



Regulatory Challenges and Opportunities to Developing Accessible Trails in New Jersey's Coastal Areas

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*Prepared for the New Jersey Coastal Management Program
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New Jersey's coast provides a range of spectacular recreational opportunities, but few of these are currently designed and maintained for accessibility for those with disabilities. This paper summarizes the principal challenges and opportunities for improving that situation that are presented by the complex environmental regulations governing development in our state's coastal areas. This paper supplements the paper titled *Regulatory Challenges and Opportunities to Developing Accessible Trails in New Jersey*, which addressed the state's wetlands, stream encroachment, stormwater and Pinelands regulations.

We begin again with the idea that "There is no one size fits all solution to creating accessible trails. Access needs vary widely among disabilities, and what is accessible to one disabled person may not be to another." (Disabled Hikers [Website](#).) For example, a given trail may be safe and comfortable for a person using crutches but not for one using a particular wheelchair, or may be fine for a person using a wheelchair but not for a person who is blind, due to its lacking a handrail or other means of marking the edge of the path.

Our review of the coastal development regulations indicates that the primary regulatory issues for creating access for people with disabilities will arise with improving the surfaces of walking trails, creating beach access, and installing accessible docks for activities like kayaking. These three kinds of improvement – to trails, beach access and docks – are the focus of our analysis here. Each of these forms of improvements can serve a wide range of people if carried out thoughtfully and maintained well over time.

It is also essential to clarify a key point of terminology in the coastal context. The coastal regulations use the term "access" in many places because of the state's policy of providing access to the beaches and estuaries for the general public, not just those with the means to own or rent houses in coastal towns. The term "access" in the rules, however, is generic in meaning and is not used with any thought to the specific needs associated with accessibility for people with disabilities. In this paper, we use the term "accessibility" to mean the features that make a trail, beach or waterway accessible for people with disabilities that create mobility challenges.

While the findings and conclusions set out in this report are founded on a detailed review of the rules, the conclusions we reach here are those of the Pinelands Preservation Alliance and are subject to revision as we gain more practical experience in developing accessible trails in regulated natural areas and see how the Department of Environmental Protection implements the rules in this context. We welcome comments and corrections from readers, which may be sent to Carleton Montgomery at carleton@pinelandsalliance.org.

New Jersey's environmental regulations specifically directed at controlling development in coastal areas are combined into the massive Coastal Zone Management Rules ("CZM Rules"), N.J.A.C. 7:7-1.1 et seq. At over 600 pages of dense and interlocking provisions, the CZM Rules combine the regulations for several distinct statutes: the Coastal Area Facility Review Act,

N.J.S.A. 13:19-1 et seq. (CAFRA permits), the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. (coastal wetlands permits), and the Waterfront Development Law, N.J.S.A. 12:5-3 (waterfront development permits), as well as the state’s permitting obligations under Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341, and Federal consistency determinations under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. § 1456. Not surprisingly, this approach makes the CZM Rules very complex to apply to any given situation. In addition, other statewide environmental rules – like freshwater wetlands, stream encroachment and stormwater management rules – may also apply, in addition to or through incorporation by reference in the CZM Rules.

As with the other regulations we have reviewed, it is important to recognize that no one, including the agency staff, have a lot of experience with applying these rules to the creation of accessible trails, because so few such trails have been installed, and even fewer were installed after going through the proper regulatory process. There will be a lot of re-thinking and many judgment calls by public officials as public agencies and nonprofits work on installing more accessible facilities to help all people enjoy coastal resources.

In this paper, we are using the “Accessibility Guidebook for Outdoor Recreation and Trails” published by the U.S. Forest Service of the U.S. Department of Agriculture, available by this [link](#), for the criteria by which to judge a trail or other nature-oriented facility to be accessible. (The Guidebook incorporates two sets of Forest Service standards: the Outdoor Recreation Accessibility Guidelines for site features like picnic areas and overlooks, and the Trail Accessibility Guidelines for trails designated for hiking and pedestrian use.)

The key features of any accessible access that are most likely to raise regulatory issues in the coastal context are improving the trail surface, creating boardwalks, providing access to beaches and water, and installing docks. Other features that are important to accessibility, such as having accessible parking, restrooms, signs or handrails do not appear to create significant permitting challenges under existing development regulations. These features are essential to creating an accessible trail, but they are not the focus here because they should not raise significant regulatory issues in and of themselves.

Key themes that emerge from our review are:

- The CZM Rules were not written with accessibility for people with disabilities in mind, so references or provisions for accessibility are rare after-thoughts that have little demonstrable or reliable impact on the requirements or their application.
- Nevertheless, the CZM Rules should not prevent the creation of at least some forms of accessible trails, access points and docks *if* the agency or organization proposing the project can fund the technical application requirements. Some cases, however, are not

clear. For example, it is impossible to tell how the rules would treat paving a trail in a wetland buffer.

- One section of the Rules (N.J.A.C. 7:7-14.1) governing “linear development” like trails and boardwalks gives the Department of Environmental Protection great discretion to approve or deny a project based on the highly malleable standards of “public health, safety, and welfare.” Permit applicants may want to highlight this discretion and the public benefits of creating accessible trails and access points.
- The public access provisions of the CZM Rules include language that should provide opportunities for requiring more accessible facilities than exist today, but this is just an opportunity: the rules are vague and subject to stronger or weaker interpretation by permitting agencies and developers.
- The CZM Rules do encourage general public access to natural places through trails, boardwalks and docks. In most cases, this attention to the public in general also supports development of facilities designed for wheelchair users and others with mobility challenges.
- The permit application requirements for developing accessible facilities are complex and technical, and they almost always require expensive professional consultants to prepare required analyses and permit applications, no matter how small the project may appear to be.

We make preliminary suggestions on reforms to existing regulations and practices that would greatly lessen their deterrent effect on improving accessibility while still protecting natural resources. Our preliminary recommendations for the CZM Rules are consistent with our recommendations for other sets of regulations, because in all cases the rules as written today fail to address accessibility for people with disabilities in a conscious and comprehensive fashion. We recommend that:

- All applicable regulations should be reviewed and revised based on a realistic, scientific analysis of the actual environmental impacts of accessible trails with different surface treatments in New Jersey’s natural coastal settings. This action would not only help people create more accessible trails, but it would improve the quality of trails for all users and the surrounding environment.
- All applicable regulations should be amended to expressly address the creation of accessible trails and docks in order to clarify and simplify the permitting process for trails and scenic sites of various surface treatments, boardwalks and footbridges in light of State policy supporting equitable access to open space, tidal waters and beaches.

- The Department of Environmental Protection and other relevant agencies should expressly address how they interpret and apply the barrier free access and non-discrimination provisions of the CZM Rules' public access rule to permit applications in the regulated coastal areas, in order to ensure these provisions actually support accessible access for people with disabilities.
- All Municipal Public Access Plans should be reviewed and amended to provide for a reasonable number and variety of accessible trails, boardwalks, beach access sites, and docks.

The Public Access Rule

The CZM Rules have an extensive section on public access, N.J.A.C. 7:7-16.9, which we highlight here because it is the only part of the Rules that seems to speak directly to the concerns of people with disabilities and provides some potential leverage for improving accessibility. It is essential to note, however, that these rules are not fundamentally or broadly about *accessibility* for people with disabilities, but instead about the general right of the public to get to beaches and other coastal resources in the face of private property owners and local governments that might seek to keep those places for their exclusive enjoyment.

The public access rules implement and are based on the Public Trust Doctrine, a judicially-endorsed principle that "natural resources, including but not limited to tidal waterways and their shores, air and wildlife in this State are held by the State in trust for the benefit of all of the people." (quoting the CZM Rules at N.J.A.C. 7:7-16.9(x)). This doctrine is not about accessibility as such. It is broad and vague, with its meaning only given definition through court decisions and regulations like the CZM Rules.

The public access provisions include general, aspirational instructions that all public agencies "shall seek to create and enhance opportunities for public access to tidal waterways and their shores, on a non-discriminatory basis" and that existing public access shall be maintained "to the maximum extent practicable." The Rules encourage municipalities to adopt a Municipal Public Access Plan and submit this Plan for approval by the Department of Environmental Protection.

In municipalities without an approved Public Access Plan, the Rules require that development provide for public access according to stated criteria for commercial and residential development. In this case, the public access rules are an additional substantive standard that applicants for CAFRA, coastal wetlands and/or waterfront development must meet, like the rules for beaches and wetlands buffers discussed below.

Both Municipal Public Access Plans and, where there is no plan, individual development applications, are required to (a) provide public access on a non-discriminatory basis in compliance with New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and (b) "provide barrier free access where feasible and warranted by the character of the site." N.J.A.C. 7:7-16.9(q) and (t).

These requirements provide potentially powerful means to ensure that public access is accessible to people with disabilities, but four provisos must be kept in mind:

- (i) It does not appear that state and local agencies have adopted any public, consistent policy on how or whether they apply these provisions in practice.
- (ii) The provisions are both very vague and are not backed up or filled out with definitions, examples or more detailed requirements.
- (iii) The requirement for barrier free access is conditioned by applying only "where feasible and warranted," terms that also have no definition in the rules and are susceptible to inconsistent and arbitrary application.
- (iv) The access rules are expressly limited by the other substantive regulations of the CZM Rules, so no limitations on development are relaxed or altered by the public access provisions. So it appears that public access rules are in addition to, but also subordinate to, the other environmental regulations in the CZM Rules.

To give actionable meaning to the public access rules for improving accessibility, the Department of Environmental Protection will need to clarify and apply the rule to real projects.

The Rules Within the CZM Rules

The CZM Rules combine three basic sets of overlapping rules that require a "coastal permit." These sets of rules might be thought of as "themes" that are derived from the underlying statutes or legal principles and run through the Rules, because they share many requirements and provisions in common and cannot simply be disentangled for separate analysis. The three sets of rules or themes are:

1. Coastal Area Facilities Review Act or "CAFRA" regulations, which implement the CAFRA statute.
2. Coastal wetlands regulations, which implement the coastal elements of the Freshwater Wetlands Protection Act and federal wetlands mandates from the Clean Water Act.
3. Waterfront development regulations, which implement New Jersey's Waterfront Development Law.

Each of these three rules requires its own permit, but all share most of their substantive and application requirements to receive a permit. The Rules also provide certain “permits-by-rule,” “permits-by-certification” and “general permits” that authorize specified kinds of development with reduced application and substantive requirements, and these special permits generally cover conformance with all the CZM rules or themes above. Thus, while the wording is somewhat ambiguous, the CZM Rules treat a “coastal permit” as being either a CAFRA permit, a coastal wetlands permit, or a waterfront development permit, or a permit that covers more than one of these sets of rules.

The criteria for whether a coastal permit is required for a given activity differ by each of the three underlying rules or themes. If any one of these rules requires a permit, then one must get a permit that meets all the applicable CZM requirements. Most of the substantive requirements are shared or universal across the rules, and the rules generally address development in the same types of coastal resources, such as beaches, estuaries, and tidal rivers and stream banks. Because the sets of rules share some but not all requirements, and are somewhat mixed up throughout the CZM Rules, it can be challenging to reach a reliable conclusion about which rules apply to any given proposed accessibility project.

For any proposed activity, one must determine (a) which parts of the CZM Rules apply, as each set of rules has different definitions of regulated areas and activities, (b) what substantive requirements govern the project under those rules that do apply, and (c) what permits and permitting procedures are required for the project. Fortunately, the CZM Rules provide that anyone can ask for an “applicability determination” from the Department of Environmental Protection as a first step before actually devoting the time and money it takes to prepare applications under these various rules. N.J.A.C. 7:7-2.5.

- 1. CAFRA:** CAFRA requirements apply in the CAFRA zone, an area that is established by the CAFRA statute and mapped by the Department of Environmental Protection. Within this zone, the CZM Rules define the kinds of activities that are regulated, and the substantive environmental standards the project must satisfy for approval.

The CAFRA Zone: The only reliable way to describe the CAFRA zone and determine whether a given place is in CAFRA is to consult the state’s [online map](#) and select the CAFRA boundary layers via the Layers icon on the top navigation bar. The CAFRA zone includes all beaches and estuaries on the Atlantic Coast, Delaware Bayshore, and New York Harbor as far west as Old Bridge. The CAFRA zone is large and extends well inland from the shoreline itself.

Regulated Activities in the CAFRA zone: The CZM Rules require a CAFRA permit for certain activities that meet the definition of “development” in the CAFRA zone. “Development” for purposes of CAFRA permits is defined as “the construction, relocation, or enlargement

of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation, or filling on beaches and dunes” The key term “structure” is defined as “any assembly of materials above, on, or below the surface of the land or water, including, but not limited to, buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, and bridges, and includes floating structures.” (The definitions are found at N.J.A.C. 7:7-1.5.) While there is room or argument, it appears that virtually any improvement for accessibility will be treated as a regulated “development,” including paving or stoning any trail surface, building a boardwalk or bridge, and constructing any other permanent installation.

Further complicating matters, for activities that do count as “development,” the rules provide different definitions of regulated activity depending on how far one is from the mean high water line of a tidal water or the landward side of any beach or dune, and, oddly, the population of the municipality in question. Any “development” within 150 feet of the of the high water line, beach or dune is regulated, regardless of the town’s population. Most accessibility improvements will include activity within this 150-foot line, so the CAFRA permit requirements are important to consider.

Beyond that 150-foot mark, the rules provide various thresholds for requiring a permit, such as a minimum number of housing units or parking spaces. “Public development” is regulated in all these areas. A trail or boardwalk, therefore, may be regulated in all CAFRA areas if it is treated as “public development.” This suggests the rules were not written with trails or boardwalks in mind in this section, since the environmental impact of a trail or boardwalk does not depend on whether it is publicly or privately owned. In addition, the rules provide varying thresholds for number of housing units that require a permit in each area, which suggests that minor development like trails and boardwalks are not intended to be covered in the CAFRA permit criteria here. It is likely, therefore, that one can argue persuasively that a trail improvement or boardwalk outside the 150-foot line does not require a CAFRA permit.

Substantive CAFRA requirements: As noted above, most substantive requirements are common to all coastal permits and underlying sets of rules or themes. Some, though, are specifically identified with the CAFRA theme. The substantive requirements are discussed in their own section below.

- 2. Coastal Wetlands:** The CZM Rules require a coastal wetland permit for “all activities” in coastal wetlands, as delineated and mapped by the Department of Environmental Protection. It may be important to note that this rule applies to wetlands, not wetlands buffers, but the substantive standards for CAFRA and waterfront development permits include protections in wetlands buffers.

Coastal wetlands: As with the CAFRA zone, coastal wetlands are those mapped as such by the Department of Environmental Protection. Coastal wetlands include both freshwater wetlands in the coastal area and estuarine and tidal wetlands. The distinction is important for determining what substantive requirements apply. Unfortunately, as of this writing the Department has not posted the official coastal wetlands mapping on its website.

Regulated activities in coastal wetlands: The CZM Rules require a coastal wetland permit for “all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970, including by not limited to” a list of various kinds of development. This is certainly an odd way to put things, because “activities” is not defined in the Rules and normally means all kinds of things that are not anything like a development. But we can assume that construction or conversion of any kind of trail, boardwalk or structure for accessible recreation in a coastal wetland requires a permit under these rules.

Substantive requirements in coastal wetlands: The substantive requirements for a coastal wetlands permit are the same as those for a CAFRA permit for regulated activities in a wetland, excepting only the rules for impervious cover limits. These are discussed in the final section of this paper.

- 3. Waterfront Development:** The CZM Rules require a waterfront permit for specified kinds of development along waterfronts, with the regulated waterfront area varying somewhat in different places.

Waterfront area: The regulated area where a permit may be required is defined in the regulation and differs depending on whether one is in the Hackensack Meadowlands, the CAFRA zone, or tidal areas outside the Meadowlands and CAFRA. In the CAFRA zone, for example, the regulated area includes tidal waterways up to the mean high water line, while outside CAFRA and the Meadowlands it also includes the area 100 inland from the mean high water line.

Regulated activities in the waterfront area: A waterfront permit is required for the construction or alteration of any “structure” of which any portion is in the waterfront area, as well as for specified types of development that include, for our purposes, the construction or alteration of any dock (whether fixed or floating). Given the very broad definition of “structure” in the Rules, one should assume that the construction or conversion of any trail for accessibility in the regulated waterfront area may require a waterfront permit.

Substantive requirements in waterfront areas: Again, the substantive requirements for a waterfront permit are mostly the same as those for a CAFRA permit. These are discussed in the final section of this paper.

Types of Coastal Permits and Application Requirements

The CZM Rules provide for four kinds of permits for regulated activities, in order of the difficulty of the application requirements:

1. Permits-by-rule
2. General permits-by-certification
3. General permits
4. Individual permits

Permits-by-rule, General Permits-by-certification and General Permits are available for specific kinds of development activity that are deemed to require less individualized and onerous application requirements in light of their expected environmental impact or economic value to society.

Of these special permits, the following two are most relevant to creating accessible facilities. All other regulated activities not covered by the special permits require an “individual permit,” which must meet the detailed substantive standards discussed in a later section below and has more complex and demanding application requirements.

General permit-by-certification 1A, for the installation of an elevated timber dune walkover at a residential, commercial or public development (except a single family home or duplex): This permit allows construction of dune walkovers that are built in accordance with a Beach Dune Walkover Structures design guidance, are no more than six feet wide for non-commercial and ten feet wide for commercial properties, and are consistent with state and federal management plans and regulations for threatened and endangered species protection.

The referenced guidance document is available [here](#) in a poor-quality scan. This guidance was created without any thought or reference to the situation of people with disabilities. For example, the document provides for a 20% grade for the ramps on each side of the dune, a grade that is four times steeper than that specified for trails and boardwalks by the “Accessibility Guidebook for Outdoor Recreation and Trails” published by the U.S. Forest Service of the U.S. Department of Agriculture, available by this [link](#). Thus, while the New Jersey General permit-by-rule does not expressly *forbid* the construction of any accessible dune walkover, this permit was written without consideration of accessibility, and it is likely that the Department of Environmental Protection would deem a walkover that was long enough to provide a 5% grade as requiring more extensive analysis and justification than a shorter structure to receive the benefit of this permit-by-certification.

General permit 13, for the construction of recreational facilities at public parks: This general permit applies to recreational facilities on land that is owned or controlled by a public agency,

like the state, a county or a municipality. The general permit deems construction of pathways, nature trails and boardwalks (among other facilities) as acceptable so long as they are shown to have no adverse impact on any “special area” and meet some specific design and location criteria. The “special areas” are discussed below under Substantive Requirements for Coastal Permits and include areas like beaches, wetlands and wetland buffers. This special permit, therefore, still requires an applicant demonstrate compliance with any relevant “special area” protections.

The general permit allows construction of boardwalks in wetlands provided they do not exceed six feet in width, are at least four feet above a freshwater wetland, do not interfere with natural hydrology (such as by blocking tidal flow), do not impact the habitat of any threatened or endangered species, and do not include any covered structures like gazebos. (Wider boardwalks are permitted when designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, but it is unclear how this would apply to a nature trail, given the limited application criteria in the Subcode itself.)

Permit application requirements: Each type of special and individual permit has application requirements tailored to the permit. These requirements are generally highly technical. The details are found in the CZM Rules at N.J.A.C. 7:7-23.1 to 24.6, and the application fees are set out at section 7:7-25. Each applicant for a permit will need to study these provisions and, in nearly all cases, consult with a professional engineer with experience in the CZM Rules in order to figure out which apply to a given project and how those application requirements are to be met.

Substantive Requirements for Coastal Permits

The substantive environmental protections that a project must meet for an individual permit, and for some of the special permits, are very extensive. They fall into seven basic sections:

1. Special Areas standards, N.J.A.C. 7:7-9.1 et seq.
2. Standards for Beach and Dune Activities, N.J.A.C. 7:7-10.1 et seq., of which only section 7:7-10.5 on boardwalks is relevant to our discussion.
3. General Water Areas, N.J.A.C. 7:7-12.1 et seq.
4. Impervious and Vegetative Cover Standards, N.J.A.C. 7:7-13.1 et seq.
5. General Location Rules, N.J.A.C. 7:7-14.1, on linear development.
6. Use Rules, N.J.A.C. 7:7-15.1 et seq.
7. Resource Rules, N.J.A.C. 16.1 et seq., of which the relevant section, 7:7-16.9 on public access has already been discussed above.

These various requirements are all cumulative, but they are also subject to the special permit types discussed above. So if a project qualifies for a general permit-by-rule or general permit, it may not also be subject to proving compliance with these specific substantive requirements below *unless* the special permit expressly requires compliance with these requirements.

1. Special Area Standards

This part of the CZM Rules provides special rules for particular areas, like beaches, dunes, wetlands and wetland buffers. The most important provisions for our purposes are discussed here, but other provisions may be relevant to a given project:

Dunes, section 7:7-9.16: This section generally prohibits development on dunes unless it is shown that the development “has no practicable or feasible alternative in an area other than a dune, and that [it] will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system” The rule deems certain activities to meet this no-alternative and no-harm standard, including paths and boardwalks (such as walkovers) to provide access across the dune to reach the beach.

Beaches, section 7:7-9.22: Similar to the dunes rule, development on beaches is prohibited unless it is shown that the development “has no prudent or feasible alternative in an area other than a beach, and that [it] will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system” Activities deemed to meet this standard include “linear development” that meets the requirements of the linear development rule at section 7:7-14.1. Trails, paths and boardwalks are types of “linear development” in the CZM Rules, so we will discuss those requirements below.

In the case of beaches, accessibility on the beach itself is most readily provided by non-permanent installation of rolled-out mats made of materials like polyester. The use of such mats does not meet the definition of “development” under the CAFRA or waterfront rules so long as it is merely laid on the beach surface, so this form of accessibility should not require any CZM permit.

Wetlands, section 7:7-9.27: The requirements for regulated activities in wetlands are strict and fall into two categories:

- a. In freshwater wetlands, development is prohibited unless it is permitted by the Freshwater Wetlands Protection Act regulations. These rules are discussed in our companion paper.
- b. In other wetlands, such as tidal wetlands, development is prohibited unless it meets all four of these conditions:
 - i. The development “[R]equires water access or is water oriented as a central purpose

of the basic function of the activity” That is, the activity to be served is “water dependent.” An example would be a dock for canoe or kayak access to an estuary.

- ii. There is “no prudent or feasible alternative on a non-wetland site.”
- iii. There will be the minimum feasible alteration or impairment of natural water circulation.
- iv. There will be the minimum feasible alteration or impairment of natural contours and vegetation.

This provision is designed to permit, for example, recreational facilities like docks for canoe and kayak access to estuaries that are inherently tied to wetlands, and forbid anything that does not absolutely have to be installed in the wetland.

Wetland Buffers, section 7:7-9.28: In the CZM Rules the buffers or transition areas are defined as the land within 150 feet of the edge of a freshwater wetland that is regulated by the Freshwater Wetlands Protection Act, and 300 feet from the edge of other types of wetland – but with the proviso that the actual extent of buffers in each case must be determined on a case-by-case basis through a site-specific delineation. Freshwater wetland buffers are regulated by the Freshwater Wetland Protection Act Rules.

In other wetland buffers, somewhat similarly to dune and wetlands, development is prohibited “unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate, on the wetlands and on the natural ecotone between the wetlands and surrounding upland.”

Unlike with the dunes and wetlands rules, this section on wetland buffers does not provide any information on what kinds of development will be deemed to comply, so it is much harder to know how the regulation will be applied to projects like adding stone or pavement to make an existing trail accessible. This section also does not reference or incorporate the rule for “linear development.” The lack of such detail is important. For example, General Permit 13 for recreational facilities on public land (discussed earlier) requires a finding that the activity will not harm any Special Area. Without a statement of which activities will be deemed by the Department of Environmental Protection to harm or not harm a wetland buffer, it is impossible to predict whether a project like paving a trail will be approved or denied.

Public Open Space, section 7:7-9.38: This section permits development in publicly-owned open space, like State Parks, if consistent with the character of the site. While the rule states that “[p]rovision of barrier free access to public open space is encouraged,” it does not include any requirement to provide accessibility or to demonstrate that development failing to meet barrier free standards is not feasible or appropriate.

2. Standards for Beach and Dune Activities

This part of the CZM Rules covers a variety of beach and dune activities, of which the only one potentially relevant here is the construction of oceanfront boardwalks. The rule for boardwalks in this section provides several construction requirements but has no limitations on size or design that might affect accessibility.

3. General Water Areas

This part of the Rules provides rules for open waters within any of the CZM-regulated zones. The provision relevant here governs Recreational Docks, section 7:7-12.5. Both docks fixed with permanent piers and floating docks are covered. This section permits recreational docks that comply with a detailed list of requirements. Key requirements are:

- a. There is a demonstrated need for the dock that cannot be met by preexisting facilities.
- b. The dock will cause the minimum feasible environmental impact, including on water flow.
- c. The width of the dock will generally be no more than six or eight feet.

The width restriction is somewhat technical, but it also may cause problems for installing an accessible dock, depending on how it is applied. Accessible dock designs often include an interior slip with decking on both sides of the slip, so a permit reviewer might view the overall dock design as being wider than eight feet, even if each section of the dock has at least one dimension smaller than eight feet. We believe it likely that this ambiguity would not prevent installation of an accessible dock that otherwise meets the rules' requirements, but it is impossible to know in the abstract and in the absence of a detailed guidance document from the Department of Environmental Protection.

4. Impervious and Vegetative Cover Standards

These standards apply to CAFRA and waterfront development permits. Impervious and vegetation cover thresholds can be very complex to determine, and they vary with the location of the development, such as the specific CAFRA planning area in which it is located. The limits are expressed as a percentage of the upland land area of each development site. While trails inherently occupy a small percentage of any given natural area, such as a State Park, the CZM Rules define both paved and graveled trails to be impervious surface, so it may be necessary to ensure that such a trail improvement, added to other impervious surfaces on a site (such as paved parking), does not exceed the regulatory limit for that property.

5. General Location Rules on Linear Development

Trails and boardwalks are defined as “linear development” by the CZM Rules, so they are subject to the regulations in section 7:7-14.1. This section essentially gives the Department of Environmental Protection discretion to approve or deny any linear development, even if it meets or violates other rules governing the location of a linear development under the CZM Rules. The Department is to base its judgment on whether the linear development will “[p]romote the public health, safety, and welfare;” “[p]rotect public and private property, wildlife and marine fisheries; and “[p]reserve, protect and enhance the natural environment.” These vague standards appear to be the very antithesis of the rule of law, but it does at least provide a means for an applicant seeking to create accessible trails to gain approvals that might otherwise violate one of the other, more specific standards of the Rules.

6. Use Rules

The Use Rules regulate a variety of different uses, such as housing, marinas, and energy generation. The discussion of recreational facilities concerns general requirements that towns create public parks, new development include recreational opportunities, and standards governing marinas and amusement piers. This section does not include any provisions likely to impede or require accessibility of nature recreation facilities and are referenced here solely for completeness.



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