

**TOWNSHIP OF UPPER  
2100 TUCKAHOE ROAD  
PETERSBURG, NJ 08270  
CAPE MAY COUNTY  
MINUTES FOR FEBRUARY 9, 2009**

**\*\*BUDGET WORKSHOP-6:00 P.M.**

Mayor Palombo opened the meeting and referred to Mr. Corson for continuing discussion on the Budget. Please see the spreadsheet below. He discussed that presently the Budget is over CAP by \$25,500 in operating funds; and is over by \$280,000 by what is required on the Capital side to be able for the Township to forego a local purpose tax for another year. The Committee went through the Budget and made adjustments that include the following items:

- Under O/E funds for demolition of a house in Tuckahoe moved into emergency appropriations.
- Atlantic Care, duplicate fire fighters medical testing reduces cost by \$4500
- \$6500 removed from Recreation for skatepark and dog park attendants, which by ordinance will not be necessary for this year.
- The Rescue Squad line item was discussed. Jay Potter requests that a private office be provided for full time workers to insure privacy of records. He also commented on an oxygen machine that he requested this year, in that it would pay for itself within 3-4 years.
- Regarding building maintenance, Mr. Dietrich stated that shingles need to be replaced on the roof area over the foyer and the court at the Township Hall building. He also requested remote programmable thermostats for the building for more efficient use of energy.
- \$225,000 for the street sweeper was eliminated from the Budget. It will be purchased over 5 years, similar to how the ambulance is being purchased.
- Truck #23 will be replaced.
- \$2000 was removed from Finance O/E.
- \$2000 was removed from skate park and dog park maintenance.
- \$1000 was removed from the Community Center expenses.

With the reductions listed above the Budget is now under CAP, and the Capital expenses are reduced so as not to require a local purpose tax for this year.

The Budget meeting was adjourned at 7:20 PM. After a small break the regular business meeting convened at 7:30 PM.

# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

Current Fund Appropriations						
	2009		2008		Adjusted	Modified 2008 Appropriation
	Appropriation		Appropriation			
<b>OPERATIONS</b>						
Mayor & Committee						
Salaries & Wages	\$	61,250.00	\$	61,250.00		\$ 61,250.00
Other Expenses		19,000.00	\$	12,000.00		\$ 12,000.00
Township Clerk						
Salaries & Wages	\$	170,000.00	\$	165,000.00	\$ (8,000.00)	\$ 157,000.00
Other Expenses		60,000.00	\$	60,000.00	\$ (5,000.00)	\$ 55,000.00
Financial Administration						
Salaries & Wages	\$	120,000.00	\$	137,000.00	\$75,867.36	\$ 212,867.36
Other Expenses						\$ -
Audit Services	\$	34,400.00	\$	32,000.00		\$ 32,000.00
Computer Services	\$	37,500.00	\$	35,000.00		\$ 35,000.00
Misc. Other Expenses	\$	9,000.00	\$	9,000.00	\$ 3,000.00	\$ 12,000.00
Payroll Service	\$	7,500.00				
Assessment of Taxes						
Salaries & Wages	\$	92,000.00	\$	86,000.00	\$ (5,500.00)	\$ 80,500.00
Other Expenses	\$	8,000.00	\$	7,500.00	\$ 1,700.00	\$ 9,200.00
File Conversion	\$	27,000.00				
Collection of Taxes						
Salaries & Wages	\$	124,000.00	\$	142,000.00		\$ 142,000.00
Other Expenses						\$ -
Purchase of Tax Title Liens	\$	1,000.00	\$	1,000.00	\$ 500.00	\$ 1,500.00
Misc. Other Expenses	\$	8,000.00	\$	8,000.00		\$ 8,000.00
Liquidation of Tax Title Liens	\$	1,000.00	\$	1,000.00		\$ 1,000.00
On-line Payment Program	\$	4,500.00				
Legal Services						
Salaries & Wages	\$	31,500.00	\$	30,500.00		\$ 30,500.00
2/6/2009						

2/6/2009

# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009		2008		Adjusted	Modified
	Appropriation		Appropriation	Adjustment	2008	Appropriation
Other Expenses	\$ 80,000.00	\$	80,000.00	\$ 10,000.00	\$	90,000.00
Special Litigation						
Other Expenses	\$ 100,000.00	\$	100,000.00	\$ 70,000.00	\$	170,000.00
Engineering Services						
Salaries & Wages	\$ 84,300.00	\$	82,050.00		\$	82,050.00
Other Expenses	\$ 38,450.00	\$	70,000.00	\$ (23,000.00)	\$	47,000.00
Smart Growth Expenses	\$ 20,000.00	\$	20,000.00		\$	20,000.00
NJDEP Fees	\$ 12,200.00	\$			\$	-
Affordable Housing						
Salaries & Wages	\$ 2,500.00	\$	2,500.00		\$	2,500.00
Other Expenses	\$ 17,500.00	\$	2,500.00		\$	2,500.00
Public Information						
Salaries & Wages	\$ 10,000.00	\$	10,000.00		\$	10,000.00
UTTV2	\$ 5,500.00	\$	5,200.00		\$	5,200.00
Other Expenses	\$ 10,000.00	\$	10,000.00		\$	10,000.00
Public Safety						
Aid to Volunteer Fire Companies					\$	-
First Aid Organization						
Salaries & Wages	\$ 520,000.00	\$	445,000.00	\$ 55,000.00	\$	500,000.00
Other Expenses	\$ 80,700.00	\$	75,000.00	\$ 8,000.00	\$	83,000.00
Emergency Management Services						
Salaries & Wages	\$ 19,500.00	\$	19,545.00	\$ (2,000.00)	\$	17,545.00
Other Expenses	\$ 41,200.00	\$	37,500.00		\$	37,500.00
Crossing Guard						
2/6/2009						

# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009		2008		Adjusted	Modified	
	Appropriation		Appropriation			2008	Appropriation
Salaries & Wages	\$ 8,400.00	\$	8,300.00	\$ (435.00)	\$	7,865.00	
Other Expenses	\$ 500.00	\$	500.00		\$	500.00	
Regional Dispatch-Contractual	\$ 218,500.00	\$	203,116.00	\$ 5,850.00	\$	208,966.00	
Municipal Court							
Salaries & Wages	\$ 150,000.00	\$	143,000.00	\$ (1,000.00)	\$	142,000.00	
Other Expenses	\$ 12,600.00	\$	12,000.00	\$ 750.00	\$	12,750.00	
Public Defender							
Salaries & Wages	\$ 16,600.00	\$	15,600.00		\$	15,600.00	
Municipal Prosecutor							
Salaries & Wages	\$ 27,500.00	\$	26,500.00		\$	26,500.00	
Public Works Functions							
Road Repairs & Maintenance							
Salaries & Wages	\$ 870,000.00	\$	625,000.00		\$	625,000.00	
Other Expenses	\$ 10,000.00	\$	25,000.00	\$ (15,000.00)	\$	10,000.00	
Surfacing of Roads	\$ 188,900.00	\$	183,400.00	\$ 13,000.00	\$	196,400.00	
Misc. Other Expenses							
Recycling							
Salaries & Wages	\$ 571,000.00	\$	625,000.00	\$ (33,550.00)	\$	591,450.00	
Other Expenses	\$ 65,800.00	\$	63,900.00	\$ 13,000.00	\$	76,900.00	
Garbage & Trash							
Salaries & Wages	\$ 345,000.00	\$	480,000.00	\$ (19,050.00)	\$	460,950.00	
Other Expenses	\$ 400,000.00	\$	390,000.00		\$	390,000.00	
Tipping Fees	\$ 87,000.00	\$	84,500.00	\$ 14,000.00	\$	98,500.00	
Misc. Other Expenses							

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# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009		2008		Adjusted	Modified
	Appropriation		Appropriation	Adjustment	2008	Appropriation
Public Buildings & Grounds						
Salaries & Wages	\$ 82,000.00	\$	\$ 79,000.00		\$	\$ 79,000.00
Other Expenses	\$ 180,500.00	\$	\$ 137,000.00	\$ 28,000.00	\$	\$ 165,000.00
Gypsy Moth Program						
Other Expenses	\$ 80,000.00	\$	\$ 300,000.00		\$	\$ 300,000.00
<b>Park &amp; Recreation Functions</b>						
Recreation						
Salaries & Wages	\$ 581,000.00	\$	\$ 566,000.00	\$ (8,628.44)	\$	\$ 557,371.56
Other Expenses	\$ 298,186.00	\$	\$ 259,048.00	\$ 8,628.44	\$	\$ 267,676.44
Shore Protection						
Other Expenses	\$ 12,000.00	\$	\$ 40,000.00		\$	\$ 40,000.00
Beach Monitoring-Stockton	\$ 28,000.00					
Beach Protection						
Salaries & Wages	\$ 199,500.00	\$	\$ 214,500.00	\$ (37,000.00)	\$	\$ 177,500.00
Beach Sweepers S/W	\$ 5,000.00					
Other Expenses	\$ 28,300.00	\$	\$ 28,850.00		\$	\$ 28,850.00
Community Center						
Salaries & Wages	\$ 34,000.00	\$	\$ 32,500.00	\$ 600.00	\$	\$ 33,100.00
Other Expenses	\$ 42,500.00	\$	\$ 44,000.00		\$	\$ 44,000.00
State Uniform Construction Code						
Salaries & Wages	\$ 156,000.00	\$	\$ 152,000.00	\$ (500.00)	\$	\$ 151,500.00
Other Expenses	\$ 6,000.00	\$	\$ 6,000.00		\$	\$ 6,000.00
Zoning/Code Official						
Salaries & Wages	\$ 15,000.00	\$	\$ 15,000.00		\$	\$ 15,000.00
Other Expenses	\$ 3,000.00	\$	\$ 3,000.00		\$	\$ 3,000.00
2/6/2009						

# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009 Appropriation	2008 Appropriation	Adjustment	Modified 2008 Appropriation
Planning Board				
Salaries & Wages	\$ 36,500.00	\$ 35,500.00		\$ 35,500.00
Master Plan/Coah	\$ 10,000.00	\$ 10,000.00		\$ 10,000.00
Other Expenses	\$ 4,000.00	\$ 4,000.00		\$ 4,000.00
Zoning Board of Adjustment				
Salaries & Wages	\$ 36,500.00	\$ 35,500.00		\$ 35,500.00
Other Expenses	\$ 4,000.00	\$ 4,000.00		\$ 4,000.00
Board of Health				
Salaries & Wages	\$ 550.00	\$ 550.00		\$ 550.00
Other Expenses	\$ 63,000.00	\$ 20,000.00		\$ 20,000.00
Dog Regulation				
Other Expenses		\$ 57,000.00		\$ 57,000.00
County Shelter	\$ 43,000.00			
Animal Control Contact	\$ 20,000.00			
Celebration of Public Events	\$ 12,000.00	\$ 12,000.00		\$ 12,000.00
Comp. Accumulated Absence	\$ 100.00	\$ 100.00	\$ 5,000.00	\$ 5,100.00
Drug & Alcohol Testing	\$ 9,500.00	\$ 9,500.00		\$ 9,500.00
Street Lighting	\$ 175,000.00	\$ 170,000.00		\$ 170,000.00
Insurance				
General Liability	\$ 165,000.00	\$ 150,000.00		\$ 150,000.00
Workers Compensation	\$ 308,000.00	\$ 280,000.00		\$ 280,000.00
Employee Group Health	\$ 1,375,000.00	\$ 1,250,000.00		\$ 1,250,000.00
Other Insurance Premiums	\$	\$ -		\$ -
2/6/2009				

# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009 Appropriation	2008 Appropriation	Adjustment	Modified 2008 Appropriation
<i>Environmental Insurance</i>				
Clean Communities Program				
TONNAGE GRANT	\$ 27,469.00	\$ 29,969.00		\$ -
Municipal Alliance Grant	\$ 6,867.00	\$ 7,492.00		\$ 29,969.00
Municipal Alliance Grant Match	\$ 50,000.00			\$ 7,492.00
DCA Smart Growth Grant				\$ -
Recycling Grant				\$ -
Stormwater Grant				\$ -
Emergency Management Grant	\$ 5,000.00			\$ -
Garden State Trust	\$ 89,933.74			\$ -
2009 NJ MUNICIPAL AID GRANT - NJDOT	\$ 140,000.00	\$ 140,000.00		\$ 140,000.00
2008 NJ MUNICIPAL AID GRANT - NJDOT	\$ 140,000.00	\$ 140,000.00		\$ 140,000.00
2008 NJ MUNICIPAL AID GRANT - NJDOT	\$ 125,000.00	\$ 140,000.00		\$ 140,000.00
HAZARDOUS SITE REMEDIATION				\$ -
<b>TOTAL OPERATIONS</b>	<b>\$ 9,426,705.74</b>	<b>\$ 9,004,870.00</b>	<b>\$ 154,232.36</b>	<b>\$ 9,159,102.36</b>
<b>DEFERRED CHARGES</b>				
Special Emergency Auth/Reval		\$ 100,000.00		\$ 100,000.00
Ambulance	\$ 40,500.00	\$ 40,500.00		\$ 40,500.00
Overexpenditure	\$ 82,463.36			
<b>STATUTORY EXPENDITURES</b>				
Transfer to Board of Education	\$ 271,191.00	\$ 201,404.00		\$ 201,404.00
PERS System	\$ 347,000.00	\$ 322,000.00	\$ 4,595.00	\$ 326,595.00
Social Security System	\$ 25,500.00	\$ 24,500.00		\$ 24,500.00
Unemployment Comp. Insurance				
Prior Unfunded Expense				
<b>TOTAL STAT. &amp; DEFERRED</b>	<b>\$ 766,654.36</b>	<b>\$ 688,404.00</b>		<b>\$ 692,999.00</b>

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# Township of Upper 2009 MUNICIPAL BUDGET WORKSHEET 2009

## Current Fund Appropriations

	2009 Appropriation	2008 Appropriation	Adjustment	Modified 2008 Appropriation
<b>CAPITAL IMPROVEMENTS</b>				
Capital Improvement Fund	\$ 65,000.00	\$ 65,000.00		\$ 65,000.00
Contribution CIF Beach	\$ 50,000.00	\$ 50,000.00		\$ 50,000.00
Repairs Municipal Buildings	\$ 46,063.00	\$ 36,000.00		\$ 36,000.00
Construction Rec. Facilities	\$ 125,958.00	\$ 70,500.00		\$ 70,500.00
Reconstruction Historic Building	\$ 8,000.00	\$ 8,000.00		\$ 8,000.00
Purchase Road Equipment	\$ 265,000.00	\$ 210,000.00		\$ 210,000.00
Purchase Recreation Equipment	\$ 79,000.00	\$ 55,000.00		\$ 55,000.00
Beach Replenishment	\$ 50,000.00	\$ 50,000.00		\$ 50,000.00
Purchase Office Equipment	\$ 19,000.00	\$ 10,000.00		\$ 10,000.00
Landfill Closure	\$ 11,500.00	\$ 11,500.00		\$ 11,500.00
Community Center Improvements	\$ 22,500.00	\$ 85,000.00		\$ 85,000.00
Purchase Safety Equipment	\$ 31,000.00	\$ 37,080.00		\$ 37,080.00
Amanda's Field Project	\$ 26,000.00			\$ 26,000.00
Communication/Maint.	\$ 4,000.00			\$ 4,000.00
Stormwater Outfall	\$ 20,000.00			\$ -
Purchase Community Center Equip	\$ 8,500.00	\$ 115,000.00		\$ 115,000.00
Replace Playground Equipment	\$ 31,500.00	\$ 7,500.00		\$ 7,500.00
Purchase Generator School	\$ 250,000.00	\$ 55,000.00		\$ 55,000.00
Beach Protection Equipment		\$ 250,000.00		\$ 250,000.00
Strathmore Projects				
Road Const/Reconst.				
<b>TOTAL CAPITAL IMPROVEMENTS</b>	<b>\$ 1,083,021.00</b>	<b>\$ 1,145,580.00</b>		<b>\$ 1,145,580.00</b>
<b>Reserve for Uncollected Taxes</b>				
<b>TOTAL GENERAL APPROPRIATIONS</b>	<b>\$ 10,838,854.00</b>			<b>\$ 10,997,681.36</b>

2/6/2009



Township of Upper  
2009 MUNICIPAL BUDGET WORKSHEET 2009

Current Fund Appropriations

	2009 Appropriation	2008 Appropriation	Adjustment	Modified 2008 Appropriation
TOTAL GENERAL REVENUES		\$ 289,993.74		\$ 150,000.00

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**\*\*REGULAR MEETING OF THE TOWNSHIP COMMITTEE –7:30 P.M.**

**CALL TO ORDER**

## **SUNSHINE ANNOUNCEMENT**

## **SALUTE TO THE FLAG**

## **ROLL CALL**

Barbara Camp	Present
Frank E. Conrad	Present
Curtis Corson	Present
John “Jay” Newman	Present
Richard Palombo	Present

Also present were Municipal Clerk Wanda Gaglione, Finance Officer Barbara Spiegel, Municipal Attorney Daniel Young and Municipal Engineer Paul Dietrich.

## **APPROVAL OF MINUTES - January 26, 2009 Regular Meeting and Closed Session Minutes**

Motion was made by Jay Newman, second by Barbara Camp to approve the January 26, 2009 Minutes. During roll call vote all Committee members voted in the affirmative.

## **REPORT OF GOVERNING BODY MEMBERS**

**Frank Conrad**, reported on the free rabies clinic held on February 7<sup>th</sup>. There were 124 pets inoculated and all went smoothly. The next clinic will be March 7<sup>th</sup> and will be held at Shore Veterinarians.

He commented on the By-Laws draft created for the Recreation Committee and thanked Brenda Layton for her work on the document. An item in Section 2 regarding voting was discussed. It will be amended to read “in his or her absence the assistant supervisor will vote”. Mrs. Camp requested this item be tabled to the next meeting to allow more time for review.

**Curtis Corson, Deputy Mayor**, commented that the Township Annual Financial Statement for 2008, and the Annual Debt Statement for 2008 have been received and are available for inspection. He stated that this evening at 6:00 P.M. was the last budget workshop meeting and that the Budget is ready to be introduced at the next meeting, on Feb. 23rd.

He received a letter of retirement from Tax Collector, Susan Peifer, effective 7/1/09. Ms. Peifer requested that she be allowed to use her accrued sick and vacation time in the months prior. Mr. Corson made a motion to accept Ms. Peifer’s letter with regret and to allow her to utilize time accumulated prior to retirement. Barbara Camp seconded with all five Committee members voting in the affirmative.

**Jay Newman**, reported on the UT-Corbin City court consolidation in that Corbin City has responded with the requested figures and now he will discuss the proposal with Judge Birchmeier.

He reported that the Fire & Rescue Squad shared in the successful rescue of a dog on a pond near Glory Road. He was very impressed with the efforts everyone made.

He introduced a State Trooper from the Woodbine State Police Barracks to report on police activity in the Township.

**Richard Palombo, Mayor**, reported that the County is holding a Transportation Infrastructure Conference on February 24<sup>th</sup>, to discuss the reopening of the Beesley's Point Bridge, the Garden State Parkway, and other regional transportation projects. All are invited to attend.

He reported that Fire Company Installations have taken place over the past few weeks. That Mayor Palombo attended Seaville Volunteer Fire Co., Mr. Conrad attended Tuckahoe Volunteer Fire Co., and Mr. Newman attended Marmora Volunteer Fire Co. He commended and thanked all those persons who dedicate their time to the Fire and Emergency Rescue Squad Companies.

He was happy to report that the Beach Replenishment Project is moving ahead and that the NJDEP is going out to bid the project this month. The State will include Strathmere, Sea Isle City, Stone Harbor, and North Wildwood. Strathmere will be the first beaches to be filled.

### **OTHER REPORTS**

**Wanda Gaglione**, reported that a new state statute now requires that each charitable clothing bin must now be licensed. The applications and instructions were made available.

The State requires one license be issued for each bin at the annual cost of \$25.00 per bin.

**Daniel Young, Municipal Attorney**, reported that he has two matters for closed session; one potential Litigation matter regarding an MUA Convenience permit; and one Litigation matter regarding condemnation proceedings.

**Paul Dietrich**, reported that the CMC Engineer's office is holding a pre-construction meeting on February 11, 2009 for repairs planned for Cape May County Bridges. This includes Ocean Drive Bridge over Corsons Inlet. He will attend the meeting and report at the next meeting of any lane closures, etc. Mr. Conrad commented that the bridge would not be closed but that pot hole repairs and routine maintenance is planned. This information will be posted on UTTV for the public.

He reported that the Township received a \$50,000 Smart Growth grant for continued improvements for Marmora and Seaville and that there is a huge opportunity for large scale developments with which Township residents would have an opportunity to have input on. He reported that the Township will hold an open Workshop March 7<sup>th</sup>, from 10 a.m. to 2p.m. to review what other towns have done, and look at new ideas on what type of retail, residential developments, streetscape designs, etc. that the residents would like to see. He urged everyone to attend. A follow up meeting is planned for April.

He reported that COAH has responded to the Township's application. This included the Township's identification of at least one specific area to become a rental location. We are waiting for a letter of completeness from COAH and once that is received there will be other RFP's on other sites.

### **RESOLUTIONS**

- 1. Congratulating employee Rhonda Sharp of the Upper Township Tax Office for her winning entry in the Upper Township Safety Award Program for the 1st quarter of 2009.**

**CAPE MAY COUNTY  
RESOLUTION  
RESOLUTION NO. 046-2009  
RE: CONGRATULATING EMPLOYEE RHONDA SHARP  
OF THE UPPER TOWNSHIP TAX OFFICE  
FOR HER WINNING ENTRY IN  
THE UPPER TOWNSHIP SAFETY AWARD PROGRAM  
FOR THE 1ST QUARTER OF 2009**

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**WHEREAS,** employee Rhonda Sharp is recognized for her efforts to promote safety for her fellow employees and residents of the Township through her participation in the Upper Township Safety Award Program with a submission of a safety suggestion; and

**WHEREAS,** Rhonda's safety suggestion was chosen by the Upper Township Safety Committee from the entries submitted in the first quarter for the promotion of safety for employees and the community; and

**WHEREAS,** Rhonda should be publicly recognized for the recommendation she made on the reorganization project of the permanent record storage area (the vault) that improves safety for employees and expands record storage capacity; and

**NOW, THEREFORE, BE IT RESOLVED,** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. That the Committee extends its appreciation and publicly recognizes Rhonda Sharp on her commitment to safety by her identifying a potential hazard and presenting a solution through participation in the program.

2. That the Committee, on behalf of our employees and the citizens of the Township of Upper extend to Rhonda Sharp our congratulations and present her with the "Safety Day Award" of one day off with pay.

GIVEN UNDER OUR HANDS and the seal of the Township of Upper this 9th day of February, 2009.

Resolution No. 046-2009

Offered by: Camp

Second by: Newman

Adopted: February 9, 2009

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Conrad	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Corson	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Newman	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>

**2. Appointment of Lester Woody as a full-time employee to the Upper Township Public Works Department.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N  
RESOLUTION NO. 047-2009  
RE: APPOINTMENT OF LESTER WOODY  
AS A FULL-TIME EMPLOYEE  
TO THE UPPER TOWNSHIP PUBLIC WORKS DEPARTMENT**

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**WHEREAS**, a need exists to appoint qualified personnel as full-time employees to the Upper Township Public Works Department to insure optimal operation; and

**WHEREAS**, a recommendation has been made to the Township Committee and duly considered at the meeting of January 26, 2009; and

**WHEREAS**, this Resolution is intended to ratify the action heretofore taken; and

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.

2. Lester Woody is hereby appointed in a full-time position effective January 30, 2009 at an annual salary of \$35,982.00 in accordance with the Salary Ordinance.

3. This Resolution ratifies, confirms and approves action taken by the Township Committee, by motion, at the meeting of January 26, 2009.

Resolution No. 047-2009

Offered by: Camp

Seconded by: Conrad

Adopted: February 9, 2009

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Conrad	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>

**3. Cancel Tax Credit for County owned property.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
RESOLUTION  
Resolution No. 048-2009  
CANCEL CREDIT COUNTY OWNED PROPERTY**

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**WHEREAS**, certain corrections have been recommended by the Upper Township Tax Collector in order to correct tax

records, and,

**WHEREAS**, Block 999 Lot 2, the Beesley's Point Bridge, was deeded to the County of Cape May on December 30, 2008 and is exempt for 2009,

**WHEREAS**, a credit of \$4,616.68 remains on the Property as a result of the reval,

**NOW, THEREFORE BE IT RESOLVED**, by the Township Committee of the Township of Upper, Cape May County, that corrections to the Tax records are hereby authorized and the Tax Collector is hereby directed to correct said records or take such action as indicated:

**Cancel Credit \$4,616.68 for 2009**

Resolution No. 048-2009

Offered by: Camp                      Seconded by:      Corson

Adopted: February 9, 2009

Roll Call Vote:

NAME	YES	NO	ABSTAINED	ABSENT
CAMP	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
CONRAD	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
CORSON	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
NEWMAN	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>
PALOMBO	<u>  x  </u>	<u>      </u>	<u>      </u>	<u>      </u>

- 4. A Resolution to amend Resolution No. 020-2009 that corrects the Risk Management Consultant Stipend to eighteen thousand forty eight dollars, (\$18,048.00).**

**TOWNSHIP OF UPPER**

**CAPE MAY COUNTY**

**R E S O L U T I O N**

**RESOLUTION NO. 049-2009**

**RE: A RESOLUTION TO AMEND RESOLUTION NO. 020-2009 THAT CORRECTS THE RISK MANAGEMENT CONSULTANT STIPEND TO**

**EIGHTEEN THOUSAND FORTY EIGHT DOLLARS, (\$18,048.00)**

---

**WHEREAS**, Resolution No. 20-2009 authorized a contract with Kerry G. Thomson and Kerry G. Thomson Insurance Agency as Risk Management Consultant for the Township of Upper, however incorrectly listed the stipend; and

**WHEREAS**, the purpose of this Resolution is to set forth the correct stipend authorized for the Risk Management Consultant as 6% of the Municipality's annual assessment or eighteen thousand forty eight dollars, (\$18,048.00);

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by reference.
2. Resolution No. 20-2009 and contract attached hereto, insofar as it pertains to the various professional services to be performed by Kerry G. Thomson Insurance Agency as Risk Management Consultant on behalf of the Township of Upper relative to the Atlantic County Municipal Joint Insurance Fund and Municipal Excess Liability Joint Insurance Fund, is hereby amended to delete all reference to previous stipend amount and to substitute in place thereof the correct amount of Eighteen Thousand Forty Eight Dollars, (\$18,048.00).
3. Except as herein modified, all other provisions of Resolution No. 20-2009 shall remain in full force and effect.

Resolution No. 049-2009

Offered by: Conrad

Seconded by: Newman

Adopted: February 9, 2009

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Conrad	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Corson	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Newman	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>  x  </u>	<u>          </u>	<u>          </u>	<u>          </u>



**5. Authorizing a Professional Services Contract with Pogue, Inc. T/A Pogue Safety & Health Consortium for an alcohol and controlled substances training and testing program for certain Township employees.**

**TOWNSHIP OF UPPER**

**CAPE MAY COUNTY**

**R E S O L U T I O N**

**RESOLUTION NO. 050-2009**

**RE: AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH POGUE, INC.  
T/A POGUE SAFETY & HEALTH CONSORTIUM FOR AN ALCOHOL AND CONTROLLED  
SUBSTANCES TRAINING AND TESTING PROGRAM FOR CERTAIN TOWNSHIP EMPLOYEES**

---

WHEREAS, the Omnibus Transportation Employee Testing Act of 1991 became applicable to the Township of Upper in 1996 in accordance with 49 C.F.R. §382.115(B) and mandates drug and alcohol testing for employees holding commercial driver's licenses engaged in safety sensitive duties and further requires each employer to maintain a testing policy as required by 49 C.F.R. §382.401(C)(6)(ib); and

WHEREAS, the Township has previously determined to extend that policy to all employees working in hazardous or safety sensitive areas and also to public safety employees including the Division of EMS and Township lifeguards; and

WHEREAS, to administer such a program in accordance with the Federal rules, regulations and guidelines, it is necessary to employ the services of a firm possessing such specialized skill and training; and

WHEREAS, Pogue, Inc., t/a Pogue Safety & Health Consortium (hereinafter referred to as "Pogue"), has the required expertise and provides the same or similar services for several other municipalities; and

WHEREAS, Pogue has been performing such services in the Township of Upper since in or about May of 1996 and proposes to continue to provide such services; and

WHEREAS, the Township Committee intends to engage the services of Pogue under a Professional Services Contract; and

WHEREAS, Pogue, Inc. t/a Pogue Safety & Health Consortium has completed and submitted a Business Entity Disclosure Certification which certify that the contractor has not made any reportable contributions to a political or candidate committee in the Township that would bar the award of this contract and that the contract will prohibit the contractor from making any reportable contributions through the term of the contract; and

WHEREAS, the Chief Financial Officer has certified the availability of funds to permit said Contract to be entered into;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Pogue has registered with the State of New Jersey pursuant to c.57, Laws of 2004 and has provided proof of that registration to the Township.
3. The proposed Professional Services Contract between the Township and Pogue, a copy of which is on file in the office of the Township Clerk, is approved and the Mayor and the Township Clerk are hereby authorized, directed and empowered to execute said Contract on behalf of the Township of Upper and the Township Clerk is further authorized, directed and empowered to seal said Contract with the seal of the Township of Upper.
4. The Township Clerk shall cause a Notice of Award of this Contract to be published in the official newspaper of the Township of Upper as required by N.J.S.A. 40A:11-5.
5. This Contract has been awarded without competitive bidding for the following reason or reasons:
  - (A) Professional services of the type herein sought are of such a nature as to require a high degree of trust or confidence in the individual providing the service and, in fact, may require the creation of a confidential or fiduciary relationship between that individual and the municipality;
  - (B) The services required are highly specialized or technical in nature;
  - (C) The services require peculiar ability or skill and demand a high degree of specialized knowledge or expertise;
  - (D) The services are such that their relative work must be judged by subjective considerations that are not susceptible of valuation by competitive bidding; and
  - (E) The individual who will provide these services has demonstrated his competence and particular expertise in the services required.
6. This Resolution shall take effect immediately and shall be deemed retroactive to January 1, 2009.

Resolution No. 050-2009

Offered by: Conrad

Seconded by: Corson

Adopted: February 9, 2009

Roll Call Vote:

<u>NAME</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>x</u>	<u>          </u>	<u>          </u>	<u>          </u>
Conrad	<u>x</u>	<u>          </u>	<u>          </u>	<u>          </u>
Corson	<u>x</u>	<u>          </u>	<u>          </u>	<u>          </u>
Newman	<u>x</u>	<u>          </u>	<u>          </u>	<u>          </u>
Palombo	<u>x</u>	<u>          </u>	<u>          </u>	<u>          </u>

**6. Resolution Authorizing Tax Lien Foreclosures.**

**TOWNSHIP OF UPPER  
CAPE MAY COUNTY  
R E S O L U T I O N**

**RESOLUTION NO. 051 - 2009**

**RE: AUTHORIZING INSTITUTION OF FORECLOSURE PROCEEDINGS  
OF TAX SALE CERTIFICATES AGAINST THE FOLLOWING  
PARCELS:**

**BLOCK 753 LOT 3 ( Previously known as Block 518, Lot3)  
BLOCK 809 LOT 4**

---

**WHEREAS**, the Township of Upper has acquired ownership by way of  
Assignment of two (2) Tax Sale Certificates (sometimes hereinafter referred to as "TSC") as  
more specifically described in this Resolution; and

**WHEREAS**, both of the parcels covered by these TSCs are scheduled to be included  
in the Strathmere Beach Fill Project which is scheduled to commence in the near future; and

**WHEREAS**, it is the desire of the Township Committee to foreclose against the  
parcels that are covered by these Tax Sale Certificates;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee in the  
Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Special Counsel for the Township, Gruccio, Pepper, De Santo & Ruth, P.A. is

hereby authorized and directed to institute Foreclosure proceedings forthwith against the following described parcels:

	<u>PARCEL A</u> Block 753 Lot 3 (Previously known as Block 518 Lot 3)	<u>PARCEL B</u> Block 809 Lot 4
Assignor:	John James Germanio	John James Germanio
Tax Sale Certificate No:	19/78	199655
Date of Tax Sale:	November 21, 1978	June 5, 1996
Purchaser of TSC:	John James Germanio	John JamesGermanio
Recording Information :	Mortgage Book 959 Page 613	Mortgage Book 2551 Page 530
Assessed Owner :	Bertha Buxbaum	Carol Greco

3. A copy of this Resolution shall be filed with the Tax Collector of the Township of Upper.

4. All appropriate Township officials are hereby directed to take all actions necessary to carry into effect the intent and purpose of this Resolution.

Resolution No. 051 - 2009

Offered By: Corson      Seconded by: Conrad

Adopted: February 9, 2009

<u>ROLL CALL:</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>x</u>	___	_____	_____
Conrad	<u>x</u>	___	_____	_____
Corson	<u>x</u>	___	_____	_____
Newman	<u>x</u>	___	_____	_____
Palombo	<u>x</u>	___	_____	_____

## 7. Resolution Authorizing Tax Lien Foreclosures.

### TOWNSHIP OF UPPER CAPE MAY COUNTY R E S O L U T I O N

**RESOLUTION NO. 052 - 2009**  
**RE: AUTHORIZING INSTITUTION OF IN REM FORECLOSURE**  
**PROCEEDINGS**  
**GROUP NO. 150 (Revised)**  
**and**  
**RESCINDING RESOLUTION NO. 263-2008 WHICH WAS ADOPTED ON**  
**OCTOBER 14, 2008**

[ comprising 3 liens from Group 132; 2 liens from Group 134; and 1 lien from Group 138 ]

---

**WHEREAS**, the Township Committee has been advised by the Tax Collector that she is in possession of numerous Tax Sale Certificates which are now eligible for foreclosure in rem as more particularly described in Exhibit A attached hereto; and

**WHEREAS**, it is the desire of the Township Committee to foreclose against the parcels that are covered by these Tax Sale Certificates; and

**WHEREAS**, the Township Committee previously authorized in rem foreclosure proceedings pursuant to Resolution 263-2008 which was adopted on October 14, 2008 and did thereafter determine to proceed against certain of the parcels referenced therein by way of eminent domain proceedings and thus negated the need to proceed against the same parcels by way of in rem foreclosure;

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee in the Township of Upper, in the County of Cape May and State of New Jersey, as follows:

1. The allegations of the preamble are incorporated herein by this reference.
2. Special Counsel for the Township, Gruccio, Pepper, De Santo & Ruth, P.A. is hereby authorized and directed to institute In Rem Foreclosure proceedings pursuant to the provisions of NJS 54: 5-104.29, et seq., against the Tax Sale Certificates held by it and described in Exhibit A affixed hereto and made a part hereof.
3. A copy of this Resolution shall be filed with the Tax Collector of the Township of Upper.

4. All appropriate Township officials are hereby directed to take all actions necessary to carry into effect the intent and purpose of this Resolution.

5. Resolution 263-2008 adopted on October 14, 2008 is hereby rescinded for the reasons set forth herein.

Resolution No. 052- 2009

Offered By: Camp      Seconded by: Corson

Adopted: February 9, 2009

<u>ROLL CALL:</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
Camp	<u>x</u>	<u>      </u>	<u>      </u>	<u>      </u>
Conrad	<u>x</u>	<u>      </u>	<u>      </u>	<u>      </u>
Corson	<u>x</u>	<u>      </u>	<u>      </u>	<u>      </u>
Newman	<u>x</u>	<u>      </u>	<u>      </u>	<u>      </u>
Palombo	<u>x</u>	<u>      </u>	<u>      </u>	<u>      </u>

## **ORDINANCES**

## **CORRESPONDENCE**

## **NEW BUSINESS**

### **8. Upper Township Soccer Association request to hold a 50/50 raffle on March 27, 2009, RA-354.**

Jay Newman made a motion to approve, Richard Palombo seconded the motion. During roll call vote four Committee members voted in affirmative, Frank Conrad abstained.

### **9. Historical Preservation Society request to renew/extend lease retroactive, an additional five years for second floor of the Tuckahoe Railroad Station.**

It was discussed that a five-year term may be too lengthy however the lease provides an option of terminating it with a 60-day notice. There was further discussion that the lease also provides the Historical Society the option to extend it for a successive term of 5 years. The Committee asked that the Historical Society revise their letter to more clearly state that they are exercising their option to extend the lease. There was further discussion that the Train Station as well as the Gandy House and Friendship School leases should be reviewed and updated as necessary. Also, that artifacts owned by the Township should be inventoried and documented as required by state statutes as well as for insurance purposes.

### **10. Review and possible approval of a Township organizational chart.**

Frank Conrad made a motion to accept the chart as presented. Jay Newman seconded with all five Committee members present voting in the affirmative. The Mayor directed that copies be made available to each department.

## **UNFINISHED BUSINESS:**

# **11. Draft copy of the Beach Management Plan.**

The purpose of the Plan is to provide protection for endangered and threatened beach-nesting birds and flora occurring on the Township beaches in the Strathmere and Whale Beach sections of Upper Township. The Plan defines and describes the responsibilities of the Township, the NJ Div. Of Fish and Wildlife, and the U.S. Fish and Wildlife Services. The Municipal Engineer Paul Dietrich discussed that the plan includes compromises reached with the State DEP to change the use of particular areas of the beach at specific times of the year. This pertains particularly to nesting locations of endangered bird species. The plan does allow for emergency activity. Curtis Corson made a motion to accept the Beach Management Plan and to authorize the Mayor to sign the memorandum of agreement. Motion was seconded by Jay Newman, with all five Committee members voting in the affirmative. A resolution will be placed on a future agenda to accept the Beach Management Plan and to authorize the Mayor to sign a memorandum of agreement with the NJ Div. of Fish and Wildlife, and the U.S. Fish and Wildlife Services to mutually adopt the provisions of the Beach Management Plan. A copy of the draft plan has been scanned into the Minutes as follows.

## **TOWNSHIP OF UPPER BEACH MANAGEMENT PLAN For the beaches in the Strathmere and Whale Beach section of Upper Township**

### **For the Protection of Federally & State-Listed Species**

**February 2009**

*DRAFT*

#### **Prepared By:**

Paul E. Dietrich, Sr., P.E., P.P., C.M.E.  
Township Engineer  
2100 Tuckahoe Road  
Petersburg, NJ

#### **IN COOPERATION WITH:**

New Jersey Department of Environmental Protection  
Division of Fish and Wildlife  
Endangered and Nongame Species Program  
and

United States Department of the Interior  
Fish and Wildlife Service  
New Jersey Field Office

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APPENDIX E	Actions on the Township of Upper Beaches Table

## I. INTRODUCTION

### A. PURPOSE

The purpose of this management plan is to provide a framework for cooperation among the Township of Upper (Township), the New Jersey Division of Fish and Wildlife's (NJDFW) Endangered and Nongame Species Program (ENSP), and the United States Fish and Wildlife Service's (USFWS) New Jersey Field Office (NJFO) in the stewardship of federally and State-listed endangered and threatened beach-nesting birds and flora (listed species) occurring on the Township's beaches in the Strathmere and Whale Beach sections of Upper Township. Through this plan, the parties seek to provide for the long-term protection and recovery of species populations in the Township and the State, while balancing potentially conflicting missions. In the plan, the parties define and describe the roles and responsibilities of the Township, the NJDFW, and the USFWS in the protection and management of listed species within the Township. Protective statutes and regulations are summarized in Section B of this Introduction. This plan updates the Township's prior Beach Management Plan dated November 5, 2002.

Through this management plan, the parties endeavor to increase the nesting success of listed bird species and to foster the continued recovery of listed plant species in the Township by reducing detrimental human activities and decreasing predation. Through this plan, the parties hope to effect a progressive shift of specific beach management responsibilities to the Township and citizens of Upper Township, particularly for those aspects of management that protect listed species from activities permitted, encouraged, sponsored, or performed by the Township. This plan is the result of meetings and discussions among the Township Committee, Mayor, Township Engineer, Clerk, Beach Patrol, Animal Control & Code Enforcement, and Public Works Departments; the NJDFW; and the USFWS.

This management plan is consistent with the USFWS's Recreational (Appendix A) and Fireworks (Appendix B) Guidelines, and with the State Coastal Zone Management Rules (Appendix C). This plan also satisfies the Terms and Conditions of the December 2005 Programmatic Biological Opinion between the USFWS and the U.S. Army Corps of Engineers, Philadelphia District (Corps) (Appendix D) with respect to municipal management planning for the Township, and is intended to meet the conditions of permits issued by the New Jersey Department of Environmental Protection's (NJDEP) Division of Land Use Regulation (DLUR) requiring management planning in municipalities receiving beach nourishment. Development and implementation of Service and NJDFW approved Plans is also directed by the Final Natural Resources Restoration Plan (2004) that resulted from the *Anitra* Oil Spill that occurred in the Delaware Bay in May 1996 and moved north along New Jersey's Atlantic Coast.

The parties to this plan acknowledge that the aforementioned guidelines, rules, terms, and conditions may be periodically revised, and agree to adjust the management of listed species as appropriate to ensure continued compliance, including revision of this plan if necessary.

## B. APPLICABLE LAWS AND REGULATIONS

### 1. Federal

**Clean Water Act** (33 U.S.C. 1344 *et seq.*) (CWA): Regulates discharges into waters of the United States. The CWA is administered by the U.S. Environmental Protection Agency and the Corps.

**Endangered Species Act** of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA): Establishes that endangered and threatened animals and plants are of aesthetic, ecological, educational, historical, recreational, and scientific value to the nation and its people. Section 4 provides for listing wildlife and plants as threatened or endangered, including criteria for listing and de-listing species. Section 6 authorizes cooperative agreements and funding for States to establish programs for conservation of threatened and endangered species. Section 7 directs all federal agencies to consult with the USFWS regarding any proposed federal action that may affect a federally listed species. Section 9 prohibits take of federally listed wildlife and restricts collection, destruction, and transport of endangered plants. Section 10 establishes permits for scientific collection, and permits for take of listed wildlife that is incidental to an otherwise lawful non-federal action contingent upon preparation of a Habitat Conservation Plan. Implementing federal regulations are found at 50 CFR 17 and 50 CFR 402. The federal list of threatened and endangered species is found at 50 CFR 17.11 and 17.12. The ESA is administered jointly by the USFWS and the National Marine Fisheries Service.

**Migratory Bird Treaty Act** (40 Stat. 755; 16 U.S.C. 703-712) (MBTA): prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the U.S. Department of the Interior. The MBTA is administered by the USFWS.

### 2. State

**New Jersey Endangered and Nongame Species Conservation Act** of 1973, as amended (N.J.S.A. 23:2A *et seq.*): Establishes a list of wildlife species designated by the State of New Jersey as threatened and endangered, and prohibits taking, possessing, transporting, exporting, processing, selling, or shipping listed species. Implementing State regulations are found at N.J.A.C. 7:25-4. The State list of threatened and endangered wildlife is found at N.J.A.C. 7:25-4.13 and 4.17. The Act is administered by the ENSP.

**New Jersey Endangered Plant Species List Act** (N.J.S.A. 13:1B *et seq.*): Finds that plant species have medicinal, genetic, ecological, educational and aesthetic value to the citizens of New Jersey and that the perpetuation of many native plant species is in jeopardy. The Act establishes an official State list of endangered plants found at N.J.A.C. 7:5C1-1 *et seq.* The Act is administered by the Office of Natural Lands Management (ONLM).

**New Jersey Coastal Zone Management Rules** (N.J.A.C. 7:7E): Constitute the substantive rules of the NJDEP regarding the use and development of coastal resources, to be used primarily by the DLUR in reviewing permit applications under the New Jersey Coastal Area Facility Review Act (N.J.S.A. 13:19-1 *et seq.* as amended to July 19, 1993) (CAFRA), the New Jersey Wetlands Act of 1970 (N.J.S.A. 13:9A-1 *et seq.*), the New Jersey Waterfront Development Law (N.J.S.A. 12:5-3), Water Quality Certification (Section 401 of the CWA), and federal

Consistency Determinations (Section 307 of the federal Coastal Zone Management Act (104 Stat. 4779; 16 U.S.C. 3951 *et seq.*)). The Rules are administered by the DLUR.

## C. LISTED SPECIES

### 1. Species Known to Occur on the Township of Upper Beaches

The following species have been documented on Strathmere's beaches. The parties to this plan anticipate the continuing presence of these species in Strathmere and the continued suitability of Strathmere beaches as habitat for these species.

#### (a) Piping Plover (*Charadrius melodus*)

Piping plovers are small, territorial shorebirds present on the New Jersey shore between March and August. Nests consist of a shallow scrape in the sand located above the high tide line. Flightless chicks are led by their parents to feeding areas, including the intertidal zone. The plover diet consists of invertebrates. One and two pairs of plovers have nested in Strathmere between 2004 and 2007 between Whittier & Willard Avenues and in the Strathmere Natural Area. Piping plovers are federally listed as threatened, State-listed as endangered, and protected by the MBTA.

#### (b) Least Tern (*Sterna antillarum*)

Least terns are small, colonial-nesting sea birds, present on the New Jersey shore between April and September. Nests consist of a shallow scrape in the sand located above the high tide line. Flightless chicks remain in the colony, where they are fed by their parents. The least tern diet consists of fish. Small least tern colonies were present in recent years between Whittier & Willard Avenues (22 and 9 adults in 2004 and 2005, respectively). Least terns are State-listed as endangered and protected by the MBTA.

#### (c) Black skimmer (*Rynchops niger*)

Black skimmers are colonial beach-nesting sea birds that have historically used Strathmere Natural Area (North of Seaview Avenue) as an important nesting area, but may potentially nest on Upper Township's portion of Strathmere's beaches. Colonies ranging in size from 60 to 1613 individuals were present at Strathmere Natural Area almost every year between 1991-2005, although nesting was more sporadic since 2000 as habitat quality decreased, and no skimmers have nested from since 2005 due to the lack of any suitable nesting habitat for skimmers. Black skimmers are State-listed as endangered and protected by the MBTA.

#### (d) American oystercatcher (*Haematopus palliatus*)

American Oystercatchers are territorial nesters, nesting on New Jersey beaches from April – August. They make their nests on beaches by scraping a shallow depression in the sand just above the high tide line and also nest on back bay islands. From 1-3 pairs of oystercatcher have nested in the area from Willard Avenue to the Strathmere Natural Area (inclusive) each year since monitoring of this species began in 2002. Individual pairs have routinely moved between Strathmere Natural Area and Upper Township's portion of Strathmere Beach (often within the same year) depending on habitat conditions and the level of human and predator disturbance. Oystercatchers are a State species of concern (currently proposed).

(e) Seabeach Amaranth (*Amaranthus pumilus*)

Seabeach amaranth is an annual plant, visible on New Jersey's Atlantic coastal beaches between May and November. Seabeach amaranth is usually found growing in nearly pure sand. The species requires sparsely vegetated upper beach habitat that is not flooded during the growing season. Seeds are dispersed by wind and water, and are present on the beach year-round. Seabeach Amaranth has been present on Strathmere's beaches since 2001. Plant numbers have ranged from 1 plant to 98 plants from 2001 - 2005 between Dodge and Morris Avenues and at Taylor Avenue in 2005. Plants have been absent in recent years due to the lack of suitable habitat. Seabeach amaranth is federally listed as threatened and State-listed as endangered.

(f) Seabeach evening primrose (*Oenothera humifusa*): beach and dune habitats plant, State-listed as endangered. Seabeach evening primrose was documented on Strathmere's beaches from 2002-2004.

(g) Seabeach Sandwort (*Honckenya Peploides*): beach and salt marsh habitats plant, State species of concern. Seabeach sandwort was documented on Strathmere's beaches in 2007.

## 2. Species That May Potentially Occur on Township of Upper Beaches

The following species have not been documented in Strathmere, but could become established in the future. The parties to this plan will work cooperatively to manage these species if they colonize Strathmere's beaches. The habitat management and species protections laid out in this plan are expected to be sufficient to protect the following species if they become established; therefore, plan revision would likely not be necessary.

(a) Red Knot (*Calidris canutus rufa*)

Red knots are migratory shorebirds that travel from South America to the Arctic to breed and use the Delaware Bay as a critical stopover site for feeding and resting. Red knots are a federal candidate species under consideration for inclusion on the list of endangered and threatened wildlife under the ESA and are State-listed as threatened. Currently, the Township is not identified as an important migratory staging area for the red knot; however, the red knot may potentially use Strathmere's beaches during migration as a stopover site for feeding or roosting activities. No specific management components are included in the Plan at this time.

## D. GOVERNMENT ENTITIES

**Township:** Township of Upper, Cape May County, New Jersey.

**Corps:** U.S. Army Corps of Engineers, Philadelphia District. The Corps Regulatory Program issues permits for placement of fill material in waters of the United States and for construction activities in navigable waters, pursuant to Section 404 of the federal CWA and Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151, as amended; 33 U.S.C. 403 *et seq.*), respectively. Corps permits are required for activities such as wetland fill, beach nourishment, and construction or maintenance of ocean groins and jetties. The Corps' Civil Works Planning Program carries out shore protection, flood control, navigation, and ecosystem restoration

projects as directed by Congress, including the New Jersey Shore Protection Study that includes beach nourishment in the Township.

**DLUR:** New Jersey Department of Environmental Protection, Division of Land Use Regulation. The DLUR administers the State permitting program for activities in wetlands and within New Jersey's Coastal Zone. Permits from the DLUR are required for activities such as disturbance of wetlands, beach and dune maintenance, construction or maintenance of structures on the beach, beach nourishment, and construction or maintenance of groins, jetties, seawalls, and bulkheads.

**ENSP:** New Jersey Department of Environmental Protection, Division of Fish and Wildlife, Endangered and Nongame Species Program. The ENSP is responsible for listing, monitoring, and managing State-listed wildlife species, and administration of the New Jersey Endangered and Nongame Species Conservation Act.

**NJDEP:** New Jersey Department of Environmental Protection. The NJDEP is the State Department that oversees environmental laws and policies, and includes the DLUR, the NJDFW, and the ONLM.

**NJDFW:** New Jersey Department of Environmental Protection, Division of Fish and Wildlife. The NJDFW is charged with protecting and managing the State's fish and wildlife to maximize their long-term biological, recreational, and economic values. In addition to the ENSP, the NJDFW includes the Bureaus of Wildlife Management, Freshwater Fisheries, Marine Fisheries, Shellfisheries, and Information and Education, and the Office of Environmental Review.

**NJFO:** New Jersey Field Office, Ecological Services, U.S. Fish and Wildlife Service. Within New Jersey, the NJFO's responsibilities include review of federal water-resources projects, monitoring and management of federally listed species (both wildlife and plants), and administration of the ESA.

**OEM:** Township Office of Emergency Management. The OEM is the Township office responsible for managing States of Emergency.

**ONLM:** New Jersey Department of Environmental Protection, Division of Parks and Forestry, Office of Natural Lands Management. The ONLM is responsible for administration of the New Jersey Natural Heritage Database on biodiversity resources, promulgation and amendment of New Jersey's Endangered Plant Species List, and administration and management of State-owned lands designated to the Natural Areas System.

**USFWS:** U.S. Fish and Wildlife Service. The USFWS is the principal agency through which the federal government carries out its responsibilities to conserve, protect, and enhance the nation's fish and wildlife and their habitats for the continuing benefit of the people. The primary responsibilities of the USFWS are migratory birds, endangered species, certain marine mammals, anadromous fish, and wildlife resources on federal land.

## **E. ACRONYMS AND DEFINITIONS**

**ATV:** all-terrain vehicle.

**beach nourishment:** addition of sand in designed contours to extend a beach and the nearshore shallows seaward.

**Biological Opinion:** a document that includes: (1) the opinion of the USFWS as to whether or not a proposed federal action is likely to jeopardize the continued existence of federally listed species; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on federally listed species. Issuance of a Biological Opinion concludes formal consultation between the USFWS and a federal action agency pursuant to Section 7 of the ESA, and an accompanying Incidental Take Statement authorizes, if appropriate, limited incidental take of federally listed wildlife in the course of implementing the federal action.

**brood:** a group of young birds hatched at one time and cared for by the same parents.

**Conservation Measures:** actions to benefit or promote the recovery of listed species that are included by a federal agency as an integral part of a proposed action. These actions will be taken by the federal agency and serve to minimize or compensate for project effects on the federally listed species impacted by the proposed action. Conservation Measures are usually included in a Biological Opinion.

**consultation:** the process required by Section 7 of the ESA through which the USFWS works with a federal action agency to determine if a proposed federal action is likely to adversely affect a listed species under USFWS jurisdiction, or jeopardizes the continued existence of such a species. Federal actions include actions that are carried out, funded, or authorized by a federal agency.

**Declared Emergency:** a state declared by Township, County, State, and/or federal governments in anticipation of, during, or following an event that threatens human health, safety, or property.

Throughout this plan, “State of Emergency” (SOE) signifies a state of Declared Emergency. The term “emergency” is defined below.

Within the Township, the Mayor or Office of Emergency Management (OEM) declares all Emergencies, and the OEM manages the Emergency. A copy of the Emergency Declaration Document is on file at the Township Municipal Clerks Office, 2100 Tuckahoe Road, Petersburg. Once the Emergency has been declared, the OEM or Mayor, confirm and notify the Township Clerk. Activities responding to a State of Emergency (SOE) may include the following:

**SOE Beach Nourishment:** placement of clean sand on the beach to protect human life or health or public or private structures, signified by a Declared Emergency and eligibility for DLUR permits under N.J.A.C. Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. Emergency Beach Nourishment is included in the definition of “SOE Post-storm Beach or Dune Restoration.”

**SOE Clean-up:** removal from the beach of large debris that poses a threat to human health or safety using vehicles and equipment, signified by a Declared Emergency.

**SOE Raking:** mechanical beach raking necessary to remove from the beach debris that poses a threat to human health or safety (e.g., medical waste, hazardous materials), signified by a Declared Emergency.

**SOE Post-storm Beach or Dune Restoration:** activities listed at Section 7:7E-3A.3(b) of the New Jersey Coastal Zone Management Rules to restore beaches or dunes impacted by coastal storms with a recurrence interval equal to or exceeding a 5-year storm event, signified by a Declared Emergency and eligibility for DLUR permits under Section 7:7E-3A.3. Placement of sand and other materials (beach nourishment) and sand scraping (defined below) are among the activities listed at 7:7E-3A.3(b).

**emergency:** a situation presenting imminent risk to human life, health or safety.

**emergency vehicle:** a vehicle responding to an emergency.

**essential vehicle:** a vehicle required to provide for safety, law enforcement, maintenance of public property, or access to private dwellings not otherwise accessible.

**feral:** wild, untamed or un-owned, referring to animals that are normally pets such as cats or dogs.

**Fireworks Guidelines:** the USFWS document entitled *Guidelines for Managing Fireworks in the Vicinity of Piping Plovers and Seabeach Amaranth on the U.S. Atlantic Coast* (Appendix B).

**fledged:** able to fly. Piping plover, least tern, and black skimmer chicks are presumed to have survived the nesting season once fledged; monitoring and management restrictions are usually relaxed once all chicks are fledged. For management purposes, piping plover chicks are considered fledged at 35 days of age or when observed in sustained flight for at least 15 meters, whichever occurs first.

**growing season:** the time of year when seabeach amaranth is present on the beach; usually May 15 through November 30.

**harass:** an act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

**harm:** an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

**incidental take:** take of listed fish or wildlife species that results from, but is not the purpose of, carrying out an otherwise lawful activity.

**listed species:** for the purposes of this plan, a species that is: (1) listed or proposed for listing as endangered or threatened, or designated as a candidate for listing, by the USFWS pursuant to the ESA and its implementing federal regulations; (2) listed as endangered or threatened by the State pursuant to the New Jersey Endangered and Nongame Species Conservation Act and its implementing State regulations; (3) listed by the State as endangered pursuant to the New Jersey Endangered Plant Species List Act; and/or (4) listed as a State species of concern by the NJDFW or the ONLM.

**nesting area:** an area occupied by nesting piping plovers, least terns, and/or black skimmers in the current or recent nesting seasons, including areas used for courtship, territorial displays, egg-laying and incubation, and chick brooding and foraging.

**nesting season:** the time of year when nesting piping plovers, least terns and/or black skimmers are present on the beach; usually March 15 through August 31 if both plovers and colonial nesters are present.

**predator enclosure:** staked wire fencing that encircles a piping plover nest as a barrier to predators while permitting passage of plover adults and chicks; netting is normally installed on the top of the structure to prevent entry by avian predators.

**predator management:** activities to reduce the adverse effects of predators on listed bird species, including but not limited to monitoring, minimizing food sources, use of predator enclosures, and predator population control through trapping or other means of removal.

**productivity:** a measure of piping plover, least tern, and black skimmer nesting success measured as chicks fledged per pair of nesting birds.



**Programmatic Biological Opinion:** a Biological Opinion that addresses a federal program rather than a single federal action; such programs typically guide implementation of future agency actions by establishing standards, guidelines, or governing criteria to which future actions must adhere.

**Recreational Guidelines:** the USFWS document entitled *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act* (Appendix A).

**routine:** not associated with a State of Emergency (SOE).

**sand scraping:** mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore; also known as sand mining or sand transfer.

**service animal:** any guide dog, signal dog, or other animal individually trained to provide assistance to a person with a disability (e.g., seeing-eye dogs).

**SOE:** State of Emergency; see Declared Emergency.

**supervised beach:** a life-guarded bathing beach.

**symbolic fencing:** string-and-post fencing marked with flagging and signs, intended to protect listed species by restricting human entry into an area.

**take:** to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a listed species, or attempt to engage in any such conduct.

**Terms and Conditions:** specific methods by which a federal action agency must implement actions necessary or appropriate to minimize the extent of incidental take of federally listed wildlife in the course of carrying out an otherwise lawful federal action. Terms and Conditions are usually included in an Incidental Take Statement that accompanies a Biological Opinion.

**wrack:** organic material including seaweed, seashells, driftwood, and other materials deposited on beaches by tidal action; often forms a “wrack line” along the high water mark.

## II. MANAGEMENT ZONES

Six separate management zones are identified for the Strathmere and Whale Beach beaches consisting of two Protected Zones, two Precautionary Zones, and two Recreational Zones (see Figure 1a & 1b), that are based on their current and historical use by beach-nesting birds and potential re-colonization by listed plants. The relative importance of protective management practices in each management zone considers existing human uses, habitat conditions, and past distribution and occurrence of listed species.

### **PROTECTED ZONE I: (*Polk Avenue to Hamilton Avenue*)**

This zone will be managed to promote the protection and recovery of listed species and the enhancement of their habitat (beach raking will not be permitted). Recreational uses will be accommodated consistent with species protections. Limited uses include emergency access, hand cleaning of debris, and beach/dune maintenance and inspections when necessary.

### **RECREATIONAL ZONE II: (*Hamilton Avenue to Irvin Avenue*)**

This zone is comprised of the developed recreational beaches. Any listed species documented in this zone will receive protection as required by applicable State and federal laws and regulations.

The Township has designated the block from Hamilton Avenue to Hawthorne Avenue at the catamaran beach due to its proximity to the emergency vehicle access at Hawthorne Avenue.

**PRECAUTIONARY ZONE III: (*Irvin Ave to Nelson Avenue*)**

Recreational uses will be accommodated consistent with species protections. Limited uses include emergency access, hand cleaning of debris, and beach/dune maintenance and inspections when necessary.

**RECREATIONAL ZONE VI: (*Nelson Avenue to Webster Avenue*)**

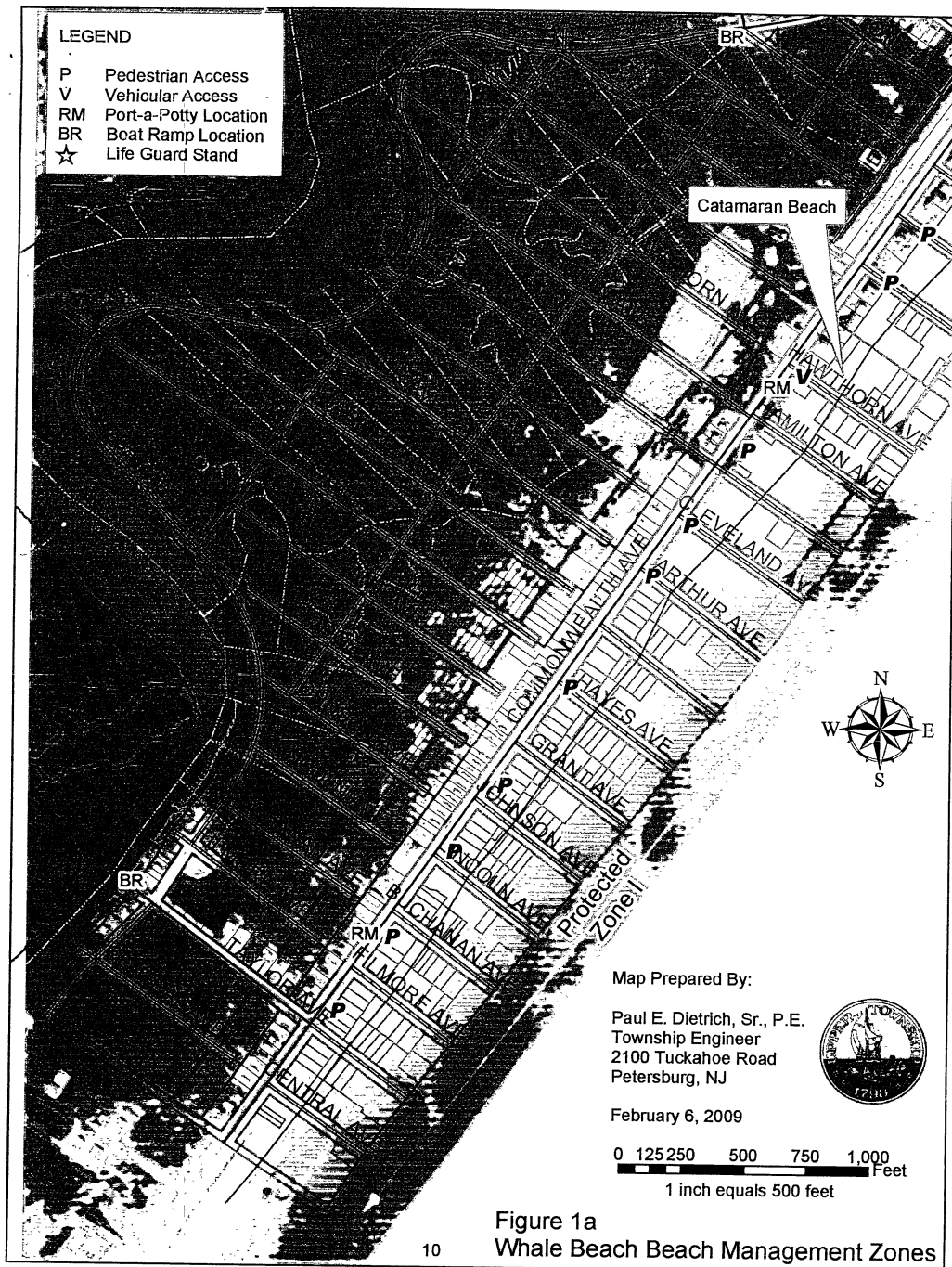
This zone is comprised of the developed recreational beaches. Any listed species documented in this zone will receive protection as required by applicable State and federal laws and regulations.

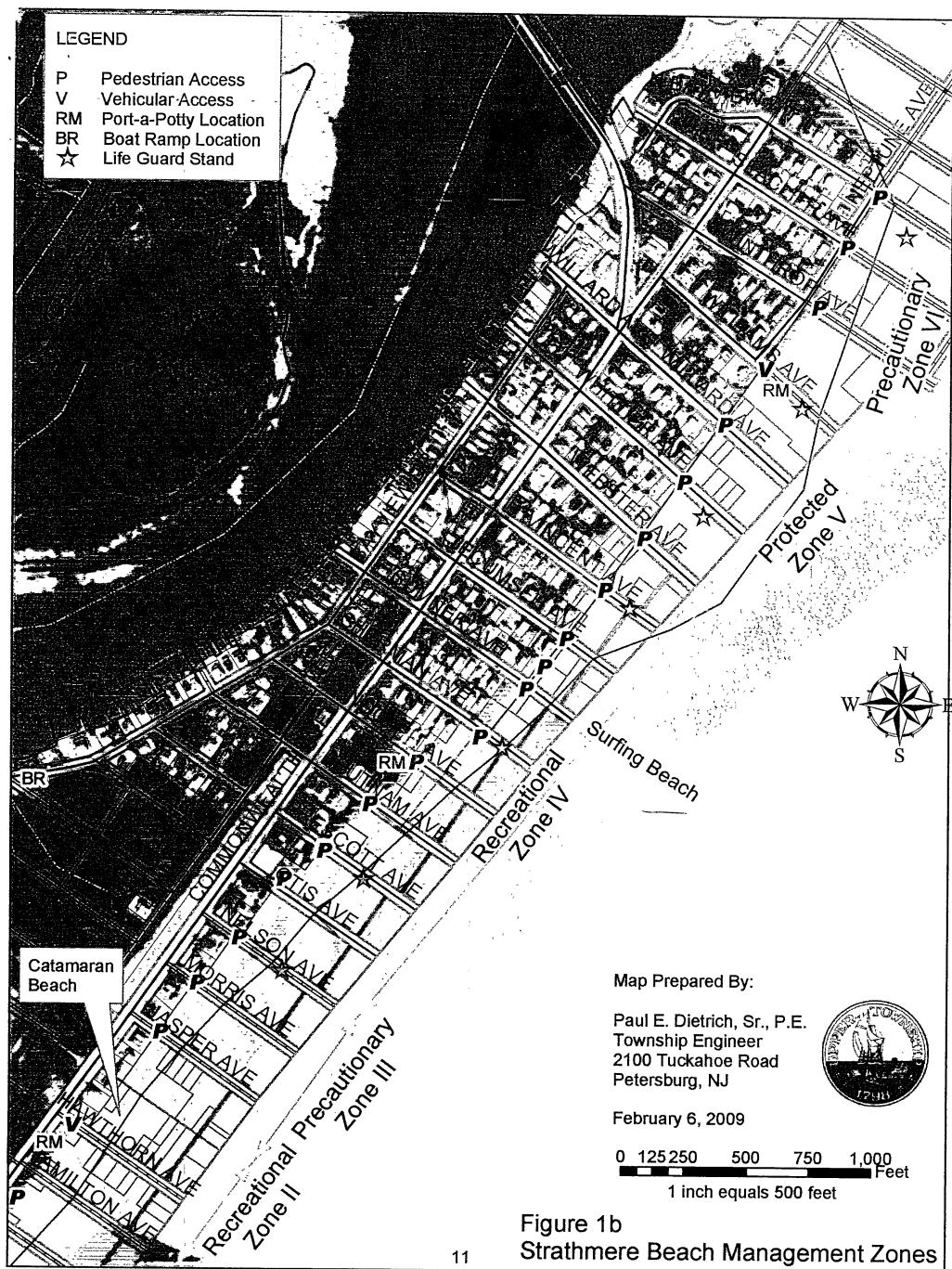
**PROTECTED ZONE V: (*Webster Avenue to Williams Avenue*)**

This zone will be managed to promote the protection and recovery of listed species and the enhancement of their habitat (beach raking will not be permitted). Recreational uses will be accommodated consistent with species protections. Limited uses include emergency access, hand cleaning of debris, and beach/dune maintenance and inspections when necessary. Nesting species have utilized the beach between Whittier Avenue and Willard Avenue. The lifeguard stand(s) locations may be adjusted as needed to minimize disturbance to beach nesting birds and their chicks through consultation with the NJDFW and the USFWS. Additionally, this zone has Beach Patrol vehicle use restrictions during the nesting season (see the Human Disturbance Section).

**PRECAUTIONARY ZONE VI: (*Williams Avenue to Strathmere Natural Area*)**

Recreational uses will be accommodated consistent with species protections. Limited uses include emergency access, hand cleaning of debris, and beach/dune maintenance and inspections when necessary. This area is also regularly protected by the Upper Township Beach Patrol and routine vehicular travel through this zone is required by the Upper Township Beach Patrol.





### III. RECOVERY GOALS

The parties to this plan consider the following to be realistic, sustainable targets for listed species on Strathmere's beaches. Populations of listed species above these goals will continue to be protected in accordance with applicable State and federal laws and regulations.

#### **Piping plovers:**

- 2-4 pairs Strathmere-wide (not inclusive of state-owned Strathmere Natural Area)
- Productivity greater than or equal to the USFWS recovery goal of 1.5 chicks fledged per pair.

#### **Least terns:**

- One colony of birds Strathmere-wide (not inclusive of state-owned Strathmere Natural Area) with at least moderate productivity ( $\geq 0.5$  to  $\leq 1.00$  chicks fledged per pair) when a colony is present.

#### **Black Skimmers:**

- Minimize disturbance (*i.e.*, human use, dogs, etc.) to any colonies present on Strathmere's Natural Area that originated from the Township.

#### **Seabeach amaranth:**

- The presence of plants and to effectively protect any plants that occur.

#### **Seabeach sandwort and Seabeach evening primrose:**

- The presence of plants and to effectively protect any plants that occur.

### IV. MANAGEMENT ISSUES

Management issues form the basis or framework for this plan. The major issues are defined, and the roles and responsibilities of each party to the plan are set forth to address each issue.

#### A. BIOLOGICAL MONITORING

##### ➤ Background

Basic biological information is routinely collected about listed species on Strathmere's beaches. The NJDFW monitors beach-nesting birds to determine habitat use, numbers of nesting pairs, nest locations, and reproductive success. The USFWS surveys and monitors (when funding is available) seabeach amaranth to determine plant numbers, size, reproductive status, location, and condition. Additional plants of concern that may occur are recorded incidentally during the USFWS surveys. This information is essential in evaluating species trends and progress towards recovery, and assessing the effectiveness of beach management practices.

Note: ONLM has conducted annual state-wide surveys documenting any federal or State-listed threatened or endangered plants occurring on New Jersey's coastline and provided that information to the USFWS.

➤ **NJDFW/USFWS Actions**

- The NJDFW will continue intensive surveys, monitoring, and management of nesting birds throughout Strathmere's beaches, as per agreement with the USFWS pursuant to Section 6 of the ESA. The NJDFW currently surveys Strathmere's nesting area 3 days per week during the nesting season, including weekends and holidays, although survey intensity is scaled back (or discontinued) after mid-July in those years when no breeding birds are present.
- The USFWS will conduct (subject to available funding) annual seabeach amaranth surveys that include the Township to monitor population trends and distribution, and plans to initiate limited early-season survey work to identify seabeach amaranth plants at risk of damage or destruction.
- The NJDFW will post signs (if needed) in the area of the Strathmere Natural Area during the breeding season or fall migration period (for roosting black skimmers). Posting signs will notify beachgoers the birds are in the area and any appropriate restrictions for the public.
- The NJDFW and the USFWS will promptly report any new or expanded occurrence of a listed species to the Township, particularly within the Recreational Zone.
- The NJDFW and the USFWS will regularly report relevant biological information to the Township (see Section G).

**B. PREDATOR MANAGEMENT**

➤ **Background**

Predation is a major factor impairing piping plover and least tern productivity in Strathmere. The primary predators in Strathmere are gulls (*Larus* spp.) and crows (*Corvus* spp.). Other potential predators include raccoons (*Procyon lotor*), striped skunks (*Mephitis mephitis*), red foxes (*Vulpes vulpes*), and feral cats (*Felis catus*). Reducing predation will involve reducing or eliminating provisions of food from refuse and hand feeding, using predator exclosures, educational outreach, and if necessary, predator removal.

Predators (herbivores) of seabeach amaranth (if plants are present in Strathmere) may include moth caterpillars belonging to the Lepidopteran families Noctuidae (cutworms) and Pyralidae (webworms), and aphids. Other potential herbivores include grasshoppers and mammals. Seabeach amaranth may also be affected by fungal diseases.

➤ **Township Actions**

- Through the Animal Control Officer, the Township will conduct removal of cats in problem areas when necessary, preferably through humane live trapping. If the Animal Control Officer is unable to assist, the Township will explore other alternatives with the NJDFW assistance. Primary responsibility for control of feral cat populations lies with the Township.
- The Township will emphasize the importance of its ordinance prohibiting dogs, cats and any other animals on the beach.

- By ordinance, the Township prohibits dogs, cats, and any other animals (except service animals) from March 15 – September 30 within the Protected Zone, Precautionary Zones, and Recreational Zone (Township Ordinance Code §8-5.4). All animals, including service animals, are required to be leashed and are prohibited from entering fenced areas.
- The Township will enforce the seasonal prohibition of animals on the beach through the New Jersey State Police, and will take any other necessary steps to provide adequate enforcement such as posting signs regarding the pet prohibition at each entrance to the beach.
- Consistent with current State and local regulations, the Township will not actively block measures to control predator populations recommended and/or undertaken by the NJDFW or the USFWS. The Township will not enact any new ordinances to prohibit predator management activities.
- By way of signature to this plan, the Township gives the NJDFW and the USFWS written permission to engage in predator control activities on Strathmere beaches, including removal of feral cats, foxes, and other predators including herbivores of seabeach amaranth.
- See also Education and Outreach (Section F).

➤ **NJDFW Actions**

- The NJDFW will continue to monitor the extent of predation on nesting birds within Strathmere (Section A), and will include this in the information reported to the Township (Section G)
- The NJDFW will erect predator exclosures on piping plover nests where and when appropriate. Use of predator exclosures to reduce plover nest predation will generally be tried prior to undertaking predator removal, unless the NJDFW has cause to believe that exclosures could worsen predation pressures (certain predators are known to target exclosures). In addition, control of predator populations may be necessary to reduce predation on plover chicks, or on least tern and black skimmer eggs and chicks, none of which are protected by exclosures.
- Any predator population control (other than for feral cats) will be the responsibility of the NJDFW. The NJDFW will pursue control when necessary and appropriate.
- The NJDFW will notify the Township Clerk and the New Jersey State Police at least 2 days before engaging in any predator control activities; by way of this plan the Township grants the NJDFW permission for these activities, as indicated above. The NJDFW will adopt the Township's recommendations for timing, methods, or other aspects of control operations to the extent possible.
- If the Township is unable to obtain assistance from the Township's Animal Control Officer with cat removal, the NJDFW will assist the Township in exploring other alternatives, including carrying out removal with the NJDFW or contract staff.

➤ **USFWS Actions**

- Upon request and within the limits of available staff time and funding, the USFWS will assist the Township and/or the NJDFW in control of predator populations, such as arranging for removal through the U.S. Department of Agriculture's Animal and Plant Health Inspection Service or other qualified vendors.
- In the course of annual seabeach amaranth surveys, the USFWS will monitor the extent of seabeach amaranth herbivory and disease within the Township (if applicable) (Section A), and will include this in the information reported to the Township (Section G).
- In the course of annual seabeach amaranth surveys, the USFWS will note any observations of herbivory and disease of other listed plant species (Section A), and report this information to the Township (Section G) and the ONLM.
- If herbivory and/or disease threaten the seabeach amaranth recovery goals specified in this plan, the USFWS will recommend and/or implement necessary actions, potentially including application of appropriate pesticides. By way of this plan, the Township grants the USFWS permission for these activities, as indicated above. The USFWS will initiate early coordination with the Township upon detection of an herbivory/disease problem, and will include the Township in the planning of any proposed control measures. The USFWS will notify the Township Clerk in writing at least 10 days before implementing any herbivore/disease control activities, and will adopt the Township's recommendations for timing, methods, or other aspects of control operations to the extent possible. The USFWS will post signs in any treated areas as necessary and appropriate. Any USFWS actions are subject to the Intra-Service consultation requirements of Section 7 of the ESA, as well as all applicable regulations regarding pesticide handling and use.

**C. HUMAN DISTURBANCE**

➤ **Background**

The broad area of human disturbance includes any human activities that directly or indirectly harm or harass listed plants or birds, including interference with incubation and care of chicks. Recreational beach users and municipal employees may directly harm listed species by crushing beach-nesting bird eggs or plants. In addition, unfledged plover, tern, and skimmer chicks are highly sensitive to disturbance. Nesting birds may experience low success if exposed to frequent harassment by vehicles, pedestrians, sunbathers, pets, or kites.

➤ **Township Actions**

- The Township will assist the NJDFW with pre-season symbolic fencing, or will identify volunteers to assist with this task if needed by NJDFW. (See NJDFW Actions, below.)
- In the event that seabeach amaranth plants remaining on the beach after August 31 are threatened by human activities (*e.g.*, a large population of plants near a beach access structure, a Township-sponsored clean-up or event in an area of species occurrence), the Township will erect and maintain symbolic fencing, posted with appropriate signs, as recommended by the USFWS (in addition to any seabeach amaranth or other listed plants



that are incidentally fenced areas by NJDFW). The Township will remove fencing once all plants are gone or the threat is abated, as recommended by the USFWS. (See USFWS Actions, below.)

- As needed, the Township will seek land owner permission for symbolic fencing and other activities to protect and manage listed species, when and where listed species occur on privately owned portions of the beach.
- The Township will regulate permanent and temporary private structures and storage of private property on the beach (e.g., catamarans, volleyball nets, shelters) as needed to protect listed species or their habitat.
- Within the Protected Zone or the Precautionary Zones, the Township will not designate any new recreational areas (e.g., supervised beaches) or take any actions to promote increased recreational use without written concurrence from the NJDFW and the USFWS that such designation or action would not adversely affect listed species or their habitats. The Township currently has guarded beaches at Seacliff Avenue, Williams Avenue, Whittier Avenue, Vincent Avenue, Sherman Avenue, Prescott Avenue and Nelson Avenue.
- The Township will adjust the location of beach stands as needed through consultation with the NJDFW and the USFWS to minimize impacts to beach nesting birds and their chicks.
- The Township will work with the NJDFW and the USFWS to regulate existing and new recreational activities as needed to protect listed species.
- The Township will discourage kite flying within 200 meters of posted nesting areas between March 15 and August 31 through signs and education.
- In the Recreational Zone, the Township may conduct, permit, or sponsor any organized recreational activities or events (e.g., tournaments, races, games, musical events) at any time with no restrictions unless the Township has been notified that listed species are present. If listed species are present, the Township will adopt restrictions such as timing, fencing, or alternate locations as recommended by the NJDFW and/or the USFWS.

In the Protected Zone, the Township will not schedule organized events.

In the Precautionary Zones, the Township will schedule organized events only between September 1 and March 14, unless the NJDFW and the USFWS have indicated in writing that the event will not affect listed species (e.g., nesting activity or the growing season has concluded for the year, or listed species are absent from the event area). For events scheduled in the Precautionary Zones between September 1 and November 30, the Township will implement the USFWS fencing recommendations to protect seabeach amaranth, if present.

- The Township will continue to prohibit use of recreational vehicles on Strathmere beaches on a year-round basis.

- The New Jersey State Police maintains supervised and unsupervised beaches throughout the Township. The New Jersey State Police do not patrol the beaches with vehicles, but may respond to an emergency with a vehicle. The Township will implement driving restrictions in the Protected and Precautionary Zones consistent with the USFWS's Recreational Guidelines (Appendix A). The New Jersey State Police does not patrol the beach in vehicles.
  - No restrictions apply when Police are responding to an emergency as defined in the Plan.
- Municipal and contractor vehicles are occasionally driven on Strathmere's beaches (*e.g.*, Township Public Works Department and Beach Patrol). Other than Police Emergency Responses, no municipal or contractor vehicles (except Public Works for routine beach clean-ups, see Beach Management and Maintenance Section E of the Plan) will be driven in the Protected Zone I between March 15 and November 30, and in the Precautionary Zones between March 15 and August 31 (unless no listed are species present) unless responding to an emergency or a SOE as defined in this plan. It is the Township's responsibility to limit contractor and any vendor vehicles to the same restrictions as the municipal vehicles. In Protected Zone V (Webster to Williams Avenue), if beaches are severely eroded, the Township may need to access this zone with Beach Patrol vehicles to pick up and drop off lifeguard boats, generally one time at the beginning and at the end of the day. This activity may occur during the egg laying portion of the nesting season only under the following conditions:
  - All suitable habitat or areas where breeding activity is observed by NJDFW must be fenced off (by NJDFW) prior to vehicle use.
  - Speed of the vehicle should not exceed 5 miles per hour.
  - Travel should be infrequent enough to avoid creating deep tire ruts that could impede future chick movements.

Once chicks are present, Beach Patrol vehicles will not be permitted (except for bonafide emergencies). Beach Patrol vehicles will be re-routed to the Hawthorne Avenue vehicle access. If no bird species are present by July 15, Beach Patrol vehicle use may continue, but at the same frequency as had been previously used (*i.e.*, 1-2 trips per day). In the future if nesting increases in Protected Zone V, the Plan may be amended to restrict Beach Patrol vehicle use during the entire nesting season, re-routing all Beach Patrol vehicle use to Hawthorne Avenue if necessary. If nesting patterns shift dramatically over the course of the plan, vehicle use restrictions will be reviewed in consultation with NJDFW and USFWS, including possible re-designation of which areas will be considered Protected or Recreational Zones.

- No driving restrictions will apply in the Recreational Beach Zone unless the Township has been notified that listed species are present. If listed species colonize the Recreational Beach Zone, the Township will include municipal, contractor, and vendor vehicles in the Recreational Zone Vehicle Use Policy to be developed with the NJDFW and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone.
- The Township will inform, in writing, all appropriate Township Departments (*e.g.*, Police, Public Works, Township Clerk, Beach Patrol) and any contractors and vendors of the need to avoid vehicle travel in the Protected Zone from March 15 through November

30 and in the Precautionary Zones from March 15 through August 31 (if no listed species are present, than July 15) except in bonafide emergency or SOE situations.

➤ **NJDFW Actions**

- With Township assistance if needed, the NJDFW will be responsible for pre-season fencing, and will continue to post signs for all nesting areas. The NJDFW will conduct pre-season fencing with symbolic fencing in areas of suitable nesting habitat as necessary and appropriate (in any Beach Zone) in late March or early April. The NJDFW will coordinate annually with the Township regarding the extent of areas that will be pre-season fenced.
- The NJDFW will post all active nesting areas (in any beach Zone) with appropriate signs and symbolic fencing, including enlarging or adjusting pre-season fencing based on observed nesting activity. Within the limits of available funding, the NJDFW will also assist in fencing and posting of limited areas identified by the USFWS where seabeach amaranth or other listed plants are at risk of being damaged (primarily in vicinity of beach nesting birds).
- The NJDFW will remove fencing within 10 days of the end of any nesting activity, unless fencing is needed longer to protect seabeach amaranth. The NJDFW, the USFWS, and the Township will cooperate to remove seabeach amaranth fencing in a timely manner (see USFWS Actions, below). All fencing will be removed promptly when it no longer provides protection to listed species.
- The NJDFW will inform the Township Municipal Clerk, Superintendent of Public Works, and Beach Patrol Supervisor within 2 working days of any areas that have been fenced.
- The NJDFW will provide a timely response to Township notification of planned events, and will provide recommendations to protect listed species.

➤ **USFWS Actions**

- Subject to Corps or other funding, the USFWS will conduct limited early-season surveys to identify areas where seabeach amaranth or other listed plants are at risk of being damaged or destroyed, in order to make fencing recommendations.
- The USFWS will make recommendations after August 31, to the Township, regarding the extent and duration of symbolic fencing needed to protect seabeach amaranth. Recommended fencing will be limited to areas where plants are at clear risk of being damaged or destroyed by human activity.
- The USFWS will generally recommend that the NJDFW and/or the Township remove amaranth fencing once all plants are gone, or by August 31, whichever comes first. In the event that plants remaining on the beach past August 31 are at continued risk of being damaged or destroyed by human activities, the USFWS will recommend that the Township erect and maintain symbolic fence in limited areas as needed to protect these plants (e.g., a large population of plants near a beach access structure, a Township-sponsored clean-up or event in an area of species occurrence). The USFWS will

recommend that the Township remove the fencing material promptly once all plants are gone for the season, or the threat is abated (*e.g.*, the event is over).

- Subject to Corps or other funding, the USFWS will assist the Township with any fencing needed after August 31 to protect seabeach amaranth.
- The USFWS will provide seabeach amaranth signs to post on symbolic fencing.
- The USFWS will continue work on Seabeach Amaranth Fencing Guidelines, and will provide these to the Township and the NJDFW if and when approved.
- If justified by the State-wide species distribution, the USFWS will investigate creating a Seabeach Amaranth Steward position with seasonal field duties. The Steward would oversee the fencing and protection of seabeach amaranth during the growing season, and the implementation of beach management plans with regard to listed plants. At this time, it is unclear if the Steward would be employed by a federal or State agency or a private organization, and potential funding sources have not been secured. The USFWS will ensure coordination with the Township if and when a Steward position is created.
- The USFWS will provide a timely response to Township notification of planned events, and will provide recommendations to protect listed species.

#### **D. FIREWORKS**

##### **➤ Background**

Listed species in the vicinity of a fireworks launch site can be directly harmed (eggs or chicks injured or destroyed, plants crushed) by explosions, debris, equipment, or launch personnel. Listed species within a fireworks viewing area, which may be distant from the launch site, may be directly harmed by spectators, illegal pyrotechnics, and off-road vehicle patrols by public safety personnel. In addition, listed birds are indirectly affected by fireworks. Normal breeding, feeding, and sheltering activities can be disrupted by noise and activity at both launch and viewing areas, and increased trash in viewing areas attracts predators. Many of these impacts are worsened because fireworks events are conducted at night, limiting visibility of plants, eggs, chicks, and symbolic fencing.

In recent years, the Township has not held fireworks in Strathmere due to the limited size of the beach. If in the future the Township wishes to hold fireworks in Strathmere the Township will coordinate the approval with the NJDFW and USFWS. Fireworks event(s) would be consistent with the Fireworks Guidelines and including the following Township Actions described below..

##### **➤ Township Actions**

- The Township will inform the NJDFW and the USFWS, in writing, of any planned fireworks events and the location proposed at least 30 days in advance.
- The Township will coordinate with the NJDFW and the USFWS to arrange for a seabeach amaranth survey and fencing within a fireworks primary and secondary viewing areas in the week preceding a fireworks event.

- To protect listed species in the Protected and Precautionary Zones, the Township will take the following protective measures:
  - Keep the launch and primary viewing area at or near as long as nesting/foraging areas remain limited to the Protected and/or Precautionary Zones.
  - Provide adequate law enforcement and other personnel to the Protected (and Precautionary Zones if necessary) during events to enforce listed species protections, including prohibiting entry in fenced areas and use of illegal personal fireworks. The Township will coordinate with the NJDFW to determine the number of required enforcement personnel.
  - Prohibit driving of municipal, contractor, and vendor vehicles in the vicinity of nesting areas during these nighttime events, unless responding to an emergency. Law enforcement patrol vehicles and any other essential municipal vehicles will remain on the street behind the dunes, from which personnel can access the beach front on foot.
  - Ensure that monitors and enforcement personnel receive accurate, current information about the locations of listed species so they can minimize any disruptions from their own activities.
  - Prohibit all pets except service animals on the beach (especially near nesting areas) during fireworks events, and ensure compliance with this prohibition. Service animals near active nesting areas will be required to stay on a leash and will not be permitted in fenced areas.
  - Remove any trash or litter from the vicinity of nesting areas immediately following the event, except any trash located within fenced areas, which will be left until daylight and then removed by or under the supervision of the NJDFW monitors. Further, any vehicles needed to remove trash will be operated during daylight hours, under supervision of a NJDFW monitor, and consistent with the Recreational Guidelines.
- If nesting becomes established within the Recreational Zone, the Township will continue the above protective measures in the Protected Zones and will take the following additional actions:
  - Relocate the primary viewing area and/or the launch site to minimize disturbance to nesting birds to the extent possible. In no case will a launch area be closer than 0.75 mile to a nesting area unless the NJDFW and the USFWS concur in writing that the proposed launch site is not likely to adversely affect listed birds.
  - Extend to nesting areas in the Recreational Zone all the protective measures listed above for the Protected Zone, and work with the NJDFW to implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing (100-foot instead of 50-foot buffers), and control of beach access and parking lots.

➤ **NJDFW Actions**

- The NJDFW will provide a timely response to any request from the Township to review specific fireworks plans and will provide recommendations to protect listed species.
- To protect listed species in the Protected Zones, the NJDFW will take the following protective measures:
  - Provide a monitor to the Protected Zones during fireworks events to assist the Township in enforcement of listed species protections.
  - Provide a monitor the following day as needed to oversee trash removal from fenced areas, and any trash removal requiring a vehicle.
- If nesting becomes established within the Recreational Zone, the NJDFW will continue the above protective measures in the Protected Zones, and will take the following additional actions:
  - Review proposed relocated primary viewing areas and/or launch sites to determine if fireworks events are likely to adversely affect listed birds.
- Extend to nesting areas in the Recreational Zone all the protective measures listed above for the Protected Zones, and will also work with the Township to implement all relevant additional protective measures listed in the Fireworks Guidelines, including enhanced survey efforts, expanded fencing, and control of beach access and parking lots.

#### ➤ **USFWS Actions**

- The USFWS will provide a timely response to any request from the Township to review specific fireworks plans and will provide recommendations to avoid impacts to listed species.
- The USFWS will continue to conduct in a timely manner consultation with the U.S. Coast Guard regarding authorization of Township fireworks events pursuant to Section 7 of the ESA.
- Subject to the availability of Corps or other funding, the USFWS will survey the primary viewing area within the Recreational Zone and the Protected Zones within the week preceding the event and will erect symbolic fencing around seabeach amaranth or other listed plants to provide a minimum 3-meter buffer zone around plants.

### **E. BEACH MANAGEMENT AND MAINTENANCE**

Beach maintenance includes activities that the Township undertakes to physically maintain Strathmere's beaches and dunes, including refuse and large debris removal, dune maintenance, beach nourishment, sand scraping, and oversight of beach access structures. These activities can impact habitat quality, disturb nesting birds, and destroy nests, chicks, and plants.

#### **1. Beach Raking**

➤ **Background**

Beach rakes can inadvertently destroy unprotected nests, kill chicks, and remove plants. Beach raking can also diminish the suitability of nesting habitat by removing shell fragments and sparse vegetation. Habitat quality is also diminished by removal of natural wrack, an important foraging area for piping plovers and a key growing zone for seabeach amaranth. Beach raking is regulated by the New Jersey Coastal Zone Management Rules. The Township currently does not rake the beach on a routine basis.

➤ **Township Actions**

- The Township will not mechanically rake the beach, except during an SOE (*i.e.*, potentially harmful debris must be removed from the beach to protect public health and safety).
- The Township will notify the NJDFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any beach Zone, the Township will implement the protective measures listed in Table 1 when conducting SOE Raking in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJDFW and the USFWS will not object to SOE Raking of the Protected and Precautionary Zones to remove medical waste, hazardous trash, or other unusual debris; SOE Raking may proceed once any required authorizations are obtained from the DLUR.
- The Township will consult with the NJDFW and the USFWS between March 15 and November 30 for after storm clean-ups of "significant washups" in the Protected and Precautionary Zones that may warrant a clean-up.

➤ **NJDFW and USFWS Actions**

- The NJDFW will monitor nesting activity and regularly inform the Township through the Municipal Clerk's office, Police, Beach and Public Works Departments of nest and brood locations so that emergency raking procedures effected by nesting status can be implemented on a timely basis.
- The NJDFW and the USFWS will promptly review requests from the Township for SOE Raking in the Protected and Precautionary Zones, and will make recommendations to protect listed species.
- The NJDFW and/or the USFWS will provide an on-site monitor during SOE Raking, if determined that it is needed.
- The NJDFW and the USFWS will recommend to the DLUR that normal raking prohibitions in the Protected and Precautionary Zones be waived to permit SOE Raking and other provisions in the Plan that will be carried out with the protective measures listed in Table 1.
- See also the section on education and outreach regarding presentations to Township employees.

**Table 1. Seasonal Protections for Listed Species When Motorized Vehicles or Equipment are Required to Respond to a State of Emergency (SOE)**

	Protections for Listed Birds	Protections for Listed Plants	Protections for All Listed Species
January			
February			
March 1 – March 14			
March 15 - April	<ul style="list-style-type: none"> <li>SOE response will be supervised by the NJDFW monitors;</li> <li>vehicle use will take place during daylight hours;</li> <li>vehicles will not exceed 5 miles per hour when and where unfledged plover chicks are present;</li> <li>vehicles will not enter fenced areas; and</li> <li>vehicles will temporarily halt or change route as requested by the NJDFW monitors to avoid harassment of listed birds.</li> </ul>	<ul style="list-style-type: none"> <li>vehicles will avoid crushing or removing seabeach amaranth and State-listed plants.</li> </ul>	<ul style="list-style-type: none"> <li>vehicles will minimize removal of wrack material; and</li> <li>SOE response will proceed in accordance with any other recommendations of the NJDFW or the USFWS to protect listed species.</li> </ul>
May			
June			
July			
August			
September			
October			
November			
December			



## **2. Large Debris Removal**

### **➤ Background**

Large debris washes up on Strathmere beaches and must be removed periodically. An annual clean-up is conducted through the NJDEP Clean Shores Program. Additional clean-ups are sometimes carried out by the Township and various Community Organizations. Removal of large debris requires motorized vehicles and equipment that can impact listed species.

### **➤ Township Actions**

- No restrictions on clean-ups will apply in the Recreational Zone unless the Township has been notified that listed species are present. If listed species colonize the Recreational Zone, the Township will include clean-ups in the Recreational Zone Vehicle Use Regulations to be developed with the NJDFW and the USFWS. The Regulations will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone and include protective measures for seabeach amaranth.
- The Township will ensure that the Clean Shores Program schedules the annual NJDEP-sponsored clean-up in the Protected and Precautionary Zones between September 1 and March 14.
- Clean Ocean Action schedules a spring clean-up (without vehicles) during April each year. The Township will consult with the NJDFW and USFWS for listed species presence to allow for clean-ups. However, clean-ups may be stopped immediately in the Protected and Precautionary Zone if necessary during this time if listed species are present and may be adversely impacted.
- The Township will not conduct, sponsor, or authorize routine clean-ups (separate from the Clean Shores Program) of the Protected Zones using motor vehicles between March 15 and November 30 and in the Precautionary Zones between March 15 and August 31 (or by July 15, if no listed species are present).
- Vehicles engaged in routine, Township-sponsored clean-ups of the Precautionary Zones between September 1 and November 30 will remain at or below the high water line to protect listed plants; the Township will notify the NJDFW and the USFWS at least 10 days prior to such a clean-up.
- The Township will notify the NJDFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable). In any beach Zone, the Township will implement the measures listed in Table 1 when conducting SOE Clean-ups in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJDFW and the USFWS will not object to SOE Clean-ups to remove hazardous trash or other unusual debris to protect public health and safety; SOE Clean-ups may proceed once any required authorizations are obtained from the DLUR.
- The Township will consult with the NJDFW and the USFWS between March 15 and November 30 for after storm clean-ups of "significant washups" in the Protected and Precautionary Zones that may warrant a clean-up.

➤ **NJDFW and USFWS Actions**

- The NJDFW will assist the Township in coordinating with the Clean Shores Program to schedule the annual NJDEP-sponsored clean-up in the Protected and Precautionary Zones between September 1 and March 14.
- The NJDFW will assist the Township in coordinating with the Clean Ocean Action clean-up in the Protected and Precautionary Zones between September 1 and March 14.
- The NJDFW and the USFWS will provide timely review of notifications of Township-sponsored clean-ups (both routine and SOE), and will provide recommendations to protect listed species.
- The NJDFW and/or the USFWS will provide a monitor to oversee SOE Clean-ups in the Protected Beach Zones between March 15 and August 31.

**3. Refuse Containers**

➤ **Background**

Regular servicing of trash cans and recycling containers increases vehicle traffic on the beach with inherent risks to listed species. However, minimizing trash on the beach benefits listed birds by limiting food scraps that attract predators.

Containers are placed at the street end of all beach access paths. Trash from near the wrack line is also collected between Memorial Day and Labor Day by hand and transported for collection at the street ends.

➤ **Township Actions**

- The Township will continue existing trash collection practices – vehicles are not used on the beach for routine trash collection.
- The Township will ensure that all refuse containers on the beach in the vicinity of the beach nesting birds are covered with predator-resistant lids.

**4. Dune Management and Invasive Plant Species Control**

➤ **Background**

Steep, stabilized dunes do not provide suitable habitat for the beach-dependent listed species included in this plan. The dune management goal in the Protected and Precautionary Zones is the development of a more natural dune system, featuring an irregular face, occasional breaches, and a low-lying sparsely vegetated fore-dune. Limiting the width of the dune zone is also important to ensure sufficient low, unstabilized, sparsely vegetated back beach habitat, which is essential to listed species. A more natural dune system can also provide habitat for diverse native vegetation and wildlife. Dune creation and maintenance are regulated by the New Jersey Coastal Zone Management Rules (Section 7:7E-3A.4). Invasive plant species (e.g. Asiatic sand

sedge [*Carex kobomugi*]), either exotic or native, can degrade or eliminate native habitat for listed species.

#### **Township Actions**

- The Township will adopt recommendations of the NJDFW and the USFWS to manage dunes and control invasive plant species in the Protected and Precautionary Zones in ways that enhance suitability of habitat for listed species, and dunes that provide for adequate storm protection. Dunes will be managed to promote a diverse assemblage of native vegetation and in accordance with N.J.A.C. 7:7E-3A.4.
- The Township will provide plans for review by the NJDFW and the USFWS at least 30 days before carrying out routine dune management or invasive plant species control activities at any time of year in the Protected and Precautionary Zones, or in the vicinity of any nesting area or seabeach amaranth occurrence that may be documented in the Recreational Zone. The Township will incorporate any recommendations of the NJDFW or the USFWS to protect listed species and their habitats.
- For routine dune management or invasive plant species control in the vicinity of a nesting area in any beach Zone, the Township will schedule work between September 1 and March 14. Work in the vicinity of a seabeach amaranth occurrence will be carried out between December 1 and May 14. Both seasonal restrictions will apply where seabeach amaranth coincides with listed birds.
- The Township will coordinate any SOE Post-storm Beach or Dune Restoration with the NJDFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Township will notify the NJDFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).

In any beach Zone, the Township will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJDFW and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

#### **➤ NJDFW and USFWS Actions**

- The NJDFW and the USFWS will provide technical assistance to the Township to develop dune management strategies that enhance suitability of habitat for listed species while meeting storm protection needs. The NJDFW and USFWS will provide technical assistance to the Township for controlling invasive plant species to enhance suitability of habitat for listed species. The NJDFW and the USFWS recommendations will promote a diverse assemblage of native dune vegetation, and will be consistent with N.J.A.C. 7:7E-3A.4.

- The NJDFW and the USFWS will provide a timely response to any request from the Township to review specific routine dune management activities, and will provide recommendations to protect listed species and their habitats.
- The NJDFW and the USFWS will provide timely recommendations upon Township notification of SOE Post-storm Beach or Dune Restoration activities.
- The NJDFW and the USFWS will provide timely recommendations upon Township notification of invasive plant species control activities.
- The NJDFW and/or the USFWS will provide a monitor to oversee SOE Beach or Dune Restoration activities, as necessary.

## 5. Beach Nourishment

### ➤ Background

The U.S. Army Corps of Engineers, Philadelphia District (Corps) have developed plans for Strathmere & Whale Beach sections of Upper Township to be included in the federal beach nourishment activities. Prior to beach nourishment, many sites within the Corps Program Area (Program Area) for beach nourishment activities now occupied by piping plovers and seabeach amaranth had become unsuitable due to previous shoreline stabilization efforts. Sandy beach habitats have eroded and new habitats were precluded from forming by the extensive system of hard stabilization structures and upland development found along the New Jersey coast. Nourishment of oceanfront beaches can create nesting habitat for piping plovers and suitable sites for seabeach amaranth. The State and Township have sponsored beach nourishment projects during 1977, 1984, 2001 and 2009

It can be anticipated that, following initial construction of the federal nourishment projects within the Program Area, similar creation of potentially suitable habitat for piping plovers and seabeach amaranth will occur in areas where these species are currently absent, or in the case of seabeach amaranth, are present in only very low numbers. It should also be noted that although the Corps nourishment projects will create sandy beach habitat that may attract piping plovers, the habitat created can be expected to be of lesser quality than habitat that is formed through natural coastal processes such as overwash. Habitat creation alone will not create a beneficial effect for either species if the habitat is suboptimal and does not provide foraging habitat for plover chicks or if disturbance from municipal and recreational users cannot be managed to avoid loss of nests of chick or loss of plants.

Pursuant to Section 7 of the ESA, the Corps completed formal consultation with the USFWS for beach nourishment activities under the USFWS's December 2005 Programmatic Biological Opinion (PBO) on the effects of federal beach nourishment, renourishment, stabilization, and restoration activities along the Atlantic Coast of New Jersey within the Corps, Philadelphia District on the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

Relevant conservation measures proposed by the Corps for protection of federally listed species and reasonable and prudent measures imposed by the USFWS to minimize take of federally listed species are specified within the USFWS's PBO and are applicable to all projects carried out under the Corps program. To be exempt from the take prohibitions of Section 9 of the ESA,

the Corps must implement all pertinent reasonable and prudent measures and terms and conditions, as stipulated in the USFWS's PBO, to minimize the impact of anticipated incidental take of piping plovers.

Nourishment or operation and maintenance activities will be scheduled and sequenced to avoid or minimize construction activities during the piping plover nesting season within known piping plover nesting areas. For areas where habitat conditions have changed substantially, such that a suitable habitat is no longer present, a case-by-base evaluation of the site will be conducted by the USFWS in coordination with the Corps and the NJDEP. All construction activities will avoid any delineated locations of seabeach amaranth to the greatest practicable extent.

In the future, the Township and/or the NJDEP may decide to sponsor beach nourishment in the Township to supplement the Corps' program. In addition, the Township and/or the NJDEP may conduct beach nourishment as part of an SOE Post-Storm Beach or Dune Restoration. Whether routine or SOE, any beach nourishment outside of the Corps program would require federal and State permits from the Corps and the DLUR, respectively.

#### ➤ Township Actions

- The Township will work with the USFWS, NJDEP, and the Corps to implement the provisions of the 2005 Programmatic Biological Opinion, and of each streamlined consultation, during each renourishment of Strathmere's beaches under the Corps' nourishment program. Key provisions of the Programmatic Biological Opinion include fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants; and a seasonal restriction (March 15 to fledging of the last chick) on construction within 1,000 meters of piping plover nesting areas, as defined in this plan.
- The Township will work with the USFWS and the Corps to ensure that any routine nourishment activities sponsored by the NJDEP and/or the Township (requiring federal permits) include Conservation Measures at least as protective as the provisions of the Programmatic Biological Opinion that governs implementation of the Corps' beach nourishment program. Protection would be achieved mainly through seasonal restrictions on construction within 1,000 meters of plover nesting areas, and fencing, avoidance, and possibly salvage and replacement of seabeach amaranth plants.
- SOE Beach Nourishment may be necessary when conditions pose a clear danger to human life or health (*e.g.* ocean front beach erosion has occurred that makes public access points onto the beach dangerous or impossible to use) or pose a clear danger of damage to public or private structures lying landward of the ocean-front seawall or primary dune line, such as private homes, public buildings, streets, water lines and sewer lines. Placement of clean fill material is among the activities listed at N.J.A.C. 7.7E-3A.3(b); therefore, SOE Beach Nourishment qualifies as "SOE Post-storm Beach or Dune Restoration" as defined in this plan.

The Township will coordinate any SOE Post-storm Beach or Dune Restoration (including SOE Beach Nourishment) with the NJDFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Township will notify the NJDFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).

In any beach Zone, the Township will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJDFW and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR and the Corps. The parties anticipate that SOE Restoration activities (including SOE Beach Nourishment) will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

➤ **NJDFW Actions**

- The NJDFW will provide current information on the status and locations of listed birds before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Township) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.
- In the course of planning for beach nourishment projects, the NJDFW will provide: (1) current and historical nesting data and locations, and (2) recommendations for habitat enhancements that could be incorporated into the project.
- The NJDFW will provide a timely response to any request from the Township to review specific beach nourishment plans.
- The NJDFW will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE Beach Nourishment.

➤ **USFWS Actions**

- The USFWS will provide updated information of the locations of seabeach amaranth before and during any renourishment (whether sponsored by the Corps, the NJDEP, or the Township) to aid in the implementation of relevant Conservation Measures and Terms and Conditions.
- In the course of planning for beach nourishment projects, the USFWS will provide: (1) current and historical locations of seabeach amaranth, and (2) recommendations for habitat enhancements that could be incorporated into the project.
- The USFWS will work with the Corps to complete promptly streamlined consultation for each renourishment of Strathmere's beaches under the Corps' program.
- The USFWS will work with the Corps, the applicant, and the Township to complete promptly consultation regarding Corps permits to authorize routine or SOE beach nourishment sponsored by the NJDEP and/or the Township.
- Regardless of the project sponsor, the USFWS will provide the Township with copies of relevant documents resulting from the consultation process regarding beach nourishment, including key sections of Biological Opinions.

- The USFWS will provide timely recommendations upon notification of SOE Post-storm Beach or Dune Restoration activities that include SOE Beach Nourishment.

## 6. Sand Scraping

### ➤ Background

Use of motorized equipment to conduct sand scraping (mechanical redistribution of sand; also called sand transfers or sand mining) can directly harm listed species by crushing eggs, chicks, plants, or seeds; can harass nesting birds through disturbance; and can adversely impact habitats for listed species by creating ruts and removing shells, wrack, and natural debris. Sand scraping is regulated by the New Jersey Coastal Zone Management Rules. The Township will prohibit sand scraping in the Protected and Precautionary Zones year round.

### ➤ Township Actions

- No restrictions on sand scraping will apply in the Recreational Zone unless the Township has been notified that listed species are present, except as otherwise regulated or prohibited by the New Jersey Coastal Zone Management Rules. If listed species colonize the Recreational Zone, the Township will develop appropriate policies for sand scraping with NJDFW and the USFWS. The policy will be consistent with the Recreational Guidelines if plovers establish nesting in the Recreational Zone.
- The Township will not conduct sand scraping in the Protected or Precautionary Zones at any time of the year except as a necessary part of SOE Post-storm Beach or Dune Restoration.
- Mechanical redistribution of sand is among the activities listed at N.J.A.C. 7.7E-3A.3(b); therefore, sand scraping under SOE conditions qualifies as “SOE Post-storm Beach or Dune Restoration” as defined in this plan.

The Township will coordinate any SOE Post-storm Beach or Dune Restoration with the NJDFW and the USFWS. The need for such activities will be signaled by a Declared Emergency, and eligibility for DLUR permits under Section 7:7E-3A.3 of the New Jersey Coastal Zone Management Rules. The Township will notify the NJDFW and the USFWS promptly upon Declaration of an Emergency (notice by fax with confirmation of receipt is acceptable).

In any beach Zone, the Township will implement the protective measures listed in Table 1 when conducting SOE Restoration activities in the vicinity of an active nesting area or seabeach amaranth occurrence. When implemented with these protective measures, the NJDFW and the USFWS will not object to SOE Restoration activities; SOE Restoration may proceed once any required authorizations are obtained from the DLUR and the Corps. The parties anticipate that SOE Restoration activities will have low potential to impact listed species, as suitable nesting/growing habitat is likely to be damaged or destroyed by the erosional or storm event(s) that caused the SOE.

## **7. Beach Access Structures**

### **➤ Background**

Public access to New Jersey's beaches is a central goal of the NJDEP's Coastal Management Program, as reflected in the State Coastal Zone Management Rules. Public access is also a key requirement of federal and State rules governing beach nourishment carried out with public funds. However, an excessive number of beach access structures in the Protected or Precautionary Zones bring more recreational users into potential conflict with listed species. Such structures can also lead to unauthorized impacts to dunes, as recreational beach users create new, unauthorized walkways through the dunes; these gaps in the dune line fragment nesting and growing areas. Figure 1a and 1b show the locations of the beach access structures.

### **➤ Township Actions**

- The Township will work with the NJDFW and the USFWS to develop written materials regarding protections for listed species and dunes.
- The Township will not propose any new beach access points/structures within the Protected or Precautionary Zones as the current number and locations of access points is sufficient and meets current State requirements. If the Township determines additional beach access (or a change in location of current access points) is necessary or is required to provide additional access, the Township will work with the NJDFW and the USFWS to locate (or relocate), design, and construct any proposed new public access structures to minimize adverse impacts to listed species.
- The Township will work with the NJDFW and the USFWS to place appropriate signs regarding protections for listed species and dunes at or near public access points. (See the section on education and outreach)

### **➤ NJDFW and USFWS Actions**

- The NJDFW and the USFWS will provide recommendations regarding any proposed new (or relocated) public beach access structures, if it is determined such changes are necessary.
- The NJDFW and the USFWS will provide appropriate signs to post at or near public beach access points (see the section on education and outreach).

## **F. EDUCATION AND OUTREACH**

### **➤ Background**

This component of the management plan encompasses all of the management issues discussed above for the purposes of reducing predation, human disturbance, and the detrimental impacts of beach maintenance. Education and outreach include on-site and off-site distribution of educational materials, educational displays, lectures, beach walks, interpretive signs, and other elements that provide information on the biology of listed species, the impact of various human activities and predators, and recommended actions to help protect and restore populations of listed species.



➤ **Township Actions**

- The Township will work with the NJDFW and the USFWS to post appropriate signs at beach entry points and on the beach regarding protections for listed species and dunes, refuse policies, the Township's pet ordinance, and activities prohibited or discouraged on the beach.
- Through the Township newsletter and/or other publications, the Township will inform residents, vacation homeowners, and renters about protections for listed species and dunes, refuse policies, the Township's pet ordinance, and activities prohibited or discouraged on the beach. The Township will also publish periodic updates on the nesting success, population status, species biology, and management activities for listed species (information provided by the agencies).
- Through the Township newsletter and/or other publications, the Township will inform residents, vacation homeowners, and renters about the importance of keeping cats indoors. The information will discourage cat owners from allowing their pets to roam freely outdoors, and from abandoning pet cats. The newsletter articles will also discourage feeding feral cats.
- The Township will post signs within the Township to discourage feeding of wildlife, with the exception of backyard bird feeders.
- To promote compliance with the aforementioned prohibition, the Township will discourage kite-flying near nesting areas through signs and educational materials.

➤ **NJDFW and USFWS Actions**

- The NJDFW and the USFWS will assist the Township in developing educational outreach materials by supplying existing materials and necessary information, and providing technical review.
- The NJDFW and the USFWS will provide information for the Township newsletter articles and/or other publications. Upon request of the Township, the agencies will author articles within limits of available staff time.
- The NJDFW will provide copies of the brochure, "CATS Indoors" to the Township for general distribution.
- The USFWS will provide copies of the seabeach amaranth fact sheet developed by the ONLM (as needed), and the USFWS's Beach Management Planning and Piping Plover Factsheets upon request and as available. NJDFW will provide brochures on beach-nesting birds upon request and as available.
- The NJDFW and the USFWS will place interpretive signs on the beach annually regarding listed species, as available and needed. The NJDFW and the USFWS will consult the Township in locating interpretive signs.

- The NJDFW will conduct beach walks to show beach nesting bird areas and nesting activity to Cape May Officials as requested by the Township and scheduled at least once per season.
- Upon request of the Township, the NJDFW and/or the USFWS will conduct periodic educational talks and/or beach walks for the Township employees, contractors, residents, or visitors within limits of available staff time.

#### **G. OTHER PROVISIONS**

- The NJDFW and the USFWS will regularly inform the Township regarding changes in listed species locations, distribution, populations, habitat, and/or nesting activity that may affect any of the provisions of this plan or that would be of general interest to the Township.
- The NJDFW will provide regular notification regarding nesting activity including but not limited to biweekly faxes or e-mails during the nesting season sent to the Municipal Clerk, Township Engineer, Director of Public Works and the Beach Patrol Captain. The faxes or e-mails will provide the current location of nests and chicks, the NJDFW management activities, and other important information.
- The NJDFW and the USFWS will provide the Township with a brief summary of endangered species recovery status and management, with recommendations, by the end of each calendar year.
- The NJDFW and the USFWS will provide maps of species locations within the Township, upon request.
- The NJDFW and the USFWS will work with the Township to support implementation of this Plan.

## APPENDIX A

U.S. Fish and Wildlife Service Guidelines for Managing Recreational Activities in Piping Plover  
Breeding Habitat on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered  
Species Act

## APPENDIX B

U.S. Fish and Wildlife Service Guidelines for Managing Fireworks in the Vicinity of Piping  
Plovers and Seabeach Amaranth on the U.S. Atlantic Coast

## APPENDIX C

Excerpts from the New Jersey Coastal Zone Management Rules

## APPENDIX D

Summary of the Binding Provisions of the December 2005 Programmatic Biological Opinion  
Between the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, Philadelphia  
District, on the effects of Federal Beach Nourishment Activities along the Atlantic Coast of  
New Jersey on the Piping Plover (*Charadrius melodus*) and Seabeach Amaranth (*Amaranthus  
pumilus*)

This document provides a summary of the binding provisions of the Programmatic Biological Opinion (PBO) issued by the U.S. Fish and Wildlife Service (Service) for the U.S. Army Corps of Engineers, Philadelphia District's (Corps) ongoing program of beach nourishment of Ocean, Atlantic, and Cape May counties in New Jersey pursuant to Section 7 of the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA). Additional binding provisions may be developed during streamlined consultation that is required before each scheduled renourishment. The PBO addressed the federally listed (threatened) piping plover (*Charadrius melodus*) and seabeach amaranth (*Amaranthus pumilus*).

### **Definitions**

Sections 4(d) and 9 of ESA, as amended, prohibit *taking* (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. *Harm* is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. *Harass* is defined as actions that create the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. *Incidental take* is any take of listed animal species that results from, but is not the purpose of, carrying out an otherwise lawful activity conducted by the federal agency or the applicant.

### **Incidental Take**

The PBO issued by the Service includes an Incidental Take Statement. Under the terms of Section 7(b)(4) and Section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the provisions of the PBO. All the binding provisions of the PBO, as described below, are non-discretionary and must be undertaken by the Corps for the exemption in Section 7(o)(2) to apply. The Corps has a continuing duty to implement the activity covered by the PBO. If the Corps: (1) fails to implement the provisions or (2) fails to require all contractors to adhere to the provisions, the protective coverage provided by Section 7(o)(2) to the Corps and its contractors may lapse. In order to monitor the impact of incidental take, the Corps must report the progress of the action and its impact on the species to the Service as specified in the Incidental Take Statement.

### **Binding Provisions**

The binding provisions of this PBO include: (1) the Conservation Measures incorporated by the Corps into their project description for the protection of listed species; and (2) the Terms and Conditions of the Incidental Take Statement issued by the Service to reduce the level of anticipated incidental take of piping plovers.

## **CONSERVATION MEASURES PROPOSED TO MINIMIZE IMPACTS TO FEDERALLY LISTED SPECIES**

### **1. Materials and Materials Placement**

All nourishment material used in Corps sponsored or permitted projects will consist of clean sand fill material (*i.e.*, 90 percent or greater sand) obtained from approved off-shore borrow areas. Grain size of fill material will be suitable for beach nourishment and will be similar in composition to the existing beach substrate on the targeted deposition site.

### **2. Materials Stockpiling and Equipment Storage**

No materials or equipment associated with beach nourishment or hard structure repair or replacement will be stockpiled or stored within 100 meters of known piping plover nesting areas or sites colonized by seabeach amaranth. Any materials or equipment stored adjacent to known plover nesting areas will be removed prior to the nesting season (March 15<sup>th</sup>).

### **3. Dune Stabilization and Vegetation Planting**

The Corps will work with the Service, the NJDEP, and the USDA to develop guidelines for planting and maintaining dune and beach vegetation and erecting sand fence on Corps nourished beaches that are protective of federally listed species while not diminishing the overall required beach protection function and/or dune stability. Vegetation and sand fencing should be maintained at densities that will not displace federally listed species from occupied sites, deter future colonization of unoccupied sites, or impede chick movements.

### **4. Extension of Outfall Structures**

Following placement of sand, extension of some existing outfall structures may be required. Work associated with outfall structure extension is an integral part of a beach fill project and will be conducted in accordance with all proposed conservation measures to protect federally listed species.

### **5. Access Into Construction Areas**

The Service and the ENSP, or their designated representatives, will be given access to Program construction areas, subject to site safety plans, for the purpose of surveying; monitoring; posting; symbolically fencing of piping plover courtship, nesting, and brood rearing areas; and erecting predator exclosures around nests. In addition, the Service and the NJDEP, Natural Heritage Program (NHP), Office of Natural Lands Management (ONLM), or their designated representatives, will be given access to Program construction areas, subject to site safety plans, to survey potentially suitable areas for seabeach amaranth.

### **6. Contractor Notification**

The Corps will ensure that all contractors and employees will be adequately informed of ESA concerns, and contract specifications will be written accordingly.



## **7. Legal Easements**

The local project sponsor will obtain legal easements allowing Service, State, and Corps representatives access to all portions of the project area over the life of each individual project for the purposes of carrying out endangered species management activities, including, but not limited to, installation of protective fencing, observation, and data collection.

## **8. Conservation Measures to Protect Piping Plovers**

### **a. Pipeline Placement**

On newly nourished beaches outside of current nesting areas and established buffer areas, pipelines may be placed and remain on the beach during construction activities. Pipelines can be placed within nesting areas during the non-nesting season provided they are removed prior to March 15.

### **b. Project Scheduling, Timing Restrictions, and Buffers**

#### **(1) Beach Nourishment**

No construction will take place during the nesting season (March 15<sup>th</sup> to August 15<sup>th</sup>) within a protective buffer area extending from each nesting area. Within nesting and buffer areas, work will be completed by March 15<sup>th</sup> or will proceed following conclusion of the nesting season. In general, known piping plover nesting areas will be afforded a 1,000-meter buffer so as not to interfere with courtship activities, nest site selection, and brood rearing. However, if due to eroded beach conditions or other beach features, no potentially suitable piping plover habitat is likely to be present within the buffer area during the affected nesting season, the buffer area may be reduced on a case-by-case basis by the Service.

#### **(2) Repair and Maintenance of Hard Structures**

Repair and maintenance of hard structures and associated operations and maintenance activities will be scheduled and sequenced to avoid or minimize construction activities during the nesting season (March 15<sup>th</sup> to August 15<sup>th</sup>) within known piping plover nesting areas or areas likely to be occupied during the affected nesting season.

### **c. Beach Profile Surveys**

Yearly beach profile surveys will be conducted outside of the nesting season to the greatest extent possible. If work must be done during the nesting season, the Corps will prioritize historical nesting areas vs. non-nesting areas to schedule surveys of sensitive areas outside of the nesting season.

### **d. Contractor Access Into Nesting and Buffer Areas**

No contractor shall be allowed into designated nesting areas without being accompanied by a qualified biologist. If it is necessary to enter a nesting area after nesting has begun, the Corps or its designated representative will coordinate with the ENSP and / or the Service to ensure that plover monitors are on site to escort workers through the nesting area. No motorized vehicles

will be operated within the unfledged chick and nesting buffer areas unless authorized by the Service on a case-by-case basis and intensive monitoring is in place. Motorized vehicles will not be authorized access within 100 meters of unfledged chicks or nests under any circumstances except in the case of a *bona fide* emergency.

e. Monitoring and Management During Construction Events

The Corps will implement a monitoring program to ensure that construction activities occurring during the piping plover nesting season (March 15<sup>th</sup> to August 15<sup>th</sup>) minimize or avoid adverse impacts to the species.

f. Monitoring and Management Following Construction of Civil Works Projects

The Corps will fund a comprehensive program to monitor piping plovers on a yearly basis within each project area, beginning with the first nesting season after initial project construction and continuing for the life of the project or until assumed by the State or local project sponsor. Monitoring and management efforts will be consistent with the Service's (1994) *Guidelines for Managing Recreational Activities in Piping Plover Breeding Habitats on the U.S. Atlantic Coast to Avoid Take Under Section 9 of the Endangered Species Act* (Guidelines). Following construction or re-nourishment, beach management activities will be the responsibility of the local municipality or other appropriate landowner. To ensure the protection of federally listed species following project construction, the Corps will require the non-federal sponsor (NJDEP) to work with each municipality or other appropriate landowner to prepare site-specific endangered species management plans. Plans will be implemented under the guidance of the Service, the ENSP, and the Corps. The management plans will describe site-specific protective measures for piping plover, including: establishment of protective zones; restrictions on beach raking, beach maintenance, and other municipal activities; actions to reduce impacts to the local plover population from predators and humans; and other management as appropriate for individual site conditions.

g. Habitat Enhancement

h. Measures Specific to Townsends Seawall Project

**9. Conservation Measures to Protect Seabeach Amaranth**

a. Surveys

Prior to project construction, a Corps biologist, contracted biologist/botanist or designated representative will survey the project area within the seabeach amaranth growing season (May 1 – November 1) to document the presence or absence of seabeach amaranth.

b. Monitoring and Protection of Seabeach Amaranth Plants

In the event that seabeach amaranth is found within a project area, information including plant locations, numbers of plants and size of plants will be recorded and provided to the Service and NHP.

If construction personnel or vehicles are active in proximity to the site or might transit the site,

symbolic fencing will be erected, encompassing a 3-meter protective buffer around the plant(s). The buffers will be adjusted as necessary to protect the plants and, where appropriate, will be combined into a single larger buffer area to better accommodate larger numbers of seabeach amaranth plants.

All construction activities will avoid any delineated locations of seabeach amaranth to the greatest practicable extent. Construction activities include, but are not limited to, staging, surveying, operation, and sand transport activities. The Corps will undertake all practicable measures to avoid damaging or destroying seabeach amaranth by avoiding areas where the species is present.

c. Restoration of Seabeach Amaranth Areas Likely to be Destroyed

(1) Transplantation of Plants

Individual plants that would be covered with sand, or that occur where impacts from construction equipment cannot be avoided, will be transplanted to a similar habitat near or within the project area.

(2) Seed Collection

When possible, seeds from plants to be translocated will be harvested prior to plants being moved.

(3) Stockpiling Sand Substrate

If translocation or seed collection is not a viable alternative, or has been proven ineffective, construction will be avoided around the plant and buffer area until individual plants die back. The top layer of sand substrate, including the plant site and the surrounding 3-meter buffer area, will be “scraped” and stockpiled. After the area has been graded to the design profile, the stockpiled “scraped sand” will then be re-spread within the project area in an area with suitable habitat conditions for seabeach amaranth.

d. Long-term Management

If seabeach amaranth is found within the project area, the appropriate municipal endangered species management plan(s) will be amended to include site-specific protective measures for this species. Such measures will include establishment of protective zones, restrictions on beach raking, fencing to prevent damage from vehicle and pedestrian use, monitoring, and other management as appropriate for individual site conditions.

**REASONABLE AND PRUDENT MEASURES (with implementing TERMS AND CONDITIONS, refer to USFWS's 2005 PBO)**

***RPM 1:** Ensure that all Corps project engineers, staff, contractors, cooperators, and / or permittees are fully informed and compliant with all conservation measures contained within the Program description, RPMs, and terms and conditions of this Biological Opinion.*

***RPM 2:** Ensure that the piping plover construction monitor is qualified to identify piping plovers and their habitats.*

**RPM 3:** *Ensure that efficient and effective communication and coordination occurs among Corps project engineers, staff, contractors, cooperators, piping plover construction monitor and / or permittees and the Service, NJDEP, municipal, and any other construction and monitoring staff.*

**RPM 4:** *Practice adaptive management of projects within the Program Area and adjust protective measures as needed or as new information becomes available.*

**RPM 5:** *Ensure that the Corps piping plover monitoring and management program is sufficient to monitor and minimize disturbance to nesting piping plovers from recreational users on Corps Program Area beaches.*

**RPM 6:** *Seek ways to preserve or enhance piping plover habitat within the Program Area while meeting shore protection goals.*

**RPM 7:** *Ensure that dune and beach management actions carried out by the State and local project sponsors and / or permittees over the life of the Program are compatible with piping plover habitat requirements.*

**RPM 8:** *Secure increased cooperation and participation of local beach managers in endangered species protection to augment conservation measure commitments summarized in the Program description.*

**RPM 9:** *Report on the progress of the action and its impact on the species, as required pursuant to 50 CFR 402.14(i)(3).*

APPENDIX E

TOWNSHIP OF UPPER  
BEACH ACTIONS TABLE

<b>Action</b>	<b>Zone</b>	<b>Prohibited Start Date</b>	<b>Prohibited End Date</b>	<b>Comment</b>
<b>NJ State Police (non-emergency)</b>	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no listed species are present. If seabeach amaranth occurs refer to protective measures in the Plan.
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no listed species are present.
<b>Beach Lifeguard Patrols (non-emergency)</b>	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no listed species are present. If seabeach amaranth occurs refer to protective measures in the Plan.
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no listed species are present.
<b>Public Works (non-emergency)</b>	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no listed species are present. If seabeach amaranth occurs refer to protective measures in the Plan.
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no listed species are present.
<b>Organized Beach Clean-Ups, including Large Debris Removal (with vehicles)</b>	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no listed species are present. If seabeach amaranth occurs refer to protective measures in the Plan.
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no listed species are present.

Action	Zone	Prohibited Start Date	Prohibited End Date	Comment
Beach Raking	Protected	Year Round	Year Round	NJDFW and USFWS do not object to SOE response and will provide a monitor to oversee.
	Precautionary	Year Round	Year Round	NJDFW and USFWS do not object to SOE response and will provide a monitor to oversee.
	Recreational	Year Round	Year Round	NJDFW and USFWS do not object to SOE response and will provide a monitor to oversee.
Beach Nourishment	Protected	March 15	Fledging of the last chick (plover or tern)	Refer to USFWS's 2005 Programmatic Biological Opinion.
	Precautionary	March 15	Fledging of the last chick (plover or tern)	Refer to USFWS's 2005 Programmatic Biological Opinion.
	Recreational	March 15	Fledging of the last chick (plover or tern)	Refer to USFWS's 2005 Programmatic Biological Opinion.

Action	Zone	Prohibited Start Date	Prohibited End Date	Comment
Sand Scraping	Protected	Year Round	Year Round	NJDFW and USFWS do not object to SOE response and will provide a monitor to oversee.
	Precautionary	Year Round	Year Round	NJDFW and USFWS do not object to SOE response and will provide a monitor to oversee.
	Recreational	No Date Restrictions*	No Date Restrictions*	Refer to DLUR permit. * In the event that no listed species are present
Dune Management (Routine)	Protected	March 15	August 31	If seabeach amaranth is present, any work will be carried out Dec 1 – March 14.
	Precautionary	March 15	August 31	If seabeach amaranth is present, any work will be carried out Dec 1 – March 14.
	Recreational	No Date Restrictions*	No Date Restrictions*	Refer to DLUR permit. * In the event that no listed species are present
Fireworks	Protected	Year Round	Year Round	
	Precautionary	Year Round	Year Round	
	Recreational	Year Round	Year Round	



Action	Zone	Prohibited Start Date	Prohibited End Date	Comment
Organized Events	Protected	Year Round	Year Round	
	Precautionary	March 15	August 31*	* If seabeach amaranth occurs refer to protective measures in the Plan.
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no listed species are present
Kite Flying	Protected	March 15	August 31	Prohibited within 200 meters of posted nesting areas.
	Precautionary	March 15	August 31	Prohibited within 200 meters of posted nesting areas.
	Recreational	No Date Restrictions*	No Date Restrictions*	*Prohibited within 200 meters of posted nesting areas.
Pets on the Beach	Protected	April 1	October 31	Refer to ordinance, Article I § 8-5.4
	Precautionary	April 1	October 31	Refer to ordinance, Article I § 8-5.4
	Recreational	April 1	October 31	Refer to ordinance, Article I § 8-5.4

### **PAYMENT OF BILLS:**

**“I hereby move that all claims submitted for payment at this meeting be approved and then incorporated in full in the minutes of this meeting.”** Motion made by Jay Newman, second by Frank Conrad. All five committee members voted in the affirmative.

Payroll: \$162,872.30  
Bills submitted for payment: \$1,257,379.92

### **REPORT OF MUNICIPAL DEPARTMENTS:**

- 12. Construction Code
- 13. Clerk's Office
- 14. Tax Assessor
- 15. Finance Office
- 16. MUA Report

Reports are available from the Clerk's Office.

### **PUBLIC COMMENT**

**Jay Potter, Safety Coordinator**, reported that both he and the JIF Coordinator have completed the annual inspection of all Township owned buildings. He suggested that tenants of Township leased buildings follow a set policy and procedures listing emergency contacts, hours of operations, list of assets, and master key locations. There was discussion that the matter should be sent to the Safety Committee to draft a set of policies and procedures for use by our tenants of Township owned buildings.

**Ted Kingston, Strathmere**, asked several questions about the Strathmere beach fill easements, condemnations, and whether the DEP is ready to go to bid.

Mr. Young responded that at this time the DEP is satisfied with the current status of the easements and the condemnations and that there are no current problems, however, there are two branches of the NJDEP involved that all information must be filtered through. The Township has done everything on time plus the Whale Beach project was added. By obtaining the Whale Beach easements and condemnations this allowed the NJDEP to go back to the Commissioner and get that funding as well. Paul Dietrich added that the NJDEP is waiting on information from some of the other shore towns before they can go out to bid. Mayor Palombo interjected that the original \$3.5 million project has grown to \$8 million which will cover the natural lands from the north end all the way down to include Whale beach.

Mr. Kingston asked how extensive would the fill be at the north end. Mr. Dietrich responded that it would extend to the end of the stone riprap and north to the second row of timber that runs east/west, approximately 1000 feet from Lord's house.

Mr. Kingston asked if the sand would be taken from the original channel, which is now blocked. He was answered in the affirmative. He asked long does the bid process take. Mayor Palombo responded the bid process can take about 2 weeks to review, 30 days to award, and then mobilization by State could take up to 90 days and that the Township has no power over the mobilization but is doing everything it can to get the work started. A specific date cannot be established at this time as it is in the States hands.

**Lynn Fayter, Strathmere**, asked about the State Park and whether dredging will be stopped just west of Commonwealth. She asked whether the State expected that this would fill in naturally over time and how long do they estimate that would take. Mr. Young responded that there is no hard fast rule but that over the next few years it appears that it will be naturally built back in. She also questioned the dredging of the original channel to which Mr.

Dietrich responded that the Army Corps. of Engineers has reviewed the area and has determined that the secondary channel needs to be closed off.

There were no further speakers.

Motion was made by Frank Conrad, seconded by Barbara Camp to close the regular portion of the meeting and go into an executive session to discuss items previously identified as follows: Daniel Young, has two matters for closed session; one potential Litigation matter regarding an MUA Convenience permit; and one Litigation matter regarding condemnation proceedings. During roll call vote all five Committee members voted in the affirmative.

### **CLOSED SESSION**

- 17. Resolution to conduct a closed meeting pursuant to N.J.S.A. 10:4-12, from which the public shall be excluded.**

### **RECONVENE PUBLIC PORTION OF MEETING**

### **ADJOURNMENT**

There being no further business this evening the meeting was adjourned at 9:15 P.M. Next meeting scheduled for February 23, 2009 at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC  
Municipal Clerk

48329 02/09/09 T0115 TURF & FARM SUPPLIES, INC. 899.98 2492  
48330 02/09/09 A0004 A+ COMMERCIAL OFFICE CLEANERS 250.00 2512  
48331 02/09/09 A0015 ADVANCE LEARNING 198.00 2512  
48332 02/09/09 A0018 ACTION SUPPLY INC. 247.44 2512  
48333 02/09/09 A0025 ADVANTAGE RENTAL ACE HARDWARE 793.91 2512  
48334 02/09/09 A0035 AIRLINE HYDRAULIC CORP. 600.00 2512  
48335 02/09/09 A0061 ASSOC. CERT. TAX ASSESSORS CMC 660.00 2512  
48336 02/09/09 A0086 AT&T MOBILITY 408.09 2512  
48337 02/09/09 A0091 ATLANTIC CITY ELECTRIC 20,531.85 2512  
48338 02/09/09 A0113 ARAWAK PAVING CO. INC. 10,997.44 2512  
48339 02/09/09 A0121 ABSECON RADIATOR SERVICE 410.00 2512  
48340 02/09/09 A0122 ANSELL,ZARO,GRIMM & AARON 26,512.64 2512  
48341 02/09/09 B0013 BRADCO SUPPLY CORP. 225.00 2512  
48342 02/09/09 B0020 BLAKER,RAYMOND 110.00 2512  
48343 02/09/09 B0068 BLACKLEDGE, MELISSA 45.00 2512  
48344 02/09/09 B0076 BOND,LAURENCE E. 40.00 2512  
48345 02/09/09 B0094 BROWN'S RIVER BINDERY, INC. 4,000.00 2512  
48346 02/09/09 B0142 BRINKERHOFF ENVIRONMENTAL 750.00 2512  
48347 02/09/09 B0148 BLUE FLAME/PARACO GAS 593.32 2512  
48348 02/09/09 B0152 BUCHANAN, KAREN A. 100.00 2512  
48349 02/09/09 B0184 BUSHONG, BRIAN 330.90 2512  
48350 02/09/09 C0003 CCC HEAVY DUTY TRUCK PARTS CO. 795.00 2512  
48351 02/09/09 C0010 CMC MUNICIPAL JUDGES ASSOC 75.00 2512  
48352 02/09/09 C0030 CAMP, BARBARA 48.00 2512  
48353 02/09/09 C0046 CAPE MAY COUNTY CLERK 16.00 2512  
48354 02/09/09 C0048 CAPE MAY COUNTY MUA 26,454.78 2512  
48355 02/09/09 C0052 CAPE MAY COUNTY TREASURER 1,083,345.27 2512

48356 02/09/09 C0061 CAPRIONI SEWERAGE SERVICE 200.00 2512  
 48357 02/09/09 C0068 COMCAST 256.49 2512  
 48358 02/09/09 C0071 CAPEHART & SCATCHARD, P.A. 7,888.50 2512  
 48359 02/09/09 C0116 CINTAS CORPORATION #158 108.40 2512  
 48360 02/09/09 C0124 CMC MUNICIPAL CLERK'S ASSOC. 25.00 2512  
 48361 02/09/09 C0143 CODY'S POWER EQUIPMENT 51.41 2512  
 48362 02/09/09 C0171 COLONIAL ELECTRIC SUPPLY CO. 479.55 2512  
 48363 02/09/09 C0201 CRUZAN'S TRUCK SERVICE INC. 16.28 2512  
 48364 02/09/09 D0015 DAN'S WELDING 560.00 2512  
 48365 02/09/09 D0040 DELTA DENTAL OF N.J. INC. 6,373.76 2512  
 48366 02/09/09 E0030 EXECUTIVE BUSINESS PRODUCTS 556.38 2512  
 48367 02/09/09 F0053 FORD, SCOTT & ASSOCIATES 6,500.00 2512  
 48368 02/09/09 F0054 FORT DEARBORN LIFE INSURANCE 587.28 2512  
 48369 02/09/09 G0002 GAGLIONE, WANDA 18.00 2512  
 48370 02/09/09 G0044 GILES & RANSOME, INC. 1,256.40 2512  
 48371 02/09/09 G0081 GRANT SUPPLY COMPANY, INC 2,300.61 2512  
 48372 02/09/09 H0045 HICKMAN, DOUGLAS 1,426.70 2512  
 48373 02/09/09 J0040 JOHNSON & TOWERS, INC. 2,324.54 2512  
 48374 02/09/09 J0063 JOHNSON WILSHIRE, INC 343.10 2512  
 48375 02/09/09 K0007 KACZMARSKI, RICHARD 48.00 2512  
 48376 02/09/09 K0047 KLINE, EDWARD T. 20.00 2512  
 48377 02/09/09 L0064 LITTLE LEAGUE BASEBALL, INC. 290.00 2512  
 48378 02/09/09 M0055 MAY, JUDITH 28.00 2512  
 48379 02/09/09 M0076 MGL PRINTING SOLUTIONS 110.00 2512  
 48380 02/09/09 M0093 MINMAR MARINE INC. 35.15 2512  
 48381 02/09/09 M0103 MODERN GAS COMPANY, INC. 295.26 2512  
 48382 02/09/09 M0128 MUNICIPAL CLERKS ASSOC. N.J. 175.00 2512  
 48383 02/09/09 M0193 MAYNE, MICHAEL 4.16 2512  
 48384 02/09/09 N0004 NJ-AMERICAN WATER CO. 25.25 2512  
 48385 02/09/09 N0043 NAPA AUTO PARTS OF S.JERSEY 111.18 2512  
 48386 02/09/09 N0052 NATL YOUTH SPORTS COACHED ASSN 2,360.00 2512  
 48387 02/09/09 N0089 NEXTIRAONE TA BLACK BOX 180.00 2512  
 48388 02/09/09 P0008 PALMER,NANCY 97.28 2512  
 48389 02/09/09 P0026 PAYNTER, JOSEPH 234.97 2512  
 48390 02/09/09 P0032 PEDRONI FUEL CO. 978.70 2512  
 48391 02/09/09 P0036 PENNELLO,DAVID 150.00 2512  
 48392 02/09/09 Q0008 QUILL CORPORATION 56.40 2512  
 48393 02/09/09 R0030 RIGGINS, INC. 3,935.56 2512  
 48394 02/09/09 R0055 ROSIAK, CAROL 12.00 2512  
 48395 02/09/09 R0062 RUTGERS, THE STATE UNIVERSITY 1,647.00 2512  
 48396 02/09/09 S0031 SCHULER SECURITY, INC. 216.00 2512  
 48397 02/09/09 S0097 SMH CPR TRAINING CENTER 140.00 2512  
 48398 02/09/09 S0112 SOUTH JERSEY COURT ADM. ASSOC. 30.00 2512  
 48399 02/09/09 S0126 SPIEGEL, BARBARA 28.18 2512  
 48400 02/09/09 S0216 DEPT.31 OOOO261489 323.37 2512  
 48401 02/09/09 T0005 TCTA OF NEW JERSEY 37.50 2512  
 48402 02/09/09 T0032 THE PRESS & SUNDAY PRESS 38.72 2512  
 48403 02/09/09 T0062 TOWNSHIP OF MIDDLE 2,987.60 2512  
 48404 02/09/09 T0067 TOWNSHIP OF UPPER PETTY CASH 23.75 2512  
 48405 02/09/09 T0074 TRANSAXLE LLC 522.68 2512  
 48406 02/09/09 T0131 TROUT, ROSEMARY 182.20 2512  
 48407 02/09/09 U0010 UPPER TOWNSHIP CHEERLEADING 1,278.75 2512  
 48408 02/09/09 U0012 U.T. SOCCER ASSOCIATION 1,073.75 2512  
 48409 02/09/09 U0025 UNITED STATES POSTAL SERVICE 2,000.00 2512  
 48410 02/09/09 V0005 VAN EMBDEN, NATHAN, ATTORNEY 1,132.50 2512  
 48411 02/09/09 V0013 VERIZON WIRELESS 225.80 2512  
 48412 02/09/09 V0022 VERIZON 53.37 2512  
 48413 02/09/09 V0026 VITAL COMPUTER RESOURCES, INC. 1,150.24 2512  
 48414 02/09/09 W0030 WEST PUBLISHING CO. 323.75 2512  
 48415 02/09/09 W0037 WALLACE REFRIGERATION 95.00 2512  
 48416 02/09/09 W0060 WOOLLEY, THOMAS 80.00 2512  
 48417 02/09/09 W0063 WRESTLER'S WORLD 190.07 2512  
 48418 02/09/09 Y0008 YOUNG, DANIEL J. ESQUIRE PC 23,664.78 2512  
 48419 02/09/09 Y0020 YOUNG, BARBARA L. 77.98 2512  
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 Total Paid: \$1,257,379.92

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