
Deal Borough **Municipal Public Access Plan**

Submitted by: Borough of Deal

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**Approved by the New Jersey Department of Environmental Protection:
6/29/2023**

**Adoption by the Borough
10/12/2023**

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Introduction

This document is intended to provide a comprehensive public access plan for the Borough of Deal which lays out a vision for providing access to tidal waters and shorelines within the municipal boundary. This Municipal Public Access Plan (MPAP) was developed in accordance with the Coastal Zone Management Rules at N.J.A.C. 7:7-16.9. The development and implementation of this MPAP supports the policy of local determination of public access locations and facilities, while safeguarding regulatory flexibility.

The Public Trust Doctrine, first set by the Roman Emperor Justinian around A.D. 500 as part of Roman civil law, establishes the public's right to full use of the seashore. The Public Trust Doctrine states that natural resources, including, but not limited to, tidal waterways and their shores, air and wildlife in the State of New Jersey are held by the State in trust for the benefit of all of the people. Further, the Public Trust Doctrine establishes the right of the public to fully utilize these natural resources for a variety of public uses.

The original purpose of the doctrine was to assure public access to waters for navigation, commerce, and fishing. In the past two centuries, State and Federal courts in New Jersey have recognized that public uses guaranteed by the Public Trust Doctrine also include public recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking, and boating along the various tidal shores.

Through various judicial decisions, the right of use upheld by the Public Trust Doctrine has been incorporated into many state constitutions and statutes, allowing the public the right to all lands, water and resources held in the public trust by the state, including those in New Jersey. The New Jersey Department of Environmental Protection (NJDEP) adopted new rules governing public access on November 5, 2012, that enable municipalities to develop and adopt MPAPs to govern public access within their municipality. This MPAP consists of an inventory of public access locations and plans to preserve and enhance access based on community needs and State standards.

This plan has been developed in collaboration with the NJDEP, Board of Commissioners, and Borough administration officials and presented to the Planning Board on 2/28/2023 and approved for submission to the NJDEP on 3/27/2023. Upon receiving approval from the NJDEP on 6/29/2023, the MPAP was incorporated into the Master Plan by resolution on 10/12/2023, (see Appendix 1). All public access decisions made within the Borough of Deal after this date will be consistent with this plan.

Importance of Municipal Public Access Plans

The premise of the authorization of MPAPs is that public access to tidal waters is fundamentally linked to local conditions. The development of a MPAP enables the municipality to better plan, implement, maintain, and improve the provision of public access for its residents and visitors. It also informs and/or identifies public access requirements associated with any proposed development or redevelopment project.

The Borough of Deal is responsible for ensuring that public access to the tidal waters within the municipality is in accordance with this plan as approved by NJDEP and adopted as part of the municipal Master Plan. For each new project that is required to provide public access through a NJDEP issued Coastal Area Review Act or Waterfront Development permit, the Borough of Deal will provide NJDEP with a letter confirming its consistency with this MPAP. Upon adoption of this MPAP into the municipal Master Plan, the NJDEP public access requirement shall be satisfied in accordance with this plan. The Borough of Deal will submit a progress report documenting plan implementation to NJDEP every five (5) years after the date of plan adoption.

I. Municipal Public Access Vision

A. Overview of Municipality

The Borough of Deal is and always has been a suburban residential/resort community. The residential character of Deal is reinforced by the existence of a community-oriented central retail business district and a variety of public and quasi-public services and public open spaces/recreational areas. At this juncture of Deal's developmental history, it is doubtful that any new action of the Planning Board or Board of Commissioners can have a significant effect on the overall land use pattern which has evolved.

The area now within Deal's corporate boundaries began its development in the nineteenth century. Because of its proximity to New York City, it became a popular ocean-side resort for summer vacationers. During these early years almost all of the structures in Deal were seasonal residences.

Gradually, as the area continued to grow, it became more attractive to permanent residents. These permanent residents constructed new dwellings suitable for year-round occupancy. They also converted seasonal residences to year-round use. This trend increased the proportion of permanent residents until there was a significant year-round population. It was in response to the desire of these permanent residents for local self-government that the Borough was incorporated in 1898.

The 1.2 square mile borough lies entirely within the geographic area known as the Outer Coastal Plain. The Outer Coastal Plain is that portion of the Atlantic Coastal Plain which lies south and southeast of the Highlands of the Navesink. Deal is relatively flat, yet it contains coastal bluffs bordering the Borough's beachfront.

Natural drainage is into Poplar Brook, Deal Lake, and the Atlantic Ocean. The northern half of the Borough lies within the Poplar Brook drainage basin and the southern half lies within the Deal Lake drainage basin. Portions of the lands bordering the Atlantic Ocean or Poplar Brook lie within flood hazard areas as delineated by the United States Department of Housing and Urban Development.

Map 1 shows all the tidal waterways within the municipality and all lands held by the municipality.

Tidal Waterways

- Tidal Waterways
- Municipal Boundary
- Borough Owned Beachfront Property

Deal Lake

Deal Park

Deal Casino Block 28, Lot 1

Conover Pavilion Block 28, Lot 1

Deal Beach Block 89, Lot 1

ATLANTIC OCEAN

Roosevelt Avenue Pump Station

Source: Monmouth County GIS NJIS and ESRI

B. Municipal Public Access Goals and Objectives

1. Goals & Objectives

- i. Provide public improvements to maximize public access.

In addition to those goals outlined within the Master Plan, the Borough of Deal affirms the following State required goals specifically for public access:

- ii. All existing public access shall be maintained to the maximum extent practicable.
- iii. Maintain safe and adequate access locations for fishing in those areas where fishing is safe and appropriate; and,
- iv. Provide clear informative signage for access locations.

The Borough of Deal's MPAP embraces and reflects these goals and will help preserve, protect, and enhance the public's ability to access the Public Trust lands which surround the municipality. The previous goals are compliant with the New Jersey Coastal Zone Management Rules broad set of coastal protection goals (see N.J.A.C 7:7-1.1 (c)).

2. Municipal Master Plan Consistency

The goals and objectives provided in this MPAP have been reviewed and are consistent with the Borough of Deal's Master Plan.

II. Public Access

A. Public Access Locations

Map 2 Borough of Deal's Public Access Locations, identifies an inventory of all public access locations within the Borough of Deal, along with their attributes of improvements and activities. All public access locations are utilized as outline in the below map. See Table 1, located in the Appendix, for detailed information for each location.

Public Access Locations

- Public/Utilized
- Municipal Boundary

Street Locations:

- Neptune Avenue
- Hathaway Avenue
- Marine Place
- Deal Esplanade
- Darlington Road
- Clem Conover Road
- Deal Casino South
- Deal Casino'
- Conover Pavilion
- Phillips Avenue
- Roosevelt Avenue

Sources: ESRI, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, Meta, Nippon Earth Information Service, Swatch, (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Source: Monmouth County GIS
NJIS and ESRI

B. Improved Public Access Locations

Public Access in the Borough of Deal is provided by the municipality and consists of a variety of access points and facilities as follows:

1. Neptune Avenue Access currently provides access to the beach. There is free on street parking at this location (location #1 on the Public Access Locations Map). The Borough is in the process of providing site improvements by constructing a new set of concrete steps to provide public access to the beach. The permit application was submitted to NJDEP for review on July 22, 2022. The application was then withdrawn on October 17, 2022, due to the large permit fee triggered by the size of Block 89, Lot 1. The Borough is in the process of subdividing the lot to create a dedicated lot for the project area and re-submit the CAFRA Individual Permit Application within a year of withdrawal. Once completed, the Neptune Ave Access point will provide beach access with a staircase. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee.
2. Hathaway Avenue Access provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. There is free on street parking in the area of the access point. There is a guarded beach for swimming at this access point, surfing and fishing are permitted outside the guarded swim zone. Other amenities at this location will include restrooms (location #2 on the Public Access Locations Map).
3. Marine Place Visual Access point offers visual access of the beach and ocean for visitors who choose to not physically access the beach. There is free on street parking at this location (location #3 on the Public Access Locations Map). If parking on this street, you must park before the NO parking zone listed in Borough Ord. Chapter 10 parking regulations. There is currently no beach access in this area due to retaining wall and a 20-to-30-foot drop.
4. Deal Esplanade Road Access point provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. On street parking is restricted with 2-hour limits. Swimming, surfing, and fishing are permitted (location #4 on the Public Access Locations Map).
5. Darlington Road Access point provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. On street parking is restricted with 2-hour limits. Swimming, surfing, and fishing are permitted (location #5 on the Public Access Locations Map).
6. Clem Conover Road Visual Access point offers visual access of the beach and ocean for visitors who choose to not physically access the beach. There is free on street parking at

this location (location #6 on the Public Access Location Map). If parking on this street, you must park before the NO parking zone listed in the Borough Ordinance Chapter 10 parking regulations. There is currently no beach access in this area due to the existing rock revetment.

7. Deal Casino South access point provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. This access point has free off-street parking, as well as free parking in the grass area. Access can be gained to the W. Stanley Conover Pavilion where restrooms and a snack bar are available as well as guarded beaches for swimming. This beach access was added as part of the beach replenishment project by USACE in 2017 (location #7 on the Public Access Locations Map).
8. The Deal Casino main entrance is for membership only and provides a large parking lot, handicap accessibility, restrooms, snack bar, and pool (location #8 on the Public Access Locations Map).
9. W. Stanley Conover access point provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. A yearly membership is available which provides a 4'x8' locker as well as one parking permit. The yearly membership fee information is available on the Borough's website. The Conover Pavilion main entrance is for members and for visitors holding daily passes. This access point also has free off-street parking. Amenities provided at the W. Stanley Conover Pavilion are handicap accessibility, restrooms, snack bar and locker rooms. Additionally, there is a guarded beach for swimming (location #9 on the Public Access Locations Map).
10. Phillips Avenue Access provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. There is free off-street parking in the area of the access point at the W. Stanley Conover Pavilion. Swimming, surfing, and fishing are permitted (location #10 on the Public Access Locations Map).
11. Roosevelt Avenue Access provides beach access for a fee. Daily, weekday, and weekend fees are updated annually by ordinance. Anyone under the age of 12 does not require a fee. There is free on street parking in the area of the access point. If parking on this street, you must park before the NO parking zone listed in Borough Ordinance Chapter 10, parking regulations. Swimming, surfing, and fishing are permitted (location #11 on the Public Access Locations Map).

Penalties

Beach badges or daily passes are MANDATORY from Memorial Day weekend through Labor Day, and all individuals 12 years of age and older are required to have a valid beach pass all seven days a week. Members of Deal Casino, Conover Pavilion, and season pass holders MUST possess a beach pass or daily bracelet. It is strictly prohibited to replicate, alter, or tamper with daily bracelets. Individuals without a valid beach badge or daily pass will be issued a summons of \$80.00, escorted from the beach, and prohibited from returning until they obtain the required pass. Walking on or across a dune is NOT permitted. Any person found walking on or across a dune will be subject to at a minimum of \$500.00 fine.

The Borough of Deal reserves the right to update ordinances annually. Please refer to the most updated ordinances as it pertains to management and enforcement of borough property and beaches such as: beach passes, fees, parking, penalties and enforcement. This MPAP is accurate at the time the Mayor and Commissioners had approved the corresponding resolution on October 12, 2023.

Map 3 Borough of Deal's Improved Public Access Locations, provides an inventory of the existing public access locations that currently provide access to public trust lands and waters. See Table 1, located in the Appendix, for detailed information this location.

Borough of Deal, NJ - Public Parking



Map 4: Borough of Deal Enhanced Public Access Locations – Handicap Accessibility

Borough of Deal, NJ - Handicap Accessibility



C. Limitations to Public Access

The following limitations to public access currently exist:

1. Temporary Restrictions

Beach badges or daily passes are MANDATORY from Memorial Day weekend through Labor Day, and all individuals 12 years of age and older are required to have a valid beach pass all seven days a week. Members of Deal Casino, Conover Pavilion, and season pass holders MUST possess a beach pass or daily bracelet. It is strictly prohibited to replicate, alter, or tamper with daily bracelets. Individuals without a valid beach badge or daily pass will be issued a summons of \$80.00, escorted from the beach, and prohibited from returning until they obtain the required pass. Walking on or across a dune is NOT permitted. Any person found walking on or across a dune will be subject to at a minimum of \$500.00 fine.

The Borough of Deal restricts swimming on unguarded beaches which include all access points except the Deal Casino and W. Stanley Conover Pavilion. The hours of operation for these beaches are 9am – 6 pm from Memorial Day to Labor Day.

There is a fishing, surfing and scuba diving restriction in the guarded bathing areas of the Deal Casino and W. Stanley Conover Pavilion.

The Neptune Avenue Visual Access point had beach access prior to the United States Army Corp of Engineers beach replenishment project. With this project, a scour hole has been added to the outfall pipe at the Neptune Avenue Access point, which has caused an unsafe condition for access to the beach. As discussed previously under Improved Public Access Locations, the Borough is in the process of providing site improvements at this location by constructing a new set of concrete steps to provide public access to the beach.

2. Permanent Restrictions

There are currently 2-hour parking restrictions at the Darlington and Deal Esplanade beach access points. The restriction initially created in 1978 by ordinance established 1-hour parking restrictions. The restriction was extended to 2-hour parking in 2001. This makes these parking areas more available for visitors to enjoy visual access in these areas, and it encourages turnover and the overall flow of visitors in the area. The Deal Casino and Conover Pavilion currently has membership permit parking only on the paved lots with unrestricted parking on grass lots.

III. Community Needs Assessment

The Borough of Deal has performed a community needs assessment. Input from residents has been gathered at several Board of Commissioners meetings held monthly. The public has offered comments, suggestions, and concerns during the public comment portions of the meeting, which were frequently discussed. The Board of Commissioners continues to receive

public comment regarding possible improvements. The methods and results are described in the following section:

1. One complaint has been to clean or rake the areas in the newly replenished beach. Due to beach replenishment, there has been a large increase in the amount of people, which has brought an increase in trash. The Borough of Deal has recently received a new beach cleaning machine and will utilize this machine as well as the current equipment of the Borough of Deal to accomplish this task.
2. Secondly, there has been requests for benches and small recreational opportunities near the Roosevelt Avenue access point. In addition to Roosevelt Avenue, the Borough of Deal is in the process of improving all the beach access locations with pavers, plantings, and benches from Hathaway Ave to Roosevelt Ave. These are underway for beautification along the beachfront to create a safer and more accessible access to the Atlantic Ocean.

IV. Implementation Plan

The Borough of Deal has created an Implementation Plan composed of Priorities, Preservation of Public Access Locations, Signage, Proposed Access Improvements and Facilities, and Municipal Tools for Implementation as described in the following section:

A. Priorities

The Borough of Deal developed the following priorities:

1. **Maintain Existing Public Access**

The Borough of Deal Department of Public Works routinely checks access points to ensure that they are free from debris, barriers and remain safe for users. The Department of Public Works is in the process of beautifying the access points by adding pavers, benches, and shrubbery.

a. **Tools**

The Borough of Deal Department of Public works will determine the maintenance schedule and routine checks.

b. **Cost and Funding**

The cost to maintain the public access points will vary between the Department of Public Works annual budget and capital budget.

2. **Preserving Public Access**

The Borough of Deal will continue to preserve the current public access points.

a. Tools

The Borough of Deal owns all of the sites that are utilized for public access. These sites are existing beach access points. The Borough has preserved these public access sites through Conservation Restrictions.

b. Cost and Funding

Funding for preserving public access will be included in the general annual operating budget or capital budget.

3. Proposed Locations and Facilities

The Borough of Deal is in the process of providing site improvements by constructing a new set of concrete steps along Neptune Ave to provide public access to the beach, as public access is currently restricted due to the construction of a scour hole for storm water drainage by the United States Army Corps of Engineers beach replenishment project. The permit application for the concrete steps was submitted to NJDEP for review on July 22, 2022. The application was then withdrawn on October 17, 2022, due to the large permit fee triggered by the size of Block 89, Lot 1. The Borough is in the process of subdividing the lot to create a dedicated lot for the project area and re-submit the CAFRA Individual Permit Application within a year of withdrawal.

The Borough of Deal along with the United States Army Corps of Engineers and NJDEP also recently added a new access point at the Deal Casino to meet their requirements.

The borough has two access points, the Deal Casino and the W. Stanley Conover Pavilion that currently have handicap accessibility. While the Borough does not have specific sites in mind at this time, the Borough will continue maintaining and updating/enhancing existing access locations as necessary.

If funding becomes available, the Borough would like to provide additional public access to the beach along Clem Conover Road by providing concrete steps. We note, however, that the visual access is currently constrained by an existing rock revetment, making the construction of access stairs difficult and disruptive in this location.

The Borough of Deal is in the process of improving all the beach access locations with pavers, plantings, and benches from Hathaway Ave to Roosevelt Ave. With additional funding, the Borough would like to continue this work along Darlington Road and Deal Esplanade to provide additional amenities such as brick pavers, benches, and shrubbery, further improving the beach access points for residents and visitors to enjoy.

a. Tools

There are currently no plans at this time.

b. Cost and Funding

The Neptune Ave beach access stairs will be paid for through the Neptune Ave Settlement Agreement. As indicated on page 3 of the Settlement, the homeowner will be responsible for obtaining and paying for any permits or approvals required by the NJDEP or any other State, federal, or local entities.

B. Signage

The Borough of Deal has provided the following signage:

Signs have been posted at each beach access point listed in Table 1. The signs shall list beach access and rules pertaining to their use. Signs will be added as sites are improved or improvements replaced.

All public access signs will be maintained by the Borough of Deal Department of Public Works. Examples of the signage Deal has provided throughout the Borough are as follows:



Figure 1. W. Stanley Conover Pavilion Access Point



Figure 2. Philips Ave Beach Sign



Figure 3. Deal Esplanade Signage



Figure 4. Hathaway Avenue Beach Signage

**All beach access point signages in regard to Beach Fees may be updated annually per ordinance. The Borough of Deal's adopted ordinances supersedes any and all posted Beach Fees signages.*

C. United States Army Corps of Engineers Requirements for Shore Protection Projects

The Borough of Deal has met the USACE requirements as follows:

The Borough of Deal is the recipient of a Federal shore protection project in 2015 through 2017. The Deal Casino South access point was added in 2017 as part of the beach replenishment project by USACE. The Borough of Deal has met the United States Army Corps of Engineers (USACE) requirements for public access by adding an additional beach access stairway on the south end of the Deal Casino property. The Borough complies with the applicable Federal and state laws and regulations regarding public ownership and use of the shore and continues to provide and maintain access open and available to all on equal terms. All lands, easements and rights-of-way are provided for access and maintenance or repair of the Federal shore protection project. All existing oceanfront access remains open unless there are temporary restrictions for beach nourishment maintenance. In that case, for security and public safety reasons, temporary fencing along with signage will limit public use of the beach. The Borough and USACE work with the contractors to minimize the impacts to the public's use of the shoreline.

V. Resolution of Incorporation

The Borough of Deal has approved a resolution for the incorporation of the MPAP. See Appendix 1 for the resolution.

Approval of this plan does not eliminate the need for any Federal, State, County or municipal permits, certifications, authorizations or other approvals that may be required by the Applicant, nor shall the approval of this plan obligate the Department to issue any permits, certifications, authorizations or other approvals required for any project described in this plan.

Appendix 1. Resolution 23-134

(upon adoption the final resolution will replace this model)

Resolution # _____

Title: A RESOLUTION APPROVING THE MUNICIPAL PUBLIC ACCESS PLAN

WHEREAS, the Borough of Deal Municipal Public Access Plan (MPAP) was submitted to the Township Council and reviewed at the regular meeting of {date}, and

WHEREAS, the governing body has approved the plan as submitted, and

WHEREAS, the governing body recognizes the need to make the MPAP an authorized component of municipal decision-making by incorporating it into the municipal master plan,

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Deal, the "Deal Municipal Public Access Plan," a copy of which is attached, is hereby approved.

FURTHER RESOLVED, the MPAP shall be incorporated into the municipal master plan within {element}.

FURTHER RESOLVED a copy of the plan shall be sent to the New Jersey Department of Environmental Protection for review and approval in accordance with N.J.A.C.7.7.

I hereby certify the foregoing to be a resolution adopted by the {governing body} at a meeting held on {date}.

Municipal Clerk

Appendix 2. Public Access Table

Table 1 Deal Borough Public Access Location Amenities

ID	SIGNS	PARKING	STREET	BADGE	SWIMMING	FISHING	SURFING	PLAYGROUND	PARK	PIER	BOATLAUNCH	MARINA	RESTRM	H/C	SHORE-LINE	ACCESS TYPE
1	Yes	On Street	Neptune	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach*
2	Yes	On Street	Hathaway	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach
3	Yes	On Street	Marine Pl	No	No	No	No	No	No	No	No	No	No	No	Ocean	Visual
4	Yes	On Street	Deal Esplanade	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach
5	Yes	On Street	Darlington	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach
6	Yes	On Street	Clem Conover Rd	No	No	No	No	No	No	No	No	No	No	No	Ocean	Visual
7	Yes	On Street	Deal Casino South	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach
8	Yes	Lot	Deal Casino	Yes	Yes	Yes	Yes	No	No	No	No	No	No	Ramp; Parking Reserved	Ocean	Beach
9	Yes	Lot	Conover Pavilion	Yes	Yes	No	No	Yes	No	No	No	No	Yes	Ramp; Parking Reserved	Ocean	Beach
10	Yes	Lot/Street	Phillips	Yes	Yes	Yes	Yes	No	No	No	No	No	No	Parking Reserved	Ocean	Beach
11	Yes	Street	Roosevelt	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Ocean	Beach

*The Borough of Deal is in the process of acquiring NJDEP approval to provide beach access along Neptune Ave by constructing concrete steps.

Explanation of table:

SIGNS: Does the location provide signage identifying the location as a point of public access? Yes or No

PARKING: Is parking for the location/facility provided on the street or in a lot and is it free or do you have to pay? Street, free; Street, pay; Lot, free, Lot, pay

STREET: On what street is the public access located?

CROSS STREET: What is the cross street where this location is located?

BADGE: Are there times when a badge is required to use this location? Yes or No

SWIMMING: Is swimming permitted at this location? Yes or No (Limitations on swimming, such as hours, lifeguards, etc., are discussed in Section II.B and C)

FISHING and SURFING: Is fishing/surfing permitted at this location? Yes or No (Limitations/restrictions are discussed in the Section II.B and C)

PLAYGRD, PARK, PIER, BOATLNCH, MARINA, RESTRMS: Does this location include these amenities? Yes or No

H/C: What amenities are handicap accessible at this location/facility? (Not necessarily ADA Compliant) None, Parking reserved, Ramp provided, and/or Restrooms accessible

SHORELINE: What shoreline does this location inhabit? Ocean, Bay, River and/or inlet

ACCESS TYPE: Describe the type of access: Beach, Fishing, Boat, and/or Visual

[This imbedded Excel spread sheet should be used for the table described in Section II (Public Access). The title of each column should not be changed. The information about each public access location should be filled in using one of the options listed. This table will also be used to populate the information for each public access location in GIS. Additional information about each public access location can be included in the narrative portion of Section II. Please contact NJDEP with any questions or concerns about these options.]

Appendix 3. Sign Ordinance

ORDINANCE #1153

AN ORDINANCE AMENDING CHAPTER XVI OF "REVISED GENERAL ORDINANCES OF THE BOROUGH OF DEAL, 1982" Signs

**THE BOARD OF COMMISSIONERS OF THE BOROUGH OF DEAL HEREBY
ORDAIN:**

**Section 1. That Chapter XVI, Signs, of the "Revised General Ordinance of the
Borough of Deal, 1982 be and it hereby is amended in the following particulars:**

Section 2. Subsection 16-1 Definitions is amended to add as follows:

- 16-1 "Public Access Sign" shall be a posted sign depicting the public access
point to, from and along tidal waterways and their shores within the
Borough of Deal. Public Access signs shall list the name of the access
point as well as any restrictions.**

**Section 2. Subsection 16-1 Public Access Signs is amended to read as
follows:**

16-9.1 Location

**All public access signs shall be installed at the entrance of the
designated beach access points as outlined in the Municipal Public
Access Plan.**

16-9.2 Maintenance

**All public access signs shall be maintained by the Borough of Deal
Department of Public Works.**

**Section 3. This Ordinance shall take effect upon passage and publication
according to law.**

**Introduced by Commissioner Ades on May 24, 2017
Seconded by Commissioner Simhon
Roll Call: Ayes 3; Cohen, Ades & Simhon**

Appendix 4. Deed of Dedication Ordinance

ORDINANCE 1231

AN ORDINANCE AUTHORIZING EXECUTION OF A DEED OF DEDICATION AND PERPETUAL PUBLIC ACCESS EASEMENT OVER STREET ENDS AND BEACH FOR PUBLIC ACCESS TO TIDAL WATERS IN THE BOROUGH OF DEAL, COUNTY OF MONMOUTH, STATE OF NEW JERSEY

WHEREAS, the State Department of Environmental Protection ("DEP") is requiring a Deed of Dedication and Perpetual Public Access Easement for municipally owned right of ways providing visual or actual public access to the tidal waterways in the Borough of Deal; and

WHEREAS, these easements are a part of the Municipal Public Access Plan (MPAP) between the Borough of Deal and the DEP.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Borough of Deal that the easement be granted and allow the Mayor to sign the easement on behalf of the Borough of Deal

Section 1. The terms and conditions of the easement is hereby as follows:

WITNESSETH

WHEREAS, Grantor is the owner of that certain tract of land, located in the Borough of Deal, County of Monmouth, State of New Jersey, and/or identified as public street ends located at Roosevelt Avenue, Phillips Avenue, Darlington Road, Deal Esplanade, Marine Place, Hathaway Avenue and Neptune Avenue as identified in Addendum A (Street End Descriptions) and Addendum B (Key Map on the official 2010 tax map of the Borough of Deal, hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement; and

WHEREAS, the Grantee recognize that tidal waterways and their coastlines at the Borough of Deal, New Jersey are valuable economic resources to the municipality and the State of New Jersey; and

WHEREAS, access to tidal waterways at the Borough of Deal, New Jersey is a right provided to the public under the Public Trust Doctrine; and

WHEREAS, in order for the public to access tidal waterways, perpendicular access to these areas must be secured for public use; and

WHEREAS, in order to ensure public access, Grantees need a Perpetual Public Access Easement on portions of said Property(s) herein described; and

WHEREAS, the Borough of Deal shall consider this Deed of Easement in establishing the assessed value of any lands subject to such restrictions; and

WHEREAS, this Deed of Dedication and Perpetual Public Access Easement shall be subject to and consistent with any existing public access agreement or easement entered into by the Municipality with the United States Army Corps of Engineers; and

WHEREAS, this Deed of Easement will also serve to implement the Public Trust Doctrine and ensure permanent public access, use and enjoyment of tidal waterways and their shores.

NOW, THEREFORE, the Grantor grants and conveys to Grantee an irrevocable, assignable, perpetual and permanent easement as set forth herein:

GRANT OF EASEMENT: A perpetual and assignable easement and right-of-way across that land of the Property(s) described as public street ends located at Roosevelt Avenue, Phillips Avenue, Darlington Road, Deal Esplanade, Marine Place, Hathaway Avenue and Neptune Avenue as identified in Addendum A (Approximate Street End Descriptions)

and Addendum B (Key Map on the official 2010 tax map of the Borough of Deal, hereinafter the "Property(s)," and Grantor holds the requisite interest to grant this Deed of Easement listed above for use by the State of New Jersey and the Borough of Deal, their representatives, agents, contractors and assigns to:

- a. Construct, preserve, patrol, operate, maintain, repair, rehabilitate, and replace a public access area to allow the public access to tidal waterways;
- b. Post signs;

The easement reserves to the Grantor, the Grantor's, successors and assigns the right and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed to the Grantee, subject however to existing easements for utilities and pipelines, existing public highways, existing paved public roads and existing public streets.

Duration of Easement: The easement granted hereby shall be in perpetuity, and in the event that the Borough of Deal or the State of New Jersey shall become merged with any other geopolitical entity or entities, the easement granted hereby shall run in favor of surviving entities. The covenants, terms, conditions and restrictions of this Deed of Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective representatives, successors and assigns and shall continue as a servitude running in perpetuity with the land.

Municipality to Maintain Public Access: The Municipality agrees, consistent with all Federal, State and local statutes and regulations, that at all times it shall use its best, good-faith efforts to preserve, cause and ensure the public access areas to be maintained, consistent with all applicable Federal, State or local laws or regulations, notwithstanding any action or inaction of the State of New Jersey.

Character of Property(s): Notwithstanding the foregoing, nothing herein is intended or shall be deemed to grant the Grantees or otherwise permit the Grantee to any other person to cross over or use any part of the Property(s) which is not within the Easement Area; nothing herein is intended or shall be deemed to alter the boundary lines or setback lines of the Property(s).

By the acceptance of this Deed of Easement, the Municipality agrees, to the extent allowed by applicable law, that the Property(s) burdened by the easement herein described shall not be excluded from the calculations of minimum square footage requirements when construing applications under the Zoning Ordinance of the Municipality.

Miscellaneous:

1. The enforcement of the terms of this Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise their rights under this Easement in the event of any violation by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent violation or of any of Grantee rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any violation by Grantor shall impair such rights or remedies or be construed as a waiver of such rights or remedies.
2. The interpretation and performance of this Deed of Easement shall be governed by the laws of the State of New Jersey.
3. If any provisions of this Deed of Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provision of this Easement or the application of such provisions to person or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.
4. Any notice, demand, request, consent, approval or communication under this Deed of Easement shall be sent by regular first-class mail, postage prepaid and by Certified Mail, Return Receipt Requested, addressed to the mailing addresses

set forth above or any other address of which the relocation party shall notify the other, in writing.

5. The captions in this Deed of Easement have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.
6. Structures no part of the project are not authorized.

SECTION 2. That all Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION 3. If any section, subsection, paragraph, sentence or any part of this Ordinance is adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this Ordinance not directly involved in the controversy in which such judgment shall have been rendered.

SECTION 4. This Ordinance shall take effect upon final passage and publication in accordance with law.

Introduced by Commissioner Simhon on February 5, 2021

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades and Simhon

Motion to Adopt by Commissioner Simhon on March 3, 2021

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

Borough of Deal
Approximate Street End Descriptions

Roosevelt Avenue

Beginning from the easterly terminus of Roosevelt Avenue (10' wide) extending approximately 75 feet to the west.

Phillips Avenue

Beginning from the easterly terminus of Phillips Avenue (10' wide) extending approximately 150 feet to the west.

Darlington Road

Beginning from the easterly terminus of Darlington Road (10' wide) extending approximately 125 feet to the west.

Deal Esplanade

Beginning from the easterly terminus of Deal Esplanade (10' wide) extending approximately 150 feet to the west.

Marine Place

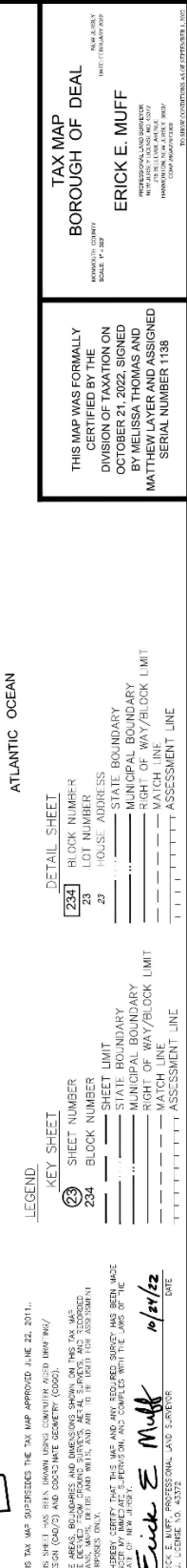
Beginning from the easterly terminus of Marine Place (10' wide) extending approximately 25 feet to the west.

Hathaway Avenue

Beginning from the easterly terminus of Hathaway Avenue (10' wide) extending approximately 150 feet to the west.

Neptune Avenue

Beginning from the easterly terminus of Neptune Avenue (10' wide) extending approximately 150 feet to the west.

[illegible]

KEY MAP

Appendix 5. Roosevelt Ave Conservation Restriction

NJDEP File No.: _____ Prepared by: _____

GRANT OF CONSERVATION RESTRICTION/EASEMENT (Public Access to the Waterfront)

THIS GRANT OF CONSERVATION RESTRICTION/EASEMENT is made this _____ day of 20____, by _____, its heirs, successors and assigns and all legal and equitable owners, and any and all current or successor holders of any interest in and to the property whose address is *Borough of Deal*, County of *Monmouth*, State of New Jersey, hereinafter referred to as the "Grantor," in favor of and to the New Jersey Department of Environmental Protection, its successors and assigns, hereinafter referred to as the "Grantee".

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain real property located in the *Borough of Deal*, County of *Monmouth*, New Jersey, designated as Lot(s) *17 and 1*, Block(s) *14 and 89* on the official Tax Map of the Borough of *Deal*, County Clerk (hereinafter "the Property"); and

WHEREAS, the Grantee has issued to Grantor Permit # *1310-04-0001.4 CAF15001*, (the "Permit"), attached hereto as **Exhibit A** and made a part hereof, which permits certain construction described therein, and requires among other conditions public access to the waterfront, pursuant to the, Coastal Area Facility Review Act, N.J.S.A. 13:19-1 *et seq.*, as amended, and the corresponding Rules on Coastal Zone Management, N.J.A.C. 7:7*et seq.*, as amended, specifically N.J.A.C. 7:16.9 Public Access, and

WHEREAS, by virtue of the Property's location directly on the *Atlantic Ocean*, the waterfront area of the Property possesses great scenic, aesthetic and recreational qualities for the public enjoyment; and

WHEREAS, pursuant to the Public Trust doctrine, all applicable case laws and duly adopted regulations, as a condition to the Permit, Grantor must provide for public access over a portion of the Property including its water's edge, by creating and maintaining in perpetuity a walkway as well as parking spaces reserved for use by the public (collectively "Easement Areas"), as more specifically shown on the approved plan(s) entitled *Construction Plan Borough of Deal, Deal Pump Station Shoreline Protection in the Borough of Deal Monmouth County, NJ*, prepared by *Leon S. Avakian, Inc.*, dated *July 9, 2015*, last revised date *January 12, 2016*, attached hereto as **Exhibit B**, and more particularly described on a legal description (metes and bounds) of the Easement Area, attached hereto as **Exhibit C**; and

WHEREAS, the Grantee is authorized by N.J.S.A. 13:1D-9 to formulate comprehensive policies for the conservation of natural resources, to promote environmental protection, and prevent pollution of the environment of the State, and is authorized by N.J.S.A. 13:8B-3 to acquire and enforce conservation restrictions; and

WHEREAS, the Grantor, having the authority to do so, intends to enter into this Conservation Restriction/Easement in order to grant to the Grantee a Conservation Restriction/Easement on the Property for recreational use by the public.

NOW THEREFORE, in consideration for the issuance of the Permit and for the valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the facts recited above and the terms, conditions and restrictions contained herein, the Grantor hereby agrees that the Property shall be subject in perpetuity to the following conveyances, covenants and restrictions in favor of the Grantee:

1. Grantor hereby conveys, transfers, assigns and grants to the Grantee a Conservation Restriction/Easement with respect to that portion of the Property as shown in **Exhibit B** and as described in **Exhibit C**.
2. The parties agree that the Conservation Restriction/Easement shall be in full force and effect as to the entire Easement Areas as shown in **Exhibit B** and described in **Exhibit C**, including those areas upon which the public parking spaces and the walkway(s) have not yet been constructed as of the date of this Conservation Restriction/Easement, and will be accessible to the public at all times in perpetuity.
3. Nothing contained in this Conservation Restriction/Easement shall be deemed or construed to give or grant to the Grantee, the public, or anyone else, any rights to use any portion of the Property except the Easement Areas.
4. Grantor, its successors and assigns, shall maintain the Easement Areas pursuant to the Maintenance Plan, prepared by *Leon S. Avakian, Inc.*, and dated *February 12, 2021*, attached hereto as **Exhibit D** and made a part hereof.
5. The Easement Areas shall be available for public recreational purposes. Recreational uses shall not include any activity that violates federal, state, county or municipal law. No construction shall be permitted within the Easement Areas, other than the public parking spaces and the walkways.
6. The Easement Areas shall be available for waterfront public access purposes, being those recreational activities including, but not limited to, jogging, bicycling, walking, viewing, fishing and other similar recreational activities consistent with and compatible with public enjoyment of the Easement Areas preserved by the Conservation Restriction/Easement herein granted.

7. In no event shall the Grantor charge a fee for access to or use of any portion of the Easement Areas, including for use of parking spaces preserved by the Conservation Restriction/Easement herein granted.
8. In no event shall Grantor erect, place or maintain any gate or any obstruction whatsoever across any portion of the Easement Areas that blocks or impedes physical access to the Easement Areas by the public at any time.
9. The Grantor shall not construct, install or maintain any structure, building or other improvement within the Easement Areas, except those appearing on plans and specifications approved by the Grantee in writing pursuant to the Permit.
10. The boundaries of the Easement Area shall be marked by an unobtrusive, semi-permanent visual marker in a manner of the Grantor's choosing, and to the Grantee's satisfaction, no less than 30 days prior to commencement of site preparation. Examples include the edge of a walkway, curbing, fence post, pipe in the ground, survey markers, and a shrub or tree line.
11. Grantor's liability with respect to the Easement Area is subject to the limitations contained in N.J.S.A. 2A:42A-8 and 2A:42A-8.1 (Landowner Liability Act).
12. Any activity on or use of the Easement Areas by Grantor which is inconsistent with the Public Trust Doctrine, the purposes of this Conservation Restriction / Easement, or not in conformance with the final plans and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit A**, cited herein or any other permit subsequently issued by the Grantee regulating the Property shall be prohibited.
13. In the event of a conflict between this Conservation Restriction/Easement and the approved plan(s), **Exhibit B**, and specifications approved by the Grantee in writing pursuant to the Permit, **Exhibit A**, the former shall govern.
14. This Conservation Restriction/Easement shall be a burden upon and shall run with the Property, and shall bind Grantor, its heir, successors and assigns, in perpetuity.
15. Grantor shall provide the Grantee telephonic and written notice of any transfer or change in ownership of any portion of the Easement Areas, including but not limited to the name and address of the new owner, and including but not limited to any later-formed condominium association, at least one month prior to the day of the signing of those documents accomplishing the actual transfer or change in ownership.
16. In addition to, and not in limitation of, any other rights of the Grantee hereunder or at law or in equity, if the Grantee determines that a breach, default or violation

("Violation") of this Conservation Restriction/Easement has occurred or that a Violation is threatened, the Grantee shall give written notice to Grantor of such Violation, setting forth the specifics thereof, and demand corrective action sufficient to cure the Violation. If the Grantor fails to cure the Violation after receipt of notice thereof from the Grantee, or under circumstances where the Violation cannot reasonably be cured within a time period dictated by the Grantee, fails to begin curing such Violation within the time period dictated by the Grantee, or fails to continue diligently to cure such Violation until finally cured, the Grantee may bring an action at law or in equity in a court of competent jurisdiction:

- a. To enjoin and/or cure such Violation,
 - b. To enter upon the Easement Areas and to take action to terminate and/or cure such Violation and or to cause the restoration of that portion of the Easement Areas affected by such Violation to the condition that existed prior thereto, or
 - c. To seek or enforce such other legal and/or equitable relief or remedies as the Grantee deems necessary or desirable to ensure compliance with the terms, conditions, covenants, obligations and purpose of this Conservation Restriction/Easement.
17. If the Grantee, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Easement Areas, the Grantee may pursue its remedies under paragraph 16 above without prior notice to Grantor or without waiting for the period provided for cure to expire. The Grantee's rights under this paragraph shall apply equally in the event of either actual or threatened Violations of the terms of this Conservation Restriction/Easement. Grantor agrees that the Grantee's remedies at law for any Violation of the terms of this Conservation Restriction/Easement are inadequate and that the Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance. The above language shall in no event be interpreted to derogate or diminish the Grantee's rights and powers under the laws of the State of New Jersey for the protection of public health, safety and welfare.
18. Enforcement of the terms of this Conservation Restriction/Easement shall be at the discretion of the Grantee and any forbearance by the Grantee to exercise its rights under this Conservation Restriction/Easement in the event of any Violation by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent Violation or of any of the Grantee's rights under this Conservation Restriction/Easement. No delay or omission by the Grantee in the

exercise of any right or remedy upon any Violation by Grantor shall impair such right or remedy or be construed as a waiver of such right or remedy.

19. Grantor agrees to reimburse the Grantee for any costs incurred by the Grantee in enforcing the terms of this Conservation Restriction/Easement against Grantor, and including, without limitation, the reasonable costs of suit and attorneys' fees.
20. The Grantee reserves the right to transfer, assign, or otherwise convey the Conservation Restriction/Easement to any other entity or person to facilitate the operation of and/or public use and enjoyment of the Easement Areas, provided it is in accordance with N.J.S.A. 13:8B-1 et seq
21. Any notice, demand, request, consent, approval or communication under this Conservation Restriction/Easement shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

***Borough of Deal
190 Norwood Avenue
Mailing Address
PO Box 56
Deal, NJ 07723***

To the Grantee:

State of New Jersey
Department of Environment Protection
Division of Land Use Regulation
501 East State Street
Mail Code 501-02A
P.O. Box 420
Trenton, NJ 08625-0420
Attention: Director, Division of Land Use Regulation
(609) 984-3444

In addition, any notice relating to paragraph 15 shall be addressed as follows:

To the Department:

State of New Jersey
Department of Environmental Protection
Coastal & Land Use Compliance & Enforcement
401 East State Street
Mail Code 401-04C

P.O. Box 420
Trenton, NJ 08625-0420
Attention: Manager, Coastal & Land Use Compliance & Enforcement
(609) 292-1240


22. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.
23. Taxes, Insurance.
 - a. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Easement Areas. Grantor shall keep the Easement Areas free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
 - b. The Grantor agrees to pay any real estate taxes or other assessments levied on the Easement Areas. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien against the land is created, the Grantee, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in said Easement Areas, or to take such other actions as may be necessary to protect the Grantee's interest in the Easement Areas and to assure the continued enforceability of this Conservation Restriction/Easement.
24. Miscellaneous.
 - a. The laws of the State of New Jersey shall govern the interpretation and performance of this Conservation Restriction/Easement.
 - b. If any provision of this Conservation Restriction/Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Restriction/Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
 - c. This Conservation Restriction/Easement and the Permit along with the approved plans set forth the entire agreement of the parties with respect to the Conservation Restriction/Easement and supersede all prior discussions, negotiations, understandings or agreements relating to the easement, all of which are merged herein. No alteration or variation of this Conservation Restriction/Easement shall be valid or binding unless contained in writing executed and recorded by the parties hereto.

- d. Should there be more than one Grantor, the obligations imposed by this Conservation Restriction/Easement upon each Grantor shall be joint and several.
 - e. The covenants, terms, conditions and restrictions of this Conservation Restriction/Easement shall be binding upon, and inure to the benefit of, the parties hereto and all parties having or acquiring any right, title or interest in any portion of the Property, including holders of subdivision deeds, and shall continue as a servitude running in perpetuity with the Property.
 - f. The captions in this Conservation Restriction/Easement have been inserted solely for convenience of reference and are not a part of this Conservation Restriction/Easement and shall have no effect upon construction or interpretation.
 - g. Execution of this Conservation Restriction/Easement does not constitute a waiver of the rights or ownership interest of the State of New Jersey in the property or under the Public Trust Doctrine.
 - h. This Conservation Restriction/Easement shall be construed as if it were drafted by both parties. Both parties waive all statutory and common law presumptions which might otherwise serve to have the instrument construed in favor of, or against, either party as the drafter hereof.
 - i. This Conservation Restriction/Easement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same instrument.
25. The Grantor reserves unto itself the right to undertake de minimis modifications of the Easement Area that are approved in advance and in writing by the Grantee. The Grantee may approve the modification under the following conditions and with the following documentation:
- a. The modification results in an increased level of protection of the regulated resource; or
 - b. The modification results in equivalent areas of resources protected; and
 - c. The modification does not compromise the original protected resource.
26. If the Grantee approves the Grantor's proposed modification, the Grantor shall amend this instrument by preparing and submitting to the Grantee for prior review and approval:

- a. A revised Plan and legal description (metes and bounds) for the area to be preserved under the modified Conservation Restriction/Easement (hereinafter the "Modification Documents"); and
 - b. An Amended Conservation Restriction/Easement that reflects the modifications to this original Conservation Restriction/Easement, the justification for the modification and that also includes the deed book and page of the title deed for the property or properties subject to the modified Conservation Restriction/Easement set forth in the Modification Documents.
27. The Grantor shall record the documents listed in paragraph 26, above, in the same manner and place as this original Conservation Restriction/Easement was recorded.
28. This Grant of Conservation Restriction/Easement may only be removed pursuant to N.J.S.A. 13:8B-1 et seq.
29. The Grantor reserves unto itself the right to abandon the project entitled ***Construction Plan Borough of Deal, Deal Pump Station Shoreline Protection in the Borough of Deal Monmouth County, NJ***, Permit File Number ***1310-04-0001.4 CAF150001*** (the "Project" as depicted and described in Exhibits B and C respectively), whereupon the Grantee shall execute an appropriate release of this Conservation Restriction/Easement without the need for a public hearing that might otherwise be required under N.J.S.A. 13:8B-1 et seq. Abandonment of the approved Project shall include a relinquishment of the Project's associated permits and any and all rights thereto. The right to this release of the Conservation Restriction/Easement may only be undertaken prior to any site disturbance, pre-construction earth movement or construction within any regulated land or water areas governed by this instrument. Any such release shall be effectuated by the recordation of a Release of Conservation Restriction/Easement which has been duly executed by Grantor and Grantee.

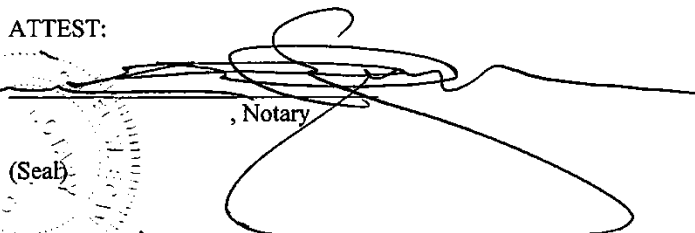
TO HAVE AND TO HOLD unto the State of New Jersey, Department of Environmental Protection, its successors and assigns forever. The covenants, terms, conditions, restrictions and purposes imposed with this Conservation Restriction/Easement shall not only be binding upon the Grantor but also its agents, personal representatives, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, the Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the **Monmouth** County Clerk.



Samuel Cohen, Mayor

ATTEST:


_____, Notary
(Seal)
STATE OF New Jersey
COUNTY OF monmouth

Be it remembered that on this 10th day of February, 2021, before me, the subscriber, a Notary Public of New Jersey, personally appeared: Samuel Cohen, and he thereupon acknowledged that he signed the foregoing instrument (in such capacity, that the seal affixed to said instrument is the corporate seal of said corporation), and that said instrument is the voluntary act of deed of said person (or corporation, made by virtue of authority from its Board of Directors).

A Notary Public of New Jersey

My Commission Expires: _____



Attachments required: NJDEP Approved Permit
NJDEP Approved Plan
Legal Description of Restricted Area (metes and bounds)
Maintenance Plan

EXHIBIT A
PERMIT NO. 1310-04-0001.4 CAF150001

**EXHIBIT B
EASEMENT AREA PLAN**

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November 2015

EXHIBIT C
LEGAL DESCRIPTION OF EASEMENT AREA

**EXHIBIT D
MAINTENANCE PLAN**

1. Grantor agrees to maintain the Easement Areas at Grantor's expense.
2. Parking spaces reserved for the public cannot be removed without prior written approval by the Department.
3. Public access stairs maintained by NJ Division of Fish & Wildlife, Bureau of Land Management Assunpink Wildlife Management Area, 1 Elridge Road, Upper Freehold Township, Robbinsville New Jersey 08691, with assistance from the Borough of Deal.
4. "Maintenance" includes:
 - a. Removal of snow, ice, leaves, litter, debris, graffiti, and unauthorized signage from the Easement Areas,
 - b. Regular emptying of trash receptacles,
 - c. Maintaining the surface of the Easement Areas and the area underneath in good repair, reconstruction of any portion of the Easement Areas that may be necessary due to deterioration or destruction of the Easement Areas due to any cause including but not limited to wear and tear, fire, storm, subsidence or flood,
 - d. Maintenance and regular cleaning of drainage basins, grates or any other structure that may be designed to receive surface water runoff from the Easement Areas, maintenance of any lighting fixtures, trash receptacles and benches appearing on the final plans approved by the Department in writing pursuant to Permit No. *1310-04-0001.4 CAF150001* or any permit subsequently issued by the Department regulating the Property, and any other action consistent with these obligations which is necessary to effectuate permanent and convenient public access to the Easement Areas.

Appendix 6. Neptune Ave ROW Easement

DEED OF EASEMENT AND DECLARATION OF RIGHT-OF-WAY

THIS DEED OF EASEMENT AND DECLARATION OF RIGHT-OF-WAY (the "**Deed**") is made as of this 18th day of February, 2022, by:

ICC NEPTUNE AVE LLC, a Delaware limited liability company whose post office address is 767 Fifth Avenue, 24th floor, New York, New York 10153 (hereinafter "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the record owner of certain real property located in the Borough of Deal, Monmouth County, New Jersey commonly known as Lot 1, Block 83, as shown on the Borough's Tax Map (the "**Declarant's Property**"); and

WHEREAS, Neptune Avenue is an improved public right of way located in the Borough of Deal; and

WHEREAS, contemporaneous with the execution of this Deed and pursuant to an agreement between Declarant and the Borough of Deal (the "**Borough**") dated December 28, 2018, Declarant purchased from the Borough a 58'-wide portion of Neptune Avenue contiguous with Declarant's Property ("**the Vacated ROW**"), which purchased portion will be consolidated with Declarant's Property upon Declarant obtaining good and marketable title upon the successful conclusion of a quiet title action; and

WHEREAS, the Borough has retained a 12'-wide portion of Neptune Avenue that adjoins the Vacated ROW to the North; said "**Remaining ROW**" is to be preserved, used and improved for visual and physical public access to the beach and shores of the Atlantic Ocean adjacent to the easterly terminus of Neptune Avenue pursuant to the terms of an agreement by and between Declarant, the Borough and the American Littoral Society, Inc. dated November 3, 2021 ("**Settlement Agreement**"), which is hereby incorporated by reference; and

WHEREAS, the Settlement Agreement requires the Remaining ROW to be a fully accessible and unobstructed corridor having a width of 12 feet; and

WHEREAS, certain encroachments presently existing within the Remaining ROW do not allow for the Remaining ROW to be fully accessible and unobstructed to a width of 12 feet; and

WHEREAS, in order to effectuate and implement this requirement of the Settlement Agreement, Declarant wishes to enhance the width of the public access offered by the Remaining ROW by providing an easement and right-of-way for public access across a portion of the Vacated ROW that is situated between the Southerly line of the Remaining ROW and the face of the existing curbline (as extended to the stone revetment proximate to the Easterly end of

Neptune Avenue), which is 5 feet to the south of said Southerly line, as shown on Exhibit A attached hereto and described on Exhibit B attached hereto ("Easement Area"); and

NOW, THEREFORE, the Declarant, intending to be legally bound, for itself, and its transferees, licensees, tenants, occupants, successors and assigns, **HEREBY DECLARES** as follows:

1. **Incorporation of Preamble.** The provisions set forth in the above Recitals of this Deed, including, but not limited to, the attached exhibits, are incorporated herein by reference and made a part hereof.

2. **Grant of Easement.** A perpetual easement and right-of-way across that land of the Declarant's Property described as the Easement Area and identified as such in Exhibit A hereto attached, and Declarant holds the requisite interest to grant this Deed listed above for use by the Borough of Deal, their representatives, agents, contractors and assigns, for all of the same public purposes of the Remaining ROW as set forth in the Settlement Agreement, including, without limitation, to:

- a. Enable pedestrian transit over the Easement Area in favor of the general public for the purpose of providing visual and physical public access to the beach;
- b. Post tasteful and appropriate signage marking the location as an area for public beach access in conformance with the Borough's ordinances announcing the Easement Area as a point of public access; and
- c. Construct and operate a set of stairs connecting the Remaining ROW and Easement Area to the beach.

Declarant understands and agrees that the public right to access the beach and Atlantic Ocean across the Easement Area, is explicitly subject to the Borough's authority to require bathers to purchase either a seasonal or daily beach badge during the summer season in order to access the beach, and Declarant shall have no claim to any such revenue.

3. **Maintenance and Replacement.** The maintenance of the Easement Area and any improvements thereon shall be the responsibility of Declarant. "Maintenance" shall mean Declarant's obligations i) to keep the Easement Area as an open grassed area, ii) to remove any overgrown vegetation within the Easement Area, and iii) to refrain from the construction of any improvements in the Easement Area, except to the extent that the eastern portion of the Easement Area may be utilized for a set of stairs to the beach.

4. **Conservation Easement.** Declarant acknowledges that the adjoining Remaining ROW may be subject to a Grant of Conservation Restriction/Easement in favor of the New Jersey Department of Environmental Protection (the "NJDEP") to provide public access to the waterfront as contemplated by Section 4(g) of the Settlement Agreement. Upon notice that the Borough has offered or filed a Grant of Conservation Restriction/Easement in favor of the NJDEP to the Remaining ROW, Declarant agrees that it will agree to subject the Easement Area

to a Grant of Conservation Restriction/Easement in favor of the NJDEP to provide public access to the waterfront so long as the following applies: (i) the Borough of Deal files a Grant of Conservation Restriction/Easement in favor of the NJDEP to provide public access to the waterfront for the Remaining ROW pursuant to settle agreement; (ii) NJDEP agrees to such a Grant of Conservation Restriction/Easement for the Easement Area; and (iii) the Grant of Conservation Restriction/Easement in favor of the NJDEP to provide public access to the waterfront is consistent with the terms of this Deed and imposes no greater obligations on Declarant than this Deed. In the event that Declarant subjects the Easement Area to a Grant of Conservation Restriction/Easement in favor of the NJDEP to provide public access to the waterfront, and further provided that maintenance of the Easement Area is provided for in the Grant of Conservation Restriction/Easement, then this Deed shall be terminated.

5. **Duration of Easement.** The easement and right of way set forth in this Deed above is not personal to Declarant, but shall run with the land and shall be binding upon the Declarant during the period of its ownership and binding upon Declarant's successors and assigns in perpetuity, except as otherwise provided in Section 4.

6. **Release of Declarant after Sale.** Upon the sale or transfer of Declarant's interest in the Declarant's Property, Declarant shall be released from all responsibilities or obligations arising hereunder after such sale or transfer, without the necessity of the execution or delivery of additional documents.

7. **Validity.** If any term, covenant, or condition of this Deed or the application thereof to any person or circumstance shall be invalid or unenforceable, the remainder of this Deed or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

8. **Application of Law.** The validity, construction, performance and enforceability of this Deed shall be governed in all respects by the laws of the State of New Jersey, without reference to the choice-of-law principles thereof. The venue of any litigation arising in connection with this Deed or in respect of any of the obligations under this Deed, shall, to the extent permitted by law, be in Monmouth County, New Jersey.

9. **Headings.** The paragraph headings are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

10. **Enforceability.** This Deed is intended to benefit the Borough, thus Declarant affords the Borough the right to enforce the provisions of this Deed should Declarant, or its successors or assigns, fail to honor same.

IN WITNESS WHEREOF, Declarant has executed this Deed the day and year first above written.

ICC NEPTUNE AVE LLC,
a Delaware limited liability company

By: 
Name: Isaac Chera
Title: Managing Member

ACKNOWLEDGMENT

STATE OF New York :
COUNTY OF New York : SS

I certify that on February 18, 2022, ISAAC CHERA, personally came before me and stated to my satisfaction that he is the Managing Member of ICC Neptune Ave LLC, the company named in the within instrument and that the execution, as well as the making of this instrument, has been duly authorized by ICC Neptune Ave LLC, as its voluntary act and deed by virtue of authority from its members.


Notary Public
My Commission Expires: AVRAM E. POSNER
Notary Public, State of New York
No. 02PO6002035
Qualified in Nassau County
Commission Expires February 2, 2026

RECORD AND RETURN TO:
Paul V. Femicola, Esq.
PAUL V. FERNICOLA & ASSOCIATES, LLC
219 Broad Street
Red Bank, New Jersey 07701

EXHIBIT A

Easement Area

#12906374.4

EXHIBIT B

Legal Description

#12906374.4



Corporate Office
1800 Route 34, Suite 101, Wall, New Jersey 07719

Regional Offices
King of Prussia, Pennsylvania
Bethlehem, Pennsylvania
Hackettstown, New Jersey
Camden, New Jersey
Newark, New Jersey
New York, New York
Atlanta, Georgia

**LEGAL DESCRIPTION OF A
PROPOSED 5' WIDE PUBLIC ACCESS EASEMENT WITHIN
LOT 1.01, BLOCK 83
BOROUGH OF DEAL
MONMOUTH COUNTY, NEW JERSEY**

All that certain lot, tract, or parcel of land, situate, lying and being in the Borough of Deal, Monmouth County, New Jersey, being more particularly bounded as follows to wit:

BEGINNING at a point in the line of division of the northerly line of Lot 1.01, Block 83 and the southerly line of a 12.00 foot strip of land being the remains of the partially vacated, easterly portion, of Neptune Avenue (formerly 70 foot Right-of-Way), said point of beginning also being South 22° 30' 00" West, 12.00' along the westerly line of the aforementioned 12.00 foot wide strip of land, from the intersection of the Northerly line of Neptune Avenue (formerly 70' wide Right-of-Way) with the Easterly line of Monmouth Terrace (100 foot wide Right-of-Way per tax map), and from said point of beginning running; thence,

1. Easterly, along the Southerly line of the 12.00 foot wide strip of land being the remnant of said vacation of Neptune Avenue, South 67° 30' 00" East, a distance of 124.74 feet to a point of intersection with the line of division of Lot 1.01, Block 83 and a 30' wide piece of land identified as "Cliff Walk" on a map entitled, "Deal, Monmouth County, N.J. Property of Atlantic Coast Realty Co. Revised Map" filed in the Monmouth County Clerk's Office on August 24, 1911 in case 53-11; thence,
2. Southerly, running along the westerly line of said "Cliff Walk", South 24° 24' 05" West, a distance of 5.00 feet to a point; thence,
3. Westerly, running through Lot 1.01, Block 83, North 67° 30' 00" West, a distance of 124.57 feet to its intersection with the line of division of the 70' wide Right-of-Way portion of Neptune Avenue and Lot 1.01, Block 83; thence,
4. Northerly, running along the westerly terminus of the 70' wide Right-of-Way portion of Neptune Avenue, North 22° 30' 00" East, a distance of 5.00 feet to the point and place of **BEGINNING**.

Containing 623.77 square feet and/or 0.014 acres of land.

Being intended to describe a proposed 5' Wide Public Access Easement as shown on a plan entitled, "Road Vacation Plan of a Portion of Neptune Avenue, Borough of Deal, Monmouth County, New Jersey", prepared by French & Parrello Associates dated November 20, 2018, last revised February 16, 2022.

SUBJECT TO: Any recorded or unrecorded easements, restrictions, and covenants.


Thomas J. Erdi, P.L.S.
Professional Land Surveyor
N.J. License No. 24GS035834

Appendix 7. Neptune Ave Utility Easement

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT made as of the 18th day of February, 2022, by **ICC Neptune Ave LLC**, a Delaware limited liability company whose post office address is c/o Crown Acquisitions, 767 Fifth Avenue, 24th Floor, New York, NY 10153 ("Grantor") to **Borough of Deal**, a political subdivision of the State of New Jersey, 190 Norwood Ave, Deal, NJ 07723 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of certain lands designated as Lot 1, in Block 83, on the Tax Map of the Borough of Deal located in the Borough of Deal, County of Monmouth, State of New Jersey, including a portion of the former Neptune Avenue conveyed by the Borough to Grantor by Quitclaim Deed (hereinafter referred to as "Property"); and

WHEREAS, the parties hereto, by this Declaration of Easement, intend to grant, create, confirm and provide for an utility easement in Property.

NOW THEREFORE, in consideration of the covenants, promises and conditions hereinafter contained, Grantor does hereby covenant, promise and agree as follows:

1. Grantor grants to Grantee, its successors and assigns, rights and easements on, under, across, over and through that portion of Property described in Schedule A attached hereto and made a part hereof (the "Utility Easement Area") for the purpose of maintaining, reconstructing, repairing facilities and associated improvements related to public utilities in the Property (the "Utility Easement"). Said easement shall include the right to enter upon the Utility Easement Area with necessary labor, equipment, vehicles and materials at any and all times for the purposes of inspecting, repairing, maintaining, operating, altering, reconstructing, reinstall in the aforesaid public utilities within the Utility Easement Area.

2. Grantor and its successors and assigns shall not construct any structure or allow any vegetation or man-made or natural object to interfere with the Utility Easement ("Obstructions"). Any Obstructions shall be promptly removed by Grantor and its successors and assigns upon reasonable notice by Borough.

3. Although the Utility Easement herein granted to the Borough is created for the benefit of the general public and for the purpose of proper management of public utilities, nothing herein contained shall be construed to convey to the public any rights, including rights of use and entry, other than as expressly provided herein.

4. The within Declarations of Easement and the rights, duties and obligations herein granted and provided shall be in perpetuity, unless the same shall be terminated in writing by all parties in interest by written agreement in recordable form.

5. The within easements, grants and rights created hereunder shall run with the land forever and shall otherwise shall inure to the benefit of the Borough, and its heirs, successors and assigns, and shall be for their use and for the uses and purposes herein expressed.

#10305246.3

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.

ATTEST:

Name: _____

ICC Neptune Ave LLC

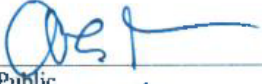
By: _____

Name: Isaac Chera

Title: Managing Member

STATE OF New York)
COUNTY OF New York) ss.:

BE IT REMEMBERED that on the 18th day of February, 2022, before me, the subscriber, a Notary Public, personally appeared **Isaac Chera**, who I am satisfied is the person who signed the within instrument as the Managing Member of ICC Neptune Ave LLC, a New Jersey limited liability company, the limited liability company named herein, and he thereupon acknowledged that the said instrument made by the limited liability company was signed, sealed and delivered by him as Managing Member and is the voluntary act and deed of the limited liability company, made by virtue of authority from the limited liability company.



Notary Public
State of New York
My Commission expires on: February 2, 2026

AVRAM E. POSNER
Notary Public, State of New York
No. 02PO6002035
Qualified in Nassau County
Commission Expires February 2, 2026

Schedule A

Utility Easement Area

#10305246.3



Corporate Office
1800 Route 34, Suite 101
Wall, NJ 07719

Regional Offices
Hackettstown, NJ
New York, NY

**LEGAL DESCRIPTIONS OF THE
ROAD VACATION OF A PORTION OF
NEPTUNE AVENUE
BOROUGH OF DEAL
MONMOUTH COUNTY, NEW JERSEY**

All that certain lot, tract, or parcel of land, situate, lying and being in the Borough of Deal, Monmouth County, New Jersey, being more particularly bounded as follows to wit:

BEGINNING at a point, said point being a distance of 661.31 feet from the intersection of the Easterly Right-of-Way Line of Ocean Avenue with the Southerly Right-of-Way Line of Neptune Avenue (70' Right of Way); running thence,

1. Northerly, along the newly vacated portion of Neptune Avenue, North $22^{\circ} 30' 00''$ East, a distance of 58.00 feet to a point; thence,
2. Easterly, running along the Northerly Right-of-Way of Neptune Avenue, and the Southerly Line of Lot 1, Block 82, South $67^{\circ} 30' 00''$ East, a distance of 124.74 feet to a point; point being on the westerly line of what is known as Cliff Walk, with the easterly Right-of-Way Line of the portion of Neptune Avenue to be vacated; running thence,
3. Southerly, running along the Easterly Right-of-Way Line of the portion of Neptune Avenue to be vacated and the Westerly line of the City Walk, South $24^{\circ} 24' 05''$ West, a distance of 58.03 feet to a point; thence,
4. Westerly, running along the Southerly Right-of-Way Line of the portion of Neptune Avenue to be vacated, North $67^{\circ} 30' 00''$ East, a distance of 122.81 feet to the point and place of **BEGINNING**.

Containing 7,179.033 square feet and/or 0.165 acres of land.


Being intended to describe the Vacation of a Portion of Neptune Avenue, in the Borough of Deal, Monmouth County, New Jersey as shown on a plan entitled, "Road Vacation Plan of a Portion of Neptune Avenue, Borough of Deal, Monmouth County, New Jersey", prepared by French & Parrello Associates dated November 20, 2018, last revised December 11, 2018.

ADDITIONAL INFORMATION:

Said vacation will be reserved by the Borough of Deal as a utility easement.

SUBJECT TO:

1. 30-foot-wide Cliff Walk.


Thomas J. Ertle, P.L.S.
Professional Land Surveyor
N.J. License No. 24GS035834

**BOROUGH OF DEAL
MONMOUTH COUNTY, NEW JERSEY**

Commissioner Simhon offers the following Resolution:

Resolution 23-134

WHEREAS, the Borough of Deal Municipal Public Access Plan (MPAP) was submitted to the Board of Commissioners and reviewed at the regular meeting of October 12, 2023; and

WHEREAS, the governing body has approved of the plan submitted; and

WHEREAS, the governing body recognizes the need to make the MPAP an authorized component of municipal decision-making by incorporating it into the municipal master plan.

NOW, THEREFORE BE IT RESOLVED, by the Board of Commissioners of the Borough of Deal, the "Deal Municipal Public Access Plan", a copy of which is attached, is hereby approved.

FURTHER RESOLVED, the MPAP shall be incorporated into the municipal master plan.


FURTHER RESOLVED a copy of the plan shall be sent to the New Jersey Department of Environmental Protection for review and approval in accordance with N.J.A.C. 7.7.

Seconded by Commissioner Ades

Roll Call: Ayes 3; Cohen, Ades & Simhon

10/12/23

I, Hereby Certify, that this is a true copy of the resolution passed at the Mayor and Commissioners meeting held on **October 12th, 2023** for the Borough of Deal, NJ.



Ronen Neuman
Acting Clerk/Borough Administrator