

CHAPTER 81

AN ACT concerning public access to certain public trust lands, amending P.L.1975, c.291, and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.13:1D-150 Findings, declarations relative to public access.

1. The Legislature finds and declares that:

a. The public has longstanding and inviolable rights under the public trust doctrine to use and enjoy the State's tidal waters and adjacent shorelines for navigation, commerce, and recreational uses, including, but not limited to, bathing, swimming, fishing, and other shore-related activities;

b. The public trust doctrine establishes the rule that ownership of the State's natural resources, including, but not limited to, ground waters, surface waters, and land flowed or formerly flowed by tidal waters is vested in the State to be held in trust for the people, that the public has the right to tidal lands and waters for navigation, fishing, and recreational uses, and, moreover, that even land that is no longer flowed by the tide but that was artificially filled is considered to be public trust land and the property of the State;

c. This historic principle stems from Roman jurisprudence declaring that the air, running water, and shores of the sea are common to mankind. The concept was extended to English law so that public property became classified as one of two types, either property that was necessary for the state's use or property that was common and available to all citizens. The common property consisted of the air, tidally flowed waters, fish, and wild animals, and the King did not own this common property as he owned other state property, but rather held it in trust for the people. After the Revolution, all royal rights in the land that was to become the State of New Jersey became vested in the people of the State of New Jersey. In 1821, the seminal court case of *Arnold v. Mundy* was decided, outlining the history of the public trust doctrine and applying it to tidally flowed lands in New Jersey, and from the time it was decided, New Jersey courts have held that the State holds in trust for the people of the State those lands flowed by tidal waters to the mean high water mark. The courts have also recognized that the public trust doctrine is not fixed or static; rather, it is to be molded and extended to meet changing conditions and the needs of the public it was created to benefit;

d. Pursuant to the public trust doctrine, the State of New Jersey has a duty to promote, protect, and safeguard the public's rights and ensure reasonable and meaningful public access to tidal waters and adjacent shorelines;

e. The Department of Environmental Protection has the authority and the duty to protect the public's right of access to tidally flowed waters and their adjacent shorelines under the public trust doctrine and statutory law. In so doing, the department has the duty to make all tidal waters and their adjacent shorelines available to the public to the greatest extent practicable, protect existing public access, provide public access in all communities equitably, maximize different experiences provided by the diversity of the State's tidal waters and adjacent shorelines, ensure that the expenditure of public moneys by the department maximizes public use and access where public investment is made, and remove physical and institutional impediments to public access to the maximum extent practicable; and

f. Public access includes visual and physical access to, and use of, tidal waters and adjacent shorelines, sufficient perpendicular access from upland areas to tidal waters and adjacent shorelines, and the necessary support amenities to facilitate public access for all, including, but not limited to, public parking and restrooms.

C.13:1D-151 Regulations to be consistent with the public trust doctrine.

2. a. The Department of Environmental Protection shall ensure that any approval, permit, administrative order, or consent decree issued, or other action taken, by the department pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation of the "Coastal Zone Management Act of 1972," 16 U.S.C. s.1451 et seq., or any other law, is consistent with the public trust doctrine.

b. The Department of Environmental Protection shall ensure that any public funding issued by the department, and any action taken on a project using such public funding, and any project or any aspect of a project utilizing federal funding that is regulated or reviewed by the department, is consistent with the public trust doctrine.

C.13:1D-152 On-site public access may be restricted.

3. a. The Department of Environmental Protection shall not adopt any rule or regulation pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation of the "Coastal Zone Management Act of 1972," 16 U.S.C. s.1451 et seq., or any other law, that mandates on-site public access to tidal waters or adjacent shorelines as a condition of any approval, permit, administrative order, or consent decree at any structure or facility that:

(1) is required to submit a facility security plan pursuant to the federal "Maritime Transportation Security Act of 2002," 46 U.S.C. s.70101 et seq., and 33 C.F.R. s.101.100 et seq.;

(2) is required to develop and adhere to a transportation security plan for hazardous materials pursuant to the regulations adopted by the federal Pipeline and Hazardous Materials Safety Administration in the United States Department of Transportation, 49 C.F.R. s.172.800 et seq.;

(3) is required to participate in the United States Department of Homeland Security's Chemical Facility Anti-Terrorism Standards program;

(4) is located at any airport, railroad yard, or nuclear power plant;

(5) requires exclusion of the public for security reasons as designated in accordance with rules and regulations adopted pursuant to subsection b. of this section by the New Jersey Office of Homeland Security and Preparedness; or

(6) is owned or operated by the New Jersey Department of Military and Veterans' Affairs and on which on-site public access is deemed to pose a threat to security or public safety.

b. The New Jersey Office of Homeland Security and Preparedness shall adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to establish a process to designate those facilities that, for homeland security reasons, require exclusion of the public from the tidal waters or adjacent shorelines located at those facilities. The rules and regulations shall nevertheless provide for access to tidal waters and their adjacent shorelines to the maximum extent feasible and as otherwise permitted by law.

C.13:1D-153 Criteria for departmental approval.

4. a. For any application for a permit or other approval to be issued by the Department of Environmental Protection pursuant to the "Coastal Area Facility Review Act," P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, "The Wetlands Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.), the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or the State's implementation of the "Coastal Zone Management Act of 1972," 16 U.S.C. s.1451 et seq., or any

other law, if the application provides for a change in the existing footprint of a structure, a change in use of the property, or involves beach replenishment or beach and dune maintenance, the department shall review the existing public access provided to tidal waters and adjacent shorelines at the property and shall require as a condition of the permit or other approval that additional public access to the tidal waters and adjacent shorelines consistent with the public trust doctrine be provided. In determining the public access that is required at a property, the department shall consider the scale of the changes to the footprint or use, the demand for public access, and any department-approved municipal public access plan or public access element of a municipal master plan. The requirements of this subsection shall apply to any application for an individual permit submitted on or after the effective date of P.L.2019, c.81 (C.13:1D-150 et al.). No later than 18 months after the effective date of P.L.2019, c.81 (C.13:1D-150 et al.), the requirements of this subsection shall apply to permits-by-rule, general permits, or general permits-by-certification issued by the department as provided in rules and regulations adopted pursuant to subsection b. of this section.

b. No later than 18 months after the effective date of P.L.2019, c.81 (C.13:1D-150 et al.), the department shall adopt, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations establishing:

(1) those permits-by-rule, general permits, and general permits-by-certification for which public access would be required, but which would not require individual review pursuant to subsection a. of this section;

(2) those permits-by-rule, general permits, and general permits-by-certification for which, consistent with the public trust doctrine, public access would not be required; and

(3) specific categories of projects which, due to the existence of an emergency condition, or a condition that poses a significant and immediate threat to public health and safety, shall not require individual review of public access pursuant to subsection a. of this section.

C.13:1D-154 Public access to marinas.

5. a. For any application for a permit or other approval to be issued by the Department of Environmental Protection pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the State’s implementation of the “Coastal Zone Management Act of 1972,” 16 U.S.C. s.1451 et seq., involving a marina in existence on the date of enactment of P.L.2019, c.81 (C.13:1D-150 et al.), if the regulated activity that is the subject of the application is on the marina property, the department shall require that the existing degree of public access to the waterfront and adjacent shoreline be maintained. If the regulated activity affects or diminishes public access on the marina property, the department shall require equivalent access as a condition of the permit or other approval. Equivalent public access includes access that allows the opportunity to participate in the same activities in the same manner, by the same number of people as the existing public access. If no public access is provided to the waterfront and adjacent shoreline prior to application for a permit or other approval, the department shall not impose new public access requirements to the waterfront or adjacent shoreline as a condition of the permit or other approval. However, if the application includes property on which there is a beach, including any application involving marina property that provided no public access prior to the application, the department shall require public access to the beach and the public’s use of the beach as a condition of the permit or other approval, and activities that have the effect of discouraging or preventing the exercise of public trust rights shall be prohibited.

b. (1) For any application for a permit or other approval to be issued by the Department of Environmental Protection pursuant to the “Coastal Area Facility Review Act,” P.L.1973, c.185 (C.13:19-1 et seq.), R.S.12:5-3, “The Wetlands Act of 1970,” P.L.1970, c.272 (C.13:9A-1 et seq.), the “Flood Hazard Area Control Act,” P.L.1962, c.19 (C.58:16A-50 et seq.), or the State’s implementation of the “Coastal Zone Management Act of 1972,” 16 U.S.C. s.1451 et seq., for the development of any marina property that proposes to increase the existing developed area, which includes buildings and areas covered by asphalt or other paving, by at least 50 percent, or that proposes the development of property that is not within the parcel containing the existing marina development, the applicant shall provide to the department a public access plan that identifies:

(a) a site plan with the location and type of public access to be provided;

(b) any areas to be closed to public access because of permanent obstructions or risks due to hazardous operations where no reasonable measures can be taken to avert those risks;

(c) an explanation of the specific risks and hazards in the areas closed to public access with a description of the areas where public access is enhanced, or where public access is to be provided offsite, to compensate for the area closed due to permanent obstructions or risks due to hazardous operations; and

(d) the operating hours of the marina.

The department shall require, as a condition of the permit or other approval, public access to the waterfront and adjacent shoreline, as identified in the public access plan and approved by the department, during the marina’s operating hours.

If the application includes property on which there is a beach, the department shall require public access to the beach and the public’s use of the beach as a condition of the permit or other approval, and activities that have the effect of discouraging or preventing the exercise of public trust rights shall be prohibited.

(2) After a public access plan has been approved by the department pursuant to this subsection, any changes to the public access plan shall be submitted to the department for review and approval, even if a modification to the existing permit or other approval is not otherwise required. The applicant shall submit to the department a copy of the approved plan, the proposed changes to the plan, and information that details how the proposed changes affect the approved plan. If the proposed changes reduce the public access already provided pursuant to the public access plan, the applicant shall be required to demonstrate that the proposed public access reduction is offset by other changes to the public access plan.

c. For the purposes of this section, public access includes visual and physical access and includes the following in any combination, as appropriate:

(1) a public accessway designed in accordance with rules and regulations adopted by the department, located parallel to the shoreline with perpendicular access to it;

(2) a boat ramp, pier, fishing pier, other facilities, or other direct access to the waterway;

(3) a waterfront pocket park;

(4) public restrooms to accommodate those using the public access; and

(5) additional public parking to accommodate those using the public access.

d. The department shall consider, when determining if public access is sufficient or appropriate, the type of public access available or needed within the area, the compatibility of the proposed public access with the applicant’s proposed use of the site, the square footage of the public access area, and the environmental impact or benefit of the proposed development.

6. The Department of Environmental Protection may restrict public access to tidal waters and adjacent shorelines to protect critical habitat areas from injurious uses, or threatened or endangered species or their habitat areas from injury or injurious uses, but only to the extent necessary according to the needs of the habitat areas or species.

7. Section 19 of P.L.1975, c.291 (C.40:55D-28) is amended to read as follows:

C.40:55D-28 Preparation; contents; modification.

19. Preparation; contents; modification.

a. The planning board may prepare and, after public hearing, adopt or amend a master plan or component parts thereof, to guide the use of lands within the municipality in a manner which protects public health and safety and promotes the general welfare.

b. The master plan shall generally comprise a report or statement and land use and development proposals, with maps, diagrams and text, presenting, at least the following elements (1) and (2) and, where appropriate, the following elements (3) through (17):

(1) A statement of objectives, principles, assumptions, policies and standards upon which the constituent proposals for the physical, economic and social development of the municipality are based;

(2) A land use plan element

(a) taking into account and stating its relationship to the statement provided for in paragraph (1) hereof, and other master plan elements provided for in paragraphs (3) through (14) hereof and natural conditions, including, but not necessarily limited to, topography, soil conditions, water supply, drainage, flood plain areas, marshes, and woodlands;

(b) showing the existing and proposed location, extent and intensity of development of land to be used in the future for varying types of residential, commercial, industrial, agricultural, recreational, open space, educational and other public and private purposes or combination of purposes including any provisions for cluster development; and stating the relationship thereof to the existing and any proposed zone plan and zoning ordinance;

(c) showing the existing and proposed location of any airports and the boundaries of any airport safety zones delineated pursuant to the "Air Safety and Zoning Act of 1983," P.L.1983, c.260 (C.6:1-80 et al.);

(d) including a statement of the standards of population density and development intensity recommended for the municipality;

(e) showing the existing and proposed location of military facilities and incorporating strategies to minimize undue encroachment upon, and conflicts with, military facilities, including but not limited to: limiting heights of buildings and structures nearby flight paths or sight lines of aircraft; buffering residential areas from noise associated with a military facility; and allowing for the potential expansion of military facilities; and

(f) including, for any land use element adopted after the effective date of P.L.2017, c.275, a statement of strategy concerning:

(i) smart growth which, in part, shall consider potential locations for the installation of electric vehicle charging stations,

(ii) storm resiliency with respect to energy supply, flood-prone areas, and environmental infrastructure, and

(iii) environmental sustainability;

(3) A housing plan element pursuant to section 10 of P.L.1985, c.222 (C.52:27D-310), including, but not limited to, residential standards and proposals for the construction and improvement of housing;

(4) A circulation plan element showing the location and types of facilities for all modes of transportation required for the efficient movement of people and goods into, about, and through the municipality, taking into account the functional highway classification system of the Federal Highway Administration and the types, locations, conditions and availability of existing and proposed transportation facilities, including air, water, road and rail;

(5) A utility service plan element analyzing the need for and showing the future general location of water supply and distribution facilities, drainage and flood control facilities, sewerage and waste treatment, solid waste disposal and provision for other related utilities, and including any storm water management plan required pursuant to the provisions of P.L.1981, c.32 (C.40:55D-93 et al.). If a municipality prepares a utility service plan element as a condition for adopting a development transfer ordinance pursuant to subsection c. of section 4 of P.L.2004, c.2 (C.40:55D-140), the plan element shall address the provision of utilities in the receiving zone as provided thereunder;

(6) A community facilities plan element showing the existing and proposed location and type of educational or cultural facilities, historic sites, libraries, hospitals, firehouses, police stations and other related facilities, including their relation to the surrounding areas;

(7) A recreation plan element showing a comprehensive system of areas and public sites for recreation;

(8) A conservation plan element providing for the preservation, conservation, and utilization of natural resources, including, to the extent appropriate, energy, open space, water supply, forests, soil, marshes, wetlands, harbors, rivers and other waters, fisheries, endangered or threatened species wildlife and other resources, and which systemically analyzes the impact of each other component and element of the master plan on the present and future preservation, conservation and utilization of those resources;

(9) An economic plan element considering all aspects of economic development and sustained economic vitality, including (a) a comparison of the types of employment expected to be provided by the economic development to be promoted with the characteristics of the labor pool resident in the municipality and nearby areas and (b) an analysis of the stability and diversity of the economic development to be promoted;

(10) An historic preservation plan element: (a) indicating the location and significance of historic sites and historic districts; (b) identifying the standards used to assess worthiness for historic site or district identification; and (c) analyzing the impact of each component and element of the master plan on the preservation of historic sites and districts;

(11) Appendices or separate reports containing the technical foundation for the master plan and its constituent elements;

(12) A recycling plan element which incorporates the State Recycling Plan goals, including provisions for the collection, disposition and recycling of recyclable materials designated in the municipal recycling ordinance, and for the collection, disposition and recycling of recyclable materials within any development proposal for the construction of 50 or more units of single-family residential housing or 25 or more units of multi-family residential housing and any commercial or industrial development proposal for the utilization of 1,000 square feet or more of land;

(13) A farmland preservation plan element, which shall include: an inventory of farm properties and a map illustrating significant areas of agricultural land; a statement showing that municipal ordinances support and promote agriculture as a business; and a plan for preserving as much farmland as possible in the short term by leveraging moneys made available by P.L.1999, c.152 (C.13:8C-1 et al.) through a variety of mechanisms including, but not limited to, utilizing

option agreements, installment purchases, and encouraging donations of permanent development easements;

(14) A development transfer plan element which sets forth the public purposes, the locations of sending and receiving zones and the technical details of a development transfer program based on the provisions of section 5 of P.L.2004, c.2 (C.40:55D-141);

(15) An educational facilities plan element which incorporates the purposes and goals of the "long-range facilities plan" required to be submitted to the Commissioner of Education by a school district pursuant to section 4 of P.L.2000, c.72 (C.18A:7G-4);

(16) A green buildings and environmental sustainability plan element, which shall provide for, encourage, and promote the efficient use of natural resources and the installation and usage of renewable energy systems; consider the impact of buildings on the local, regional and global environment; allow ecosystems to function naturally; conserve and reuse water; treat storm water on-site; and optimize climatic conditions through site orientation and design; and

(17) A public access plan element that provides for, encourages, and promotes permanently protected public access to all tidal waters and adjacent shorelines consistent with the public trust doctrine, and which shall include a map and inventory of public access points, public facilities that support access, parking, boat ramps, and marinas; an assessment of the need for additional public access; a statement of goals and administrative mechanisms to ensure that access will be permanently protected; and a strategy that describes the forms of access to satisfy the need for such access with an implementation schedule and tools for implementation.

c. The master plan and its plan elements may be divided into subplans and subplan elements projected according to periods of time or staging sequences.

d. The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, (3) the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act," sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and (4) the district solid waste management plan required pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c.39 (C.13:1E-1 et seq.) of the county in which the municipality is located.

In the case of a municipality situated within the Highlands Region, as defined in section 3 of P.L.2004, c.120 (C.13:20-3), the master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality, as developed in the master plan, to the Highlands regional master plan adopted pursuant to section 8 of P.L.2004, c.120 (C.13:20-8).

C.13:1D-156 Rules, regulations.

8. The department may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary to implement the provisions of P.L.2019, c.81 (C.13:1D-150 et al.).

9. This act shall take effect on the 60th day after the date of enactment.

Approved May 3, 2019.