

# TOWNSHIP OF LOWER MUNICIPAL PUBLIC ACCESS PLAN



Submitted by  
Township of Lower Council  
2600 Bayshore Road  
Villas, NJ 08251

**Township**

**Council**

**Approval**

**Resolution**

**FINDINGS AND CONCLUSIONS OF  
THE PLANNING BOARD OF  
THE TOWNSHIP OF LOWER**

RESOLUTION NO. 12-15

WHEREAS, the Planning Board of the Township of Lower has conducted a examination of the Municipal Public Access Plan (MPAP) of the Township of Lower pursuant to N.J. DEP regulations; and

WHEREAS, the Planning Board wishes to formalize their examination and to direct that their approval be passed along to the governing body; and

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Lower, Cape May County, New Jersey, on the 19<sup>th</sup> day of April 2012, that the document entitled Township of Lower Municipal Public Access Plan, Township of Lower, dated March 15, 2012 is hereby approved; and

BE IT FURTHER RESOLVED that a copy of this document be recommended to the governing body of the Township of Lower, the County of Cape May, for submission to the New Jersey State Department of Environmental Protection for review and approval in accordance with N.J.A.C. C7.7. and N.J.A.C.7.7E.

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William J. Galestok, PP, AICP  
Director of Planning

DATED: April 19, 2012

# **MUNICIPAL PUBLIC ACCESS PLAN**

## **March 19, 2012**

### **ACKNOWLEDGMENTS**

The Township of Lower Municipal Public Access Plan was authored by William J. Galestok, PP, AICP, Lower Township Planning Director, in cooperation with the following Lower Township Officials:

#### **LOWER TOWNSHIP COUNCIL**

Mayor Michael Beck  
Deputy Mayor Kevin Lare  
Council Member Thomas Conrad  
Council Member Walter Craig  
Council Member Glenn Douglass  
Township Manager Michael Voll

#### **LOWER TOWNSHIP PLANNING BOARD**

Chairman Jay Dilworth  
Vice-Chairman Charles Hewitt  
Michael Beck  
Johnnie Walker - Mayor's Designee  
John McNulty  
Kevin Lare  
Daniel Senico  
Brian Sullivan  
Paul St. John  
Christopher McDuell  
Frank Zeigler

#### **Photography for this report**

Lisa Schubert, Planning & Zoning Clerk  
Joseph M. Galestok, RMTV, Richard M. Teitelman Middle School



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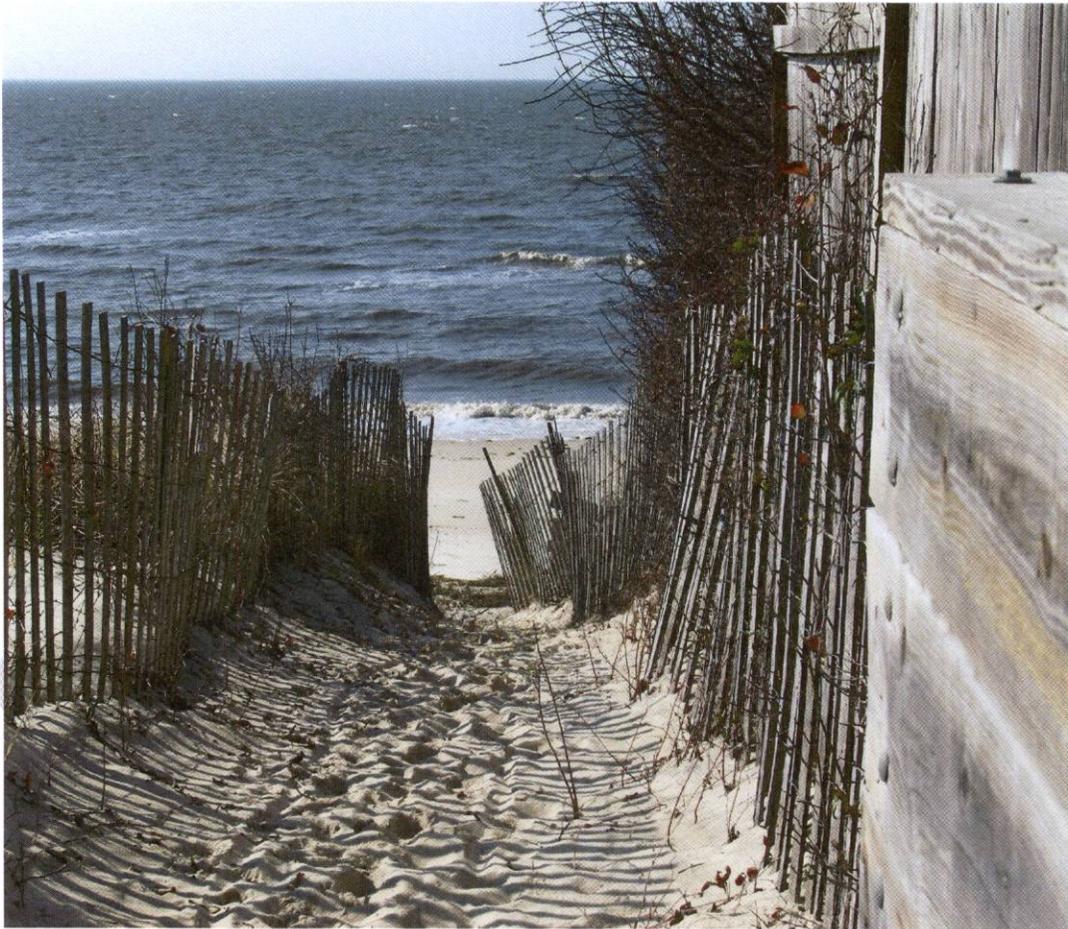


## INTRODUCTION

The purpose of this document is to provide a comprehensive Municipal Public Access Plan (MPAP) for Lower Township in accordance with N.J.A.C.7.7. and N.J.A.C. 7.7E. The MPAP is being submitted to the New Jersey Department of Environmental Protection (Department) for approval. Lower Township fully expects the following benefits from approval of our Municipal Public Access Plan:

- A. State Green Acres Programs funds.
- B. State Resources & Assistance.
- C. Development Funding for Shore Infrastructure.
- D. High Shore Protection Funding Rank.
- E. Less time consuming and less expensive Department permit process.

- F. Coastal Permit applicants (general public) to benefit from a Department Permit Process that is less expensive, less time consuming and whose outcomes are more certain.
- G. All Department General Permits available to all applicants.





### **OVERVIEW OF THE MUNICIPALITY**

Consolidating several Historic Towns, including Townbank, North Cape May, Villas, Schellengers Landing, Fishing Creek, Erma and Cold Spring, Lower Township was incorporated in 1798. With 32 square miles of area and a 2010 U.S. Census population of 22,866, Lower Township exhibits a suburban to rural environment, set between the Atlantic Ocean and Delaware Bay. “Home of the best sunsets,” in the State of New Jersey, the large summer tourist

population find themselves immersed in a wonderful mix of a convenient shopping, in local retail stores, restaurants and pubs, while experiencing all that nature has to offer. Fishing, swimming, surfing, boating, beach access, marinas, birding, historic sites, wineries, museums and camping, are just a few of the many amenities our year round residents and tourists enjoy in Lower Township. A Bayshore Heritage Byway Community, visitors are invited to see the Cape May County Airport, incorporating the Naval Air Station Wildwood Museum and the Forgotten Warriors Vietnam Museum, the Cape May Lewes Ferry, the Fishing Creek School, Historic Cold Spring Village, Cox Hall Creek Wildlife Management Area, Cold Spring Presbyterian Church and Cemetery, World War II Lookout Tower and the Cape May State Park and Lighthouse, to just name a few of the attractions along the byway route.

Rated #1 by the Birding Community and rated the #3 fishing port on the east coast, Lower Township's economy relies heavily on the tourism and commercial fishing industry. Retail shopping and general business areas are located throughout Lower Township serving the residents conveniently at the community level. Wherever you go you are assured to have fast, affordable access to shopping, restaurants, services and recreational activities.

The existing Land Use patterns include the R-1/R-2 single family residential zoning district, a low density district including most of Lower Township's farms, churches, public schools and campgrounds. The R-3 mainland residential district consists of well established neighborhoods on smaller lots with a zoning density of approximately six (6) units per acre. Multi-family/hotel-motel resort districts, provide a increased residential density of up to 60 one bedroom units per acre, in a compact summer resort setting. General Business and Residential Business areas support lodges & clubs, public purpose uses, banks, offices, restaurants & pubs, indoor recreation, automotive service stations, laundromats, garden centers, car washes and general retail establishments in a pure business or residential business environment. Lower Township also boasts a large industrial area centered around the Cape May County Airport.

Being located on a peninsula, and surrounded by water, Lower Township has a vast expanse of marine zoning to support the commercial fishing industry, family boating and the recreational fisherman. The Marine Development and Marine General Business zones were created to assist commercial fishing operations, extend public access to the waters edge through

waterfront restaurants and marinas, and provide retail support for the needs of the marine enthusiast. Conservation and wetlands zoning provide protection for our Township's most valuable natural environment. Consisting of many natural heritage priority sites, flora and fauna are protected in these extensive zoning districts which include several major conservation areas:

Higbee Beach Wildlife Management Area  
Cape May Point State Park  
Cox Hall Creek Wildlife Management Area  
Cape May National Wildlife Refuge  
Fishing Creek Wildlife Refuge  
South Cape May Meadows

Historically, Lower Township supported a number of fishing piers along the Delaware Bay. Lower Township is now looking to maximize the general public's access to all of our beaches, bays and waterways, in the present day, as our forefathers provided access to the public in the past. Lower Township's popularity as a place to live, work and play can only be enhanced by providing the maximum access to our natural waterways.





### **GOALS OF THE PUBLIC ACCESS PLAN**

- a. Impose reasonable public access regulatory requirements.
- b. Enhance the public's access to tidal waters in a comprehensive manner.
- c. Fund Municipal projects for public access thru the Green Acres and Blue Trails programs.
- d. Provide the public with the information it needs to be able to choose the most appropriate locations to enjoy the States coastal and tidal waters.
- e. Support as a legitimate public access opportunity the establishments of restaurants, bars and other recreational and amusement facilities.
- f. Uphold the State's historic role in promoting and protecting the public's right to access tidal waters, for navigation, fishing and recreation.
- g. To maintain and enhance public access to tidal waters.

Lower Township pledges to provide public access to tidal waters through implementation of the following goals:

1. Maintain all current access whenever possible.
2. Protect the ocean, bay, beach and dunes through strict enforcement of 400-79 of the Land Development Ordinance of the Township of Lower, "Dune Area Site Plan Review."
3. New residential and commercial development shall provide for onsite public access to tidal waters according to law.
4. Public access to tidal waters may be prohibited or restricted in order to promote the health, safety and welfare of the community whenever a significant, safety, security or public health threat is detected.
5. Hazardous operations, dangerous infrastructure locations, shore protection facilities, time of day or night, dangerous tidal activity areas, shore line maintenance procedures, as well as, any other activity that may cause injury to the public may be grounds for elimination or suspension of the public's access to a specific tidal access area.
6. To maximize the general public access to tidal waters, along Delaware Bay through the construction of public access improvements including:
  - A. Proposed MUNICIPL " FISHING PIER" close to population centers.
  - B. Parking support facilities.
  - C. Storm protection infrastructure.
  - D. Deep water access.
  - E. Municipal marinas and boat ramps.
  - F. Restroom facilities.
  - G. Handicapped accessible boardwalks and wheelchairs.
  - H. Legitimate public access opportunities through the establishment of restaurants, bars, and other recreational and amusement facilities built along tidal waterways.

Lower Township has created an amazing network of publically accessible waterfront access points through a public/private relationship with its residents and visitors over the years. Spawned from the wilderness as a whaling town, access to tidally flowed waters has been the life blood of the Township from it's inception. Lower Township will protect public access to the waterfront and enhance public access opportunities whenever possible into the future.



### **OVERVIEW OF EXISTING PUBLIC ACCESS FACILITIES**

Globally renowned birding locations, pristine Atlantic Ocean beaches, Delaware Bay, Cape May Harbor, Cape May Canal and the Intercoastal Waterway offer water access to all people that live, work or play in Lower Township. With 2.5 miles of Atlantic Ocean Beach, six (6) miles of shoreline along Cape May Harbor, The Cape May Canal and Cape May Inlet, and over seven (7) miles of coastline along Delaware Bay, one is never very far from public access to tidal waters. The “Diamond Beach” section of Lower Township offers NJDEP secured CAFRA access at The Grand condominium, Rochester and Atlantic Avenues; at SeaPointe condominium, Memphis and the beach and at Raleigh Avenue and the beach.

Public access to the water through boating is very popular in Lower Township. The

Spicer Creek Boat Access located in Schellengers Landing and operated by the New Jersey Department of Environmental Protection and the New Jersey Division of Fish Wildlife, offers free boat launching to the general public. Convenient public parking is also available for the trailer and tow vehicle, on-site, at no extra charge.

The Cape May Point State Park and Lighthouse, located in Lower Township, offers visitors free public access to Atlantic Ocean beaches and backwater ponds. Spectacular visual water access is offered to all who dare to climb the lighthouse tower. Free restrooms are provided on-site. Additional public access to the Delaware Bay, is provided at the end of Sunset Boulevard, Delaware Bay, where the sunsets are fantastic and public parking and bathroom facilities are available.

As we head north from “Sunset Beach” we find public access, public parking and public restrooms available at the Cape May Lewes Ferry Terminal and the David C. Douglass Memorial Rotary Park.

Lower Township offers a multitude of access points for all residents and visitors to enjoy. Maintenance of facilities is provided by the appropriate local, private, State or Federal agencies.





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### **PUBLIC ACCESS VISION**

With over 15.5 miles of tidally accessible area, Lower Township affords the general public with a tremendous opportunity for public access. Beach access for swimming, beach combing, congregation of solitude, fishing, surfing and kayaking is available in multiple areas of Lower Township. Boat launching at both public and private marinas, open to the general public, are numerous.

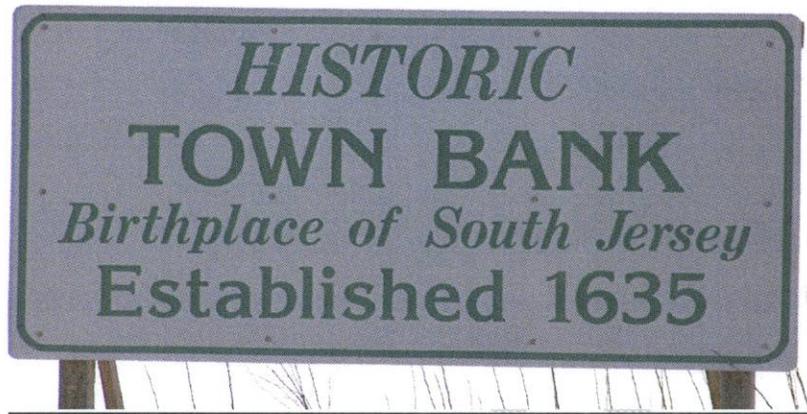
Public access is and should be available in all areas of Lower Township with the exception of restricted areas for public safety reasons.

Additional public access to the back bay areas for kayaking, stand-up paddle boarding,

fishing and crabbing, along the intercoastal waterway, might be possible through raised walkways, from publically owned right-of-ways, if safe parking areas can be provided. Other measures to mitigate constraints to public access should be studied in the future.

Lower Township has maintained and will continue to maintain public access in the future as it represents a large part of our heritage, as well as, being in our own self-interest as the years move on.





### EXISTING PUBLIC ACCESS FACILITIES AND DEMOGRAPHIC INFORMATION

Lower Township has a total permanent population of 22,866 according to the 2010 U. S. Census data. Cape May County as a whole, recorded a total permanent population of 97,265 persons. (2010 census) Interestingly, the Lower township population measured by age, for the age group 1 to 29 years exhibits a 5% average for the five (5) year age cohort, including the 35 to 39 year age grouping. The age group 40 to 69 shows an increase to a 6.9% average for the five (5) year age cohort up to age 69 and exhibits a marked decline from there on. Today's populations are extremely active across the age cohort and therefore the average increase in the weighted average should not correlate to a decrease in demand for public access to the tidal area. In fact, the demand for public access remains steady across the board with Lower Township residents and visitors enjoying the natural environment on a daily basis.

The seasonal population of Lower Township increases to 99,786 people, as estimated by the Cape May County Planning Department. (2012) Visitors to Lower Township enjoy swimming, beach and bay access, fishing, surfing, restaurants and bars on the waterfront, all made possible by Lower Township's exceptional location and access to the tidal waters edge. The large variations in Lower Township's population would normally overload a system of public access to the waterfront but not in Lower Township. With over 80 separate public access points throughout Lower Township, access can be provided to residents and visitors alike.

The existing public access facilities can be grouped according to the following access point classifications:

- A. Neighborhood streets public access (NPA)
- B. Destination public access (DPA)
- C. Public/private deed restricted public access
- D. Public trust doctrine access

Neighborhood streets public access (NPA) typically have limited on street parking only. These public access locations are appropriate for the local resident population, in the neighborhood walkable environment, although a limited number of visitors can be accommodated. Destination public access (DPA) areas are principally defined by public access points where on site organized public parking is available. The public parking facilities available may be government operated, (eg. Cape May Point State Park and lighthouse, Cape May Lewes Ferry Terminal, David C. Douglass Memorial Rotary Park, Higbees Beach Wildlife Management Area, Cox Hall Creek Wildlife Management Area), or to a lesser extent privately operated public access areas. (eg. The South Cape Meadows Preserve, Cape May Migratory Bird Refuge.) Private/public access represents areas where a public/private partnership is the controlling factor for the existence of public access to the States tidal waters. Private property may be deed restricted to allow public access and/or as the result of a New Jersey Department of Environmental Protection Coastal Area Facilities Review Act (CAFRA) permit condition mandating public access over public lands. (Eg. "Diamond Beach" section of Lower Township at Rochester, Memphis and Raleigh Avenues; CAFRA Permit, Seapointe, The Grande and LaQuinta Del Mar.)

Public Trust Doctrine rights go back to Roman Times and the land titles of private property never conveyed public trust rights from the crown. (King of England) Therefore our tidal waterways are subject to public trust rights. New Jersey claims ownership of tidal waterways to the mean high water line. The New Jersey courts have ruled that some areas, including the "dry sand" are subject to public rights. Public Access and use are defined by the

following factors:

1. Linear or lateral access (a person may take a walk along the shoreline free of charge.)
2. Perpendicular access (the public may reach tidal waters and shores from street ends over public or private property.)
3. Perpendicular access assures public access to the mean high water line.

New Jersey State agencies implement public access and enforcement. The general public therefore benefits through the provision and protection of public access rights.

Many Lower Township beaches and tidal water locations are held by private owners. Public streets may have public access locations that lead onto private property. These areas are indicated on the Public Access Table as **Public Trust Doctrine Rights; Limited Access** (PTDR), (if access is not secured via a CAFRA condition, deed of easement, or riparian grant.) Public access to tidal waters at PTDR locations are secured by way of the Public Trust Doctrine. Therefore, according to the Public Trust Doctrine, a person may take a walk along the shoreline free of charge over private beaches through linear and perpendicular access.

### **PUBLIC ACCESS TABLE**

#### **PUBLIC ACCESS TABLE OF EXISTING PUBLIC ACCESS FACILITIES**

<b><u>LOCATION OF PUBLIC ACCESS</u></b>	<b><u>ACCESS TYPE</u></b>	<b><u>ACCESS DETAILS</u></b>
<b><u>DELAWARE BAY</u></b>		
1. Miami & Delaware Avenues	Neighborhood public Access (NPA), <b><u>Public Trust Doctrine rights: Limited Access</u></b> , (PTDR)	Local, limited
2. Florida & Delaware Avenues	NPA PTDR, limited access	Local, 2 benches, park sign

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
3. Jacksonville & Delaware Avenue	NPA PTDR, limited access	Local, limited
4. St. Johns & Delaware Avenues	NPA PTDR, limited access	Local, park sign
5. Tampa & Delaware Avenues	NPA PTDR, limited access	Local
6. Schellenger & Millman Lane	NPA PTDR, limited acces	Local, limited
7. Ocean & Millman Lane	NPA	Local, park sign
8. Bay & Millman Lane	NPA	Local
9. Hudson & Beach Avenue	NPA	Local
10. Pacific & Millman Lane	NPA	Local, limited, No parking, 15' R.O.W.
11. Delaware Parkway & Millman Lane	NPA	Local, limited, No parking, 15' R.O.W.
12. Atlantic & Millman Lane	NPA	Local
13. Bates & Millman Lane	NPA	Local

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
14. Pennsylvania & Millman Lane	NPA	Local, limited, 12' R.O.W., no parking, private fishing club
15. New Jersey & Millman Lane	NPA	Local, limited, no parking, 15' R.O.W. beach stairs
16. New York & Delaware Bay Drive	NPA	Local, 1 bench, stairs
17. Ohio & Delaware Bay Drive	NPA	Local, 1 bench
18. Maryland & Delaware Avenue	NPA PTDR, limited access	Local, 1 bench
19. Cardinal & Beach	NPA	Local, 1 bench
20. Frances & Beach Avenue	NPA	Local
21. Rose & Beach Avenue	NPA	Local
22. Wilde & Beach Avenue	NPA	Local
23. Drumbed & Beach Avenue	NPA	Local
24. Ridgewood & Beach	NPA	Local, 1 bench
25. Pinetree & Beach Avenue	NPA	Local

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
26. Greenwood & Delaware Avenue	NPA	Local
27. Woodland & Delaware Avenue	NPA	Local
28. Oak & Delaware Avenue	NPA	Local
29. Walnut & Delaware Avenue	NPA	Local
30. Spruce & Delaware Avenue	NPA	Local
31. Cloverdale & Beach	NPA	Local
32. Birch & Delaware Bay Drive	NPA PTDR, limited access	Local, Park & beach rules sign
33. Arbor & Delaware Bay Drive	NPA PTDR, limited access	Local
34. Wildwood & Bay Drive	NPA	Local
35. Redwood & Bay Drive	NPA	Local
36. Rosewood & Bay Drive	NPA	Local
37. Village & Bay Drive	NPA	Local
38. Oakdale & Bay Drive	NPA	Local

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
39. Broadway & Bay Drive	NPA	Local, fence defined walkway over dune, no parking at street end
40. Hollywood & Bay Drive	NPA	Local, fence defined walkway over dune, no parking at street end
41. Sandelwood & Shore Drive	NPA	Local, fenced walkway
42. Springtime & Shore Drive	NPA	Local, fenced walkway
43. Fern Road & Shore Drive	NPA	Local
44. Forest & Shore Drive	NPA	Local
45. Hollywood & Shore Drive	NPA	Local, 1 bench
46. Baywyn & Shore Drive	NPA	Local
47. Mallow & northerly terminus of Shore Drive at Cox Hall Creek	NPA	Local
48. Pinewood & Shore drive	NPA PTDR, limited access	Local
49. Avalon & Shore Drive	NPA PTDR, limited access	Local, 2 benches

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
50. Cedarbrook & Shore Drive	NPA PTDR, limited access	Local, 1 bench
51. Delair & Shore Drive	NPA PTDR, limited access	Local, 1 bench
52. Elwood & Shore Drive	NPA PTDR, limited access	Local, 1 bench
53. Folsom & Shore Drive	NPA PTDR, limited access	Local, stairs, 1 bench
54. Racetrack & Shore Drive	NPA PTDR, limited access	Local, 1 bench
55. Adelpia & Shore Drive	NPA PTDR, limited access	Local
56. Beverly & Shore Drive	NPA PTDR, limited access	Local, 1 bench
57. Cliffside & Shore Drive	NPA PTDR, limited access	Local, 1 bench
58. Townbank Road & Beach Drive	NPA PTDR, limited access	Local, 1 bench
59. Delford & Beach Drive	NPA PTDR, limited access	Local, 1 bench, stairs
60. Englewood & Beach Drive	NPA PTDR, limited access	Local, 2 benches, stairs

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
61. Ermerson & Beach Drive	NPA	Local, 1 bench
62. Browning & Beach Drive	NPA	Local
63. Scott & Beach Drive	NPA	Local
64. Washington Blvd. & Beach Drive	NPA	Local
65. Roslyn & Beach Drive	NPA	Local
66. Whittier & Beach Drive	NPA	Local
67. Holmes Avenue & Beach Drive	NPA	Local
68. Franklin & Beach Drive	NPA	Local, 1 bench
69. Rosehill & Beach Drive	NPA	Local, 1 bench
70. Lincoln & Beach Drive	Destination Public Access (DPA)	Public parking, 8 parking spaces, 2 handicapped spaces
71. David C. Douglass Memorial Rotary Park & recreation area	DPA	24 parking spaces, 3 Handicapped spaces, bathrooms, 3 gazebos, 10 benches, 5 picnic tables, overflow parking, memorial & flag

<u>LOCATION OF PUBLIC ACCESS</u>	<u>ACCESS TYPE</u>	<u>ACCESS DETAILS</u>
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72. Higbee Beach Wildlife Management Area	DPA	Public parking lot, Trails
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**CAPE MAY CANAL**

73. Bayshore Road & South side of Cape May Canal	NPA	Local
74. DRBA Ferry Terminal	DPA	Public facility
75. New Port Drive & Cape May Canal	NPA	Local
76. Wissahickon Avenue & Cape May Canal Bridge	NPA	Local, State property

**SPICERS CREEK**

77. Spicers Creek Boat access NJDEP and NJ Fish & Wildlife	DPA	Boat ramp, dock benches, parking lot, handicap parking (1), vehicle & trailer parking (19), overflow parking
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**ATLANTIC OCEAN**

78. Cape May Migratory Bird Refuge (Sunset Blvd. & Bayshore Road)	DPA	(a) Free public access to beach (no parking) b) Fee for public access. Parking lot, 40 parking spaces, walking trails, observation decks
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LOCATION OF PUBLIC ACCESS

ACCESS TYPE

ACCESS DETAILS

79. Cape May Point State  
Park and Lighthouse

DPA

+200 parking spaces  
Restrooms, museum,  
nature trails,  
boardwalk trails,  
observations decks,  
lighthouse, barbeque  
grills with pavilions,  
educational  
opportunity, beach  
wheelchairs available

80. Cape May National Wildlife  
Refuge, Two Mile Beach Unit  
U. S. Fish & Wildlife Service

DPA

2 public parking lots,  
40+ spaces, dune  
Trails, boardwalk  
trails, office, fishing  
only, no swimming

81. Raleigh Avenue and Atlantic  
Ocean (CAFRA) La Quinta Del Mar  
& La Vita Del Mar

Private/Public Access

Local, limited parking

82. Memphis Avenue & Atlantic Ocean  
(CAFRA) Seapointe

Private/Public Access

Local, parking meters  
for 23 spaces, public  
restrooms, marked  
“public parking for  
waterfront access  
only”

83. Rochester Avenue & Atlantic Ocean  
(CAFRA) The Grande

Private/Public Access

Local, no parking

BACK BAY

84. Weeks Landing Road

NPA

Local, limited parking