and down a beach or tidal area, along the waters edge. Perpendicular access is also guaranteed, to allow a person to walk to tidal water over private property, from public street ends. Lower Township plans to provide for linear and perpendicular public access, over private lands, consistent with the New Jersey Public Trust Doctrine.

C. "Municipally Sponsored Projects"

Lower Township is planning three (3) projects to improve the level of public access to tidal waters:

- (a) Clean Shores Program
- (b) Lower Township Triathlon
- (c) Municipal Fishing Pier with boat access

The Clean Shores Program is being utilized by Lower Township to clean up the waters edge. Incarcerated persons are working for communities as part of this program and their labor will increase the level of access to our shoreline, making for a more pleasant experience for all.

The Lower Township Recreation Department is planning a 2013 triathlon, sponsored by Lower Township. This challenge is meant to bring thousands of visitors to the Delaware Bayshore. Although this event is just in the planning stages, it is probable that improvements to the public's access to tidal waters will be a positive effect of this fantastic project.

The proposed MUNICIPAL "FISHING PIER", on Delaware Bay, and located on the Bayshore Heritage Byway will increase both the amount of public access and level of public access to the Delaware Bayshore. As stated previously in this report, handicapped access to tidal waters, as well as, access for low mobility persons, is a very important part of our public access plan. The proposed Lower Township MUNICIPAL "FISHING PIER" will provide a solution to both of these problems while allowing increased access to tidal waters for all our residents and visitors. Thus, structural barriers to the natural environment can be dealt with in a safe and secure manner, benefitting increased public access while protecting the natural environment. Loose sandy, muddy, rocky soils with steep grades on unimproved trails are safe for many of our visitors, depending on their physical activity level, but provide a barrier to access for others. The establishment of the Lower Township MUNICIPAL "FISHING PIER" will provide access for all. The MUNICIPAL "FISHING PIER" will be a multi-use facility providing for fishing, sightseeing, walking, jogging and boat access. School children and adults alike will be educated on the unique marine environment. Lower Township "Home of the Best Sunsets", will be offering this recreational, educational facility, to the general public, as a new fantastic way to view one of nature's most popular events, and everyone is invited.





COORDINATION WITH MUNICIPALITIES, PRIVATE OWNERS AND NON-PROFITS

Lower Township Council, through the Township Council meeting system has provided for an open and inclusive public meeting in which Township Council and the general public were presented with this document for review, comment and amendment. The Lower Township Planning Board was provided with and reviewed the Draft Municipal Public Access Plan at their regular meeting, duly held _____, (a meeting open to the public). The Planning Board recommended approval of the draft document to Lower Township Council on _____. In addition to the above, a copy of the draft plan was placed on the Township of Lower website for information of the public at large.

APPENDIX I

I. Design Guideline Matrix

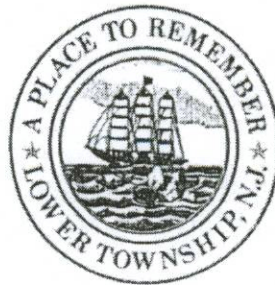
A design guideline matrix can help to evaluate a municipality and identify opportunities for public access. Provided below is one example of a design guideline matrix with some suggestions.

Type of Shoreline	Characteristics	Public Uses	Common Types of Public Access	Ways to incorporate/encourage/enhance public access
Ocean	Sandy beach shoreline, mixed residential, commercial boardwalk	Sunbathing, swimming, surfing, fishing	Street end/dune walkovers, boardwalks, parks	Permit conditions, beach nourishment projects, shorefront management plans (including inventory of sites), preserve street ends as access points, ordinances, facilities, land acquisition
Inlets	Rocky shore, human made, often commercial area	Boating, fishing, shopping, dining, walking	Rock jetty, marinas, pathways	Allow access to and on jetty, use public access signage, include on inventory, provide parking at jetty, ordinances
Bay (Back bays)	Majority residential, wetlands, bulkheaded or sandy shoreline	Boating, picnicking, fishing	Boat ramps, boating clubs, parks, beach, street ends	Permit conditions, shorefront management plan (including inventory of sites), preserve street ends as access points, ordinances, facilities, land acquisition
Delaware Bay	Beach and wetlands environment, pockets of residential areas	Boating, swimming, fishing	Beaches, parks, wetlands, trails	Land acquisition, permit conditions, shorefront management plan
River	Variety of shorelines ranging from developed fill to unhindered natural, some sandy areas	Boating, walking/hiking, fishing	Trails, walkways, boat ramps, marinas, street ends, parks	Land acquisition, support for coastal trails, permit conditions, ordinances,
Urban (Ocean, Bay or River)	Highly developed, often industrial or post industrial, impervious surface, some beaches	Walking, fishing, some swimming and sunbathing	Trails, walkways, beaches, parks	Permit conditions (development setbacks), land acquisition

(Reference; PUBLIC ACCESS IN NEW JERSEY: The Public Trust Doctrine and Practical Steps to Enhance Public Access, N.J.D.E.P

TOWNSHIP OF LOWER

2600 Bayshore Road
Villas, New Jersey 08251



Incorporated 1798

(609) 886-2005

MEMORANDUM

TO: Michael Voll,
Township Manager

FROM: William Galestok, PP, AICP
Director of Planning

DATE: July 5, 2011

RE: NJDEP Public Access
"Common sense" rules,
April 4, 2011;
Municipal Public Access Plans

History of NJDEP Public Access Rules

On April 4, 2011, NJDEP Commission Bob Martin "formally proposed new common sense rules to improve and enhance public access to New Jersey's beaches, bays and waterways." The new rules were developed because the 2007 NJDEP public access rules were declared invalid by the NJ Courts, Appellate Division, in Borough of Avalon vs. Department of Environmental Protection. (2008 & 2009). The Appellate Division found that the NJDEP overreached in the following areas:

- A. 24-7 rule for access to beaches. (Required 24/7 access to waterways)
- B. Mandated Municipalities to provide parking spaces and restroom facility to a strict department standard.
- C. Department required facilities for municipalities were tied to grant funds. (Parking & restrooms)

Additionally, the NJ Legislature, in response to marina owners, passed the "public access and marina task force act" to impose a moratorium on the 2007 rules for marinas, so more reasonable rules could be established.

April 4, 2011 Public Access Rule Proposal

Under the "new rules" NJDEP is proposing a customized approach. Each municipality would provide a Municipal Public Access Plan, (MPAP) designed to fit the needs of the municipality, under a broad framework, instead of the strict mandated rules under the prior 2007 public access regulations.

Impacts on Municipalities

1. Proposed new rules recognize a wide range of uses:
 - a. Beach access
 - b. Swimming
 - c. Congregation of solitude
 - d. Boat launching
 - e. Fishing
 - f. Surfing
 - g. Restaurants on the waterfront
 - h. Other public establishments on the waterfront
 - i. Amusement piers
2. State NJDEP will assist in funding "required" Municipal Public Access Plans (MPAP)
 - a. State Green Acres program funds
 - b. Other State resources
3. Commercial Residential, Industrial Development.
 - a. New development required to provide public access or pay into a "municipal" fund
4. Encourages municipalities to develop a MPAP
5. **MAINTAINS ALL EXISTING PUBLIC ACCESS ALONG THE SHORE AND WATERFRONT**
6. NJDEP will rank municipalities lower for shore protection funding if they don't have an approved MPAP.

Enforcement & Consequences

- A. Municipalities with department approved MPAP.
 1. Coastal permit application required to conform with approved MPAP.
 2. Department permit process, less time consuming and less expensive.

3. Results more predictable.
- B. Municipalities without an approved MPAP.
1. Coastal Permit applicants to provide a project specific access plan.
 2. Department permit application more time consuming, more expensive and outcomes uncertain.
 3. Municipal Sanctions
 - (a) May be ineligible for Green Acre loans or grants for any purpose!
 - (b) May rank lower for shore protection funds
 - (c) Not eligible for certain general permits
 - (d) ????

Summary

At the present time, we are waiting for the proposed rules, which were published in the N.J. Register on April 4, 2011, to be finalized. The fourth and final public hearing was held on Thursday, June 2, 2011, in the Township of Long Beach, Brant Beach, NJ. Typically, after the 60-day comment period, which ended on June 3, 2011, and end of Public Hearings, the department will take some time to review and respond to all the comments submitted. I contacted the NJDEP Office of Policy Implementation on June 28, 2011 and Kim Springer of that office, who is on a two (2) week vacation, will be contacting my office when she returns. Lewis Goldshore, Esq., New Jersey League of Municipalities Environmental Council, writes in NJ Municipalities Magazine, June 2011 edition, "The full impact of the new rules will not be realized until the 2012 summer season."

I called Mr. Steve Morey of Hatch Mott MacDonald, Township Engineer's Office, to discuss the Municipal Public Access Plan (MPAP) on July 1, 2011. Steve said that we have good aerial maps created when we applied for the Lower Township Beach Maintenance permits from NJDEP. These maps would provide a good base map for the "digital mapping & inventory" requirement of the MPAP, if Township Council decided to move ahead with an MPAP. We both agree and recommend Lower Township move ahead at the appropriate time, to construct a MPAP, for the next NJDEP beach maintenance permit. (Over the next year or two) However, NJDEP has not provided a scope of work at this time, and the scope is required to start working on the MPAP.

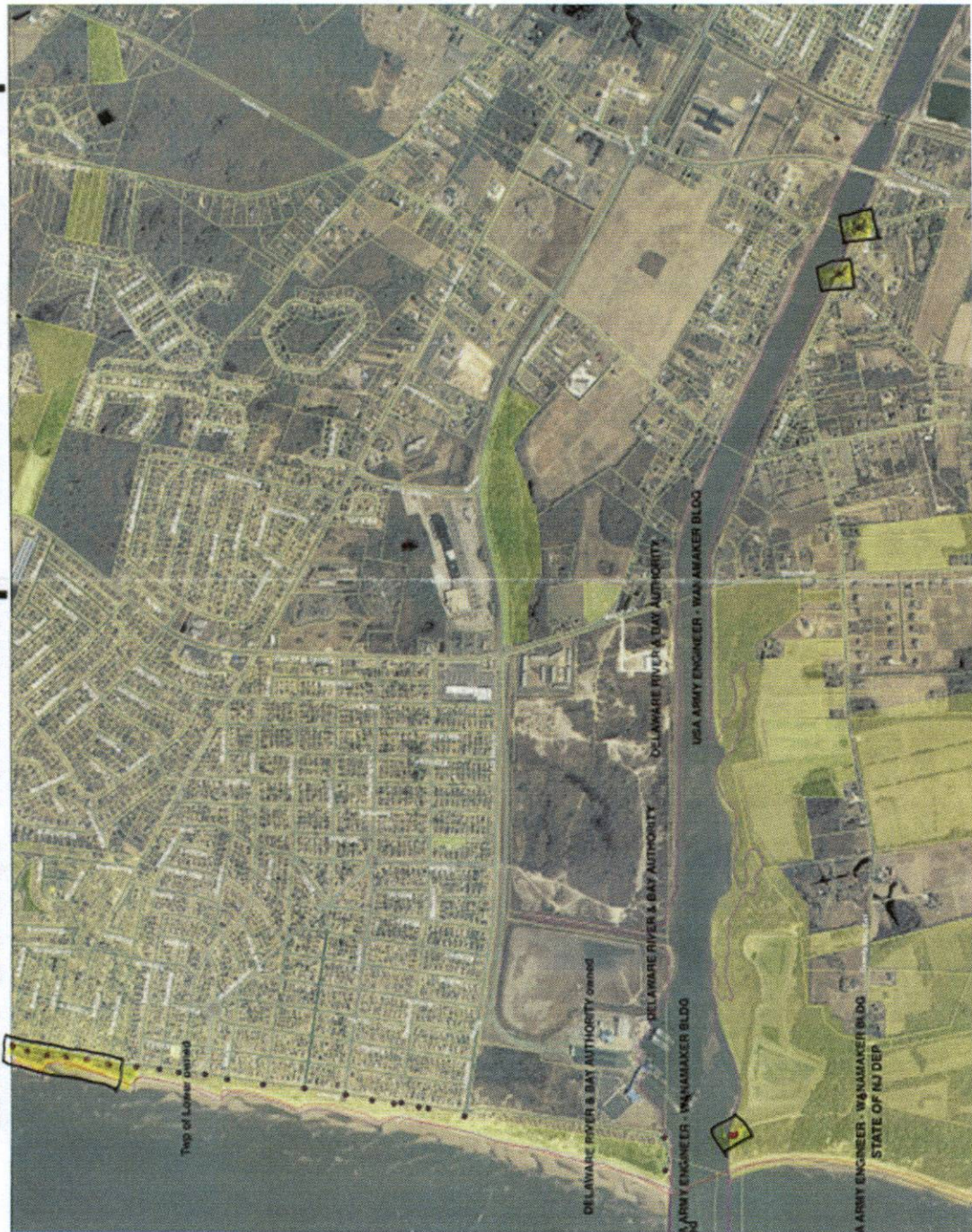
From the comments I reviewed on-line, newspaper articles published after the public hearings and comments from the NJ Sierra Club, there appears to be a lot of opposition, confusion and suspicion regarding the proposed public access rules. Several NJ Mayors, as reported in a June 26, 2011, CBS New York/AP, news article on-line, including Stone Harbor, Avalon and Long Beach Township, "praised the new approach, and indicted a willingness to work cooperatively with DEP in drafting local access plans." My recommendation is that Lower Township follow the same path as the above referenced towns, with the goal of submitting a MPAP to the NJDEP for review and approval if and when the "April 4, 2011 rules" are finalized.

If you have any questions, please call at your convenience. Thank you.

WJG:las

Appendix III

Draft Lower Township Public Access Map



Draft Lower Township Public Access Map

Legend

- Lower Township Public Access Points
- ⊕ Head of Tide
- Upper Wetlands Boundary
- Lower Township Man Boundary
- local-rip
- newstate
- Lower Township Parcels
- Open Space (State-owned)
- New Jersey Parcels
- Roads (Title Atlas)
- *Changes*



0 1/4 1/2 3/4 1 Mile

[illegible]

Draft Lower Township Public Access Map

