

**TOWNSHIP OF UPPER
2100 TUCKAHOE ROAD
PETERSBURG, NJ 08270
CAPE MAY COUNTY
MINUTES FOR FEBRUARY 23, 2009**

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 - February 9, 2009 Budget Meeting, Regular Meeting and Closed Session Minutes

Motion was made by Curtis Corson, second by Barbara Camp to approve the Minutes as written. During roll call vote all five Committee members voted in the affirmative.

REPORT OF GOVERNING BODY MEMBERS

Frank Conrad, stated that Recreation is ready to rebid for the lighting and irrigation projects at Amanda’s Field. He made a motion requesting authorization to make the funds available through the Developers Account. Jay Newman seconded with all five Committee members voting in the affirmative.

He also reported that the Baseball, Lacrosse, and Football Recreational leagues are now holding fundraisers to raise money to contribute to the Amanda’s Field improvement projects.

He reminded everyone of the second Rabies Clinic being held March 7th, from 1- 3p.m. at Shore Veterinarians.

Barbara Camp, made a motion to hire present part-time worker, Anthony Parcio to a full time position in the Department of Public Works, effective at the next pay. Frank Conrad seconded with all five Committee members voting in the affirmative.

She reported that the vehicle “wash bay” construction is almost complete. The state requires facilities washing Municipal vehicles/equipment to use recycled water effective March 2009.

She discussed the possibility that some of the other smaller towns may desire to share this service with Upper Township.

Jay Newman, reported that Upper Township and Corbin City Municipal Courts have met again to discuss possible consolidation of municipal courts. He expects to have a proposal for the next meeting.

He commented that EMS services have been busy and reported that the Rescue Squad reported 104 calls in January.

He discussed a letter received from Robert Holden, of Steelmantown, stating that speed signs were never posted on Woodbine Road as he previously requested. Mr. Holden is requesting that the Township directly address the Rt. 557 – Woodbine Road area of the Township. His letter clearly outlines the areas residents would like to see addressed particularly a “No Passing” zone just south of mile marker #5 and a decrease of the speed limit to 45 mph in residential areas. It was discussed that this is a County road and Township has limited access and authorization to make any changes. Curtis Corson made a motion to do a follow up resolution requesting the County authorize these changes. Jay Newman seconded with all five Committee members voting in the affirmative.

Mr. Newman introduced Sergeant Payne to report on police activity in the Township for January, 2009. Sgt. Payne commented on the Rt. 557-Woodbine Rd. area in that there has been additional coverage there. He will encourage increased police presence in this area. Mayor Palombo suggested Sgt. Payne receive a copy of Mr. Holden’s letter for reference.

Sgt. Payne reported 283 calls for service in the Township for the month of January. He listed a breakdown of calls and trends. He also reported on several vehicle burglaries that occurred on Mill Road and reminded everyone again, to lock their cars.

Curtis Corson, Deputy Mayor, commented that the Tax Collector’s annual report shows the Township has a 97.5% collection rate. He made a motion to accept the report, Barbara Camp seconded with all five Committee members voting in the affirmative.

Rich Palombo, Mayor, reported that the time for taking testimony for the Strathmere DeAnnexation matter has closed. The next step is for the Planning Board to prepare a finding of fact and recommendations report.

In addition to the letter from the resident on Woodbine Road discussed earlier, the Committee also received a request from the State for a resolution in support of a “No Passing” zone on Rt. 49 in the vicinity of Woodbine Road from mile post 52.3 and NJ Route 50, mile marked 53.8. Mayor Palombo made a motion to support the state in this effort, Barbara Camp seconded, with all five Committee members voting in the affirmative.

The Mayor also discussed a request for a streetlight at the driveway of a resident living on Tuckahoe-Mt. Pleasant Rd. It was discussed that this is a rural road location. Mayor Palombo requested that Paul Dietrich inspect the area in question and that the request be placed on the agenda for next meeting.

He commented on the letter received from legislative officials requesting the Township’s support of the 2.5% Residential Development Fee for the COAH Housing. This legislature also lends opportunity for municipalities to address Fair Share Obligations providing restrictive housing units by 50% now and then 50% of current round obligations over a ten year period. The letter also seems to indicate that the state rules may be reinstating the ability to pay other municipalities to address COAH obligations. Mayor Palombo made a motion to draft a resolution supporting Senate Bill 2524 and Assembly Bill 3697. Curtis Corson seconded, with all five Committee members voting in the affirmative.

He also made a motion to draft a resolution supporting the Board of Freeholders in designating March as National Nutrition Month in Cape May County. Barbara Camp seconded, with all five Committee members voting in the affirmative.

Township Committee was invited to attend the groundbreaking ceremony of the Second Cape May Baptist's new worship center on March 29, 2009.

OTHER REPORTS

Daniel Young, Municipal Attorney, reported that an ordinance is necessary and should be placed on a future agenda that grants an easement to Verizon to install extra equipment and wiring at the communication tower site at the Rescue Squad. He also reported that he has the following items to discuss in closed session: Litigation-letter regarding G.H. vs. Galloway Township; Contract-lease for Township property; Litigation-beach lot condemnation; Contract Negotiation-auditor's contract; Personnel-employee complaint and grievances.

Paul Dietrich, Municipal Engineer, reported that he has one Litigation matter to discuss in closed session, that being the Paynter matter.

He also reported that a Spring clean-up program has been completed in the Beesleys Point, Tuckahoe, and Strathmere areas under the direction of the CMC Department of Corrections. He reminded everyone of the Smart Growth Meeting set for Saturday, March 7, from 10:00 AM to 3:00 PM. The public is invited to attend and present some of their ideas; a light luncheon will also be served.

He also reported that the NJDOT has sent a notice that a portion of Route 9 will be resurfaced; that being from Stagecoach Road beginning at Poets Wood to Evergreen and to the South border to Wrights Lane. Mr. Dietrich requested that the State give notice ahead of time so residents can be notified. This work may be expedited, as it is part of the Stimulus Package.

2009 BUDGET –CAP Ordinance and Budget Introduction

The Mayor announced the good news that the Township has again launched a budget that does not have a local purpose tax. It ensures all current employees remain on staff and services remain the same. He stated that this is a very lean budget but again a budget without a local purpose tax. Helping to achieve this was the Township's ability to avoid payment for State Police Protection and successfully negotiating employee benefits. He commended Township employees for helping achieve this by not abusing benefits which would increase the costs."

Deputy Mayor Curtis Corson introduced Ordinance No. 006-2009 and explained that its adoption would allow the Township to increase the CAP by another 1% (from 2.5% to 3.5%) over last year's appropriations.

1. Introduction and First Reading of Ordinance No. 006-2009,

Re: CALENDAR YEAR 2009 ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS AND TO ESTABLISH A CAP BANK (N.J.S.A. 40A: 4-45.14).

Motion was made by Curtis Corson, second by Barbara Camp to introduce Ordinance No. 006-2009 with public hearing and final adoption set for March 23, 2009 at 7:30 PM. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE
ORDINANCE NO. 006-2009
RE: CALENDAR YEAR 2009
ORDINANCE TO EXCEED THE MUNICIPAL BUDGET APPROPRIATION LIMITS**

**AND TO ESTABLISH A CAP BANK
(N.J.S.A. 40A: 4-45.14)**

WHEREAS, the Local Government Cap Law, N.J.S. 40A: 4-45.1 et seq., provides that in the preparation of its annual budget, a municipality shall limit any increase in said budget to 2.5% unless authorized by ordinance to increase it to 3.5% over the previous year's final appropriations, subject to certain exceptions; and,

WHEREAS, N.J.S.A. 40A: 4-45.15a provides that a municipality may, when authorized by ordinance, appropriate the difference between the amount of its actual final appropriation and the 3.5% percentage rate as an exception to its final appropriations in either of the next two succeeding years; and,

WHEREAS, the Township Committee of the Township of Upper in the County of Cape May finds it advisable and necessary to increase its **CY 2009** budget by up to 1% over the previous year's final appropriations, in the interest of promoting the health, safety and welfare of the citizens; and,

WHEREAS, the Township Committee hereby determines that a 1% increase in the budget for said year, amounting to **\$85,939.09** in excess of the increase in final appropriations otherwise permitted by the Local Government Cap Law, is advisable and necessary; and,

WHEREAS the Township Committee hereby determines that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years.

NOW THEREFORE BE IT ORDAINED, by the Township Committee of the Township of Upper, in the County of Cape May, a majority of the full authorized membership of this governing body affirmatively concurring, that, in the **CY 2009** budget year, the final appropriations of the Township of Upper, shall, in accordance with this ordinance and N.J.S.A. 40A: 4-45.14, be increased by 1%, amounting to **\$300,786.92**, and that the **CY 2009** municipal budget for the Township of Upper be approved and adopted in accordance with this ordinance; and,

BE IT FURTHER ORDAINED, that any that any amount authorized hereinabove that is not appropriated as part of the final budget shall be retained as an exception to final appropriation in either of the next two succeeding years; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance as introduced be filed with the Director of the Division of Local Government Services within 5 days of introduction; and,

BE IT FURTHER ORDAINED, that a certified copy of this ordinance upon adoption, with the recorded vote included thereon, be filed with said Director within 5 days after such adoption.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 23TH OF FEBRUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD OF MARCH, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.
BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

2. Introduction of 2009 Budget.

Committeeman Curtis Corson stated that the Committee worked diligently to prepare a lean and comprehensive budget that did not require a local purpose tax, no employee layoffs, no reduced employee benefits, and no reduction of public services. Motion was made by Curtis Corson, second by Barbara Camp to introduce the 2009 Budget with public hearing and final adoption to be held on March 23, 2009 at 7:30 PM. See below for the Revenue and Appropriations Summary.

Mayor Palombo thanked Curtis Corson and the Township Committee for their diligence in formulating this Budget.

2009 Municipal Budget

of the TOWNSHIP of UPPER County of
CAPE MAY for the fiscal year 2009.

Revenue and Appropriations Summaries

Summary of Revenues		
	2009	Anticipated 2008
1. Surplus	3,100,000.00	3,061,415.00
2. Total Miscellaneous Revenues	8,531,321.98	8,388,703.38
3. Receipts from Delinquent Taxes	417,503.62	370,297.39
4. a) Local Tax for Municipal Purposes	0.00	0.00
b) Addition to Local School District Tax	0.00	0.00
Total Amount to be Rsd by Taxes for Sup of Muni Bnd	0.00	0.00
Total General Revenues	12,048,824.60	11,840,415.77

Summary of Appropriations		
	2009 Budget	Final 2008 Budget
1. Operating Expenses - Salaries & Wages	4,367,600.00	4,234,795.00
Other Expenses	5,285,556.50	4,875,040.77
2. Deferred Charges & Other Appropriations	495,465.38	487,000.00
3. Capital Improvements	880,454.74	1,145,580.00
4. Debt Service (Include for School Purposes)	0.00	0.00
5. Reserve for Uncollected Taxes	1,006,750.00	1,098,000.00
Total General Appropriations	12,048,824.60	11,840,415.77
Total Number of Employees	108	108

2009 Dedicated Utility Budget		
	2009	Anticipated 2008
1. Surplus	0.00	0.00
2. Miscellaneous Revenues	0.00	0.00
3. Deficit (General Budget)	0.00	0.00
Total Revenues	0.00	0.00

Summary of Appropriations		
	2009 Budget	Final 2008 Budget
1. Operating Expenses - Salaries & Wages	0.00	0.00
Other Expenses	0.00	0.00
2. Capital Improvements	0.00	0.00
3. Debt Service	0.00	0.00
4. Deferred Charges & Other Appropriations	0.00	0.00
5. Surplus (General Budget)	0.00	0.00
Total Appropriations	0.00	0.00
Total Number of Employees		

Balance of Outstanding Debt		
General		
Interest		
Principal		
Outstanding Balance	0.00	0.00

Notice is hereby given that the budget and tax resolution was approved by the TOWNSHIP COMMITTEE of the TOWNSHIP of UPPER County of CAPE MAY on FEBRUARY 23, 2009.

A hearing on the budget and tax resolution will be held at TOWNSHIP HALL, on MARCH 23, 2009 at 7:30 o'clock PM at which time and place objections to the Budget and Tax Resolution for the year 2009 may be presented by taxpayers or other interested parties.

Copies of the budget are available in the office of TOWNSHIP CLERK at the Municipal Building, 2100 Tuckahoe Road, Petersburg New Jersey, 609-628-2011 during the hours of 9:00 AM to 4:00 PM.

RESOLUTIONS

3. Tax Corrections.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
Resolution No. 055-2009
RE: CORRECTION**

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

make adjustments for the 2008 tax year as allowed by

N.J.S.A. 40A:5-17.1.

WHEREAS, the Tax Collector cancelled Tax Credits of less than \$5.00 per resolution #290-08, and,

WHEREAS, 3 properties had credits that were cancelled that should have been transferred to 2009 because they were paid by a third party lien holder.

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 on attached sheet:

Resolution No. 055-2009

Offered: by Conrad Seconded by: Camp

Adopted; February 23, 2009

Roll call vote:

Name	Yes	No	Abstained	Absent
CAMP	<u> x </u>	___	_____	___
CONRAD	<u> x </u>	___	_____	___
CORSON	<u> x </u>	___	_____	___
NEWMAN	<u> x </u>	___	_____	___
PALOMBO	<u> x </u>	___	_____	___

RECIND CANCELLATION OF 2008 CREDIT:

Block/lot	mount
325/39	\$2.13
326/14	\$2.13
334/14	\$3.21

4. Reserve Budget Transfer.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 056-2009
RE: RESERVE BUDGET TRANSFERS**

WHEREAS, various 2008 bills have been presented for payment this year, which bills were not covered by order number and/or recorded at the time of transfers between the 2008 budget appropriation reserve in the last two months of 2008; and

WHEREAS, N.J.S.A. 40A:4-59 provides that all unexpended balances carried forward after the close of the year are available until lapsed at the close of the succeeding year to meet specific claims, commitments or contracts incurred during the preceding fiscal year and allow transfers to be made from unexpended balances which are expected to be insufficient during the first three months of the succeeding year.

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, that the transfers in the amount of \$97,000.00 be made between the 2008 budget appropriation reserves as follows:

<u>TO</u>	<u>FROM</u>
SPECIAL LITIGATION \$93,500.00	DRUG & ALCOHOL TESTING \$2,500.00
MISC EMG SHORE PROTECTION \$3,500.00	MISC EXPENSES MAYOR/COMM \$2,000.00
	CLERK S/W \$700.00
	COLLECTION OF TAXS S/W \$1,600.00
	PLANNING BOARD S/W \$400.00
	PLANNING BOARD O/E \$1,000.00
	ZONING BOARD S/W \$600.00
	CONSTRUCTION CODE S/W \$500.00
	CONSTRUCTION CODE O/E \$1,000.00
	ZONING/CODE O/E \$1,000.00
	LIABILITY INSURANCE OTHER \$10,000.00
	INS. PREMIUMS EMPLOYEES \$10,000.00
	CROSSING GUARD S/W

\$600.00
 EMERGENCY MGT. S/W
 \$400.00
 FIRST AID ORG. S/W
 \$3,500.00
 FIRST AID CONTRIBUTION
 \$2,500.00
 ROAD REPAIRS S/W
 \$3,300.00
 RECYCLING PROGRAM S/W
 \$2,600.00
 RECYCLING PROGRAM O/E
 \$2,500.00
 GARBAGE & TRASH S/W
 \$3,100.00
 GARBAGE & TRASH O/E
 \$2,000.00
 BUILDING & GROUNDS S/W
 \$400.00
 BOARD OF HEALTH MISC.
 \$19,000.00
 DOG REGULATION MISC.
 \$10,000.00
 STREET LIGHTING COSTS
 \$5,000.00
 MISC TIPPING FEES
 \$10,000.00
 MUNICIPAL COURT S/W
 \$800.00

Resolution No. 056-2009

Offered By: Corson

Seconded By: Conrad

Adopted: February 23, 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. Approval and acceptance of the Official Organizational Chart for the Township of Upper.

Paul Dietrich commented that titles have been added for Assistant Chief EMT (currently vacant) and Supervising EMT (currently vacant). Frank Conrad made the motion and Curtis Corson

seconded to accept the chart with the added titles. All five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION
RESOLUTION NO. 057-2009
APPROVAL AND ACCEPTANCE OF
THE OFFICIAL ORGANIZATIONAL CHART FOR THE TOWNSHIP OF UPPER**

WHEREAS, an Organizational Chart was created for the Township of Upper to identify chains of command for the Township workforce; and

WHEREAS, the aforesaid chart entitled "*Township of Upper Organizational Chart*" is attached hereto as Exhibit "A" and is available for inspection;

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. The Township Committee has determined that the chart attached as Exhibit "A" and identified as the "*Township of Upper Organizational Chart*" is hereby accepted and designated on this date as the official Organizational Chart until such time as amended by the Township Committee.

Resolution No. 057-2009

Offered by: Corson

Seconded by: Conrad

Adopted: February 23, 2009

Roll Call Vote:

<u>NAME</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>	___	___	___

6. **Accepting the Upper Township Beach Management Plan and authorizing the Mayor to sign a Memorandum of Agreement between the U.S. Department of Interior Fish and Wildlife Service, the NJ Dept. of Environmental Protection and the Township of Upper.**

TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION

RESOLUTION NO. 058-2009

RE: ACCEPTING THE UPPER TOWNSHIP BEACH MANAGEMENT PLAN
AND
AUTHORIZING THE MAYOR TO SIGN A MEMORANDUM OF AGREEMENT BETWEEN
THE U.S. DEPARTMENT OF INTERIOR FISH AND WILDLIFE SERVICE,
THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
THE TOWNSHIP OF UPPER

WHEREAS, the Township of Upper, as a coastal beach community, has previously provided and currently provides crucial habitat for Federally and State listed species, and is obliged, consistent with N.J.S.A. 23:2A-6 and 16 U.S.C. SS 1538 (and as defined and codified in 50 CFR 17.3, 17.21 and 17.31), to ensure that activities carried out, promoted, or encouraged by the Township do not harm endangered or threatened species or otherwise hinder the restoration or maintenance of sustainable populations, and;

WHEREAS, the Township of Upper, as principal stewards of the beaches and dunes on which listed species depend, recognizes a further responsibility to participate actively in the management plan designed to recover listed species populations and;

WHEREAS, the U.S. Department of Interior, Fish and Wildlife Service (USFWS) and the New Jersey Department of Environmental Protection (NJDEP) recognize the additional responsibilities of the Township of Upper to minimize the threat to life and property from coastal flooding and storms and to provide a safe and secure town, a sustainable economy, and recreational opportunities for residents and visitors, and;

WHEREAS, the Township of Upper in cooperation with the USFWS, the NJDEP have developed the Township of Upper Beach Management Plan (Plan) for the Beaches in the Strathmere and Whale Beach Section of Upper Township for the Protection of Federally and State-Listed Species which defines and describes the roles and responsibilities of the Township,

the NJDEP and the USFWS (Memorandum of Agreement and Plan attached hereto as Exhibit “A”); and

WHEREAS, the Township Committee of the Township of Upper deems it appropriate to accept and adopt the Plan and enter into the aforesaid Memorandum of Agreement; 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. The Beach Management Plan attached hereto is hereby adopted and accepted.
3. The Mayor and Township Clerk are hereby authorized, directed and empowered to execute the Memorandum of Agreement attached hereto.
4. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

Resolution No. 058-2009

Offered by: Palombo Seconded by: Newman

Adopted: February 23, 2009

Roll Call Vote:

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

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

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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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 or near 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.

Note: Strathmere Natural Area directly borders Upper Township beaches and some Township activities may potentially impact nesting at this site, however, because the Natural Area is a state-owned property and not under the jurisdiction of the Township, it is not considered a management zone within this plan nor is management of the site addressed in this plan. Management of and activities permitted on state Natural Areas are governed through Natural Area System Rules and Statutes (Office of Natural Lands Management). Strathmere Natural Area is directly administered by the New Jersey Department of Environmental Protection - Division of Parks and Forestry through offices at Belleplain State Forest.

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 (≥ 0.5 to ≤ 1.00 chicks fledged per pair) when a colony is present.

Black Skimmers:

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

Seabeach amaranth:

- Long-term average population size of 100 plants.
- Minimum one-year population size of 50 plants.

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 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 Zones, 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 consider 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 Zones 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 supervised 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 Zones, 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 Zones, 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).
 - 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 Zones 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 Zones 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 post signs (if needed) in the area of the Strathmere Natural Area (Upper Township border) 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 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 USWFS. 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 USWFS, 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 USWFS 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 area $\frac{3}{4}$ mile from nesting areas 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"> ▪ SOE response will be supervised by the NJDFW monitors; ▪ vehicle use will take place during daylight hours; ▪ vehicles will not exceed 5 miles per hour when and where unfledged plover chicks are present; ▪ vehicles will not enter fenced areas; and ▪ vehicles will temporarily halt or 	<ul style="list-style-type: none"> ▪ vehicles will avoid crushing or removing seabeach amaranth and State-listed plants. 	<ul style="list-style-type: none"> ▪ vehicles will minimize removal of wrack material; and ▪ SOE response will proceed in accordance with any other recommendations of the NJDFW or the USFWS to protect listed species.
May			
June			
July			

August	change route as requested by the NJDFW monitors to avoid harassment of listed birds.		
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 Zones 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 (including placement of dune fence) 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 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 15th).

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 15th to August 15th) within a protective buffer area extending from each nesting area. Within nesting and buffer areas, work will be completed by March 15th 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 15th to August 15th) 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 15th to August 15th) 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

Action	Zone	Prohibited Start Date	Prohibited End Date	Comment
NJ State Police (non-emergency)	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no list amaranth occurs, refer to
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no list
Beach Lifeguard Patrols (non-emergency)	Protected Zone I	March 15	November 30	
	Protected Zone V (Webster to Williams Avenues)	*	*	*See the Human Disturba vehicle restrictions for Pr
	Precautionary	March 15	August 31 July 15*	* In the event that no list amaranth occurs, refer to
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no list
Public Works (non-emergency)	Protected	March 15	November 30	
	Precautionary	March 15	August 31 July 15*	* In the event that no list amaranth occurs, refer to
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no list
Organized Beach Clean-Ups, including Large Debris Removal (with vehicles)	Protected	March 15	November 30	NJDFW and USFWS do will provide a monitor to
	Precautionary	March 15	August 31 July 15*	* In the event that no list amaranth occurs, refer to
	Recreational	No Date Restrictions*	No Date Restrictions*	* In the event that no list

Action	Zone	Prohibited Start Date	Prohibited End Date	Comm
Beach Raking	Protected	Year Round	Year Round	NJDFV respon
	Precautionary	Year Round	Year Round	NJDFV respon
	Recreational	Year Round	Year Round	NJDFV respon
Beach Nourishment	Protected	March 15	Fledging of the last chick (plover or tern)	Refer t Biolog
	Precautionary	March 15	Fledging of the last chick (plover or tern)	Refer t Biolog
	Recreational	March 15	Fledging of the last chick (plover or tern)	Refer t Biolog

Action	Zone	Prohibited Start Date	Prohibited End Date	Comments
Sand Scraping	Protected	Year Round	Year Round	NJDFV respon
	Precautionary	Year Round	Year Round	NJDFV respon
	Recreational	No Date Restrictions*	No Date Restrictions*	Refer t * In th
Dune Management (Routine)	Protected	March 15	August 31	If seab be carr
	Precautionary	March 15	August 31	If seab be carr
	Recreational	No Date Restrictions*	No Date Restrictions*	Refer t * In th
Fireworks	Protected	Year Round	Year Round	
	Precautionary	Year Round	Year Round	
	Recreational	Year Round	Year Round	

Action	Zone	Prohibited Start Date	Prohibited End Date	Comm
Organized Events	Protected	Year Round	Year Round	
	Precautionary	March 15	August 31*	* If sea protect
	Recreational	No Date Restrictions*	No Date Restrictions*	* In th
Kite Flying				
Kite Flying	Protected	March 15	August 31	Prohib areas.
	Precautionary	March 15	August 31	Prohib areas.
	Recreational	No Date Restrictions*	No Date Restrictions*	*Prohi areas.
Pets on the Beach				
Pets on the Beach	Protected	March 15	September 30	Refer t
	Precautionary	March 15	September 30	Refer t
	Recreational	March 15	September 30	Refer t

7. Resolution for Appointment of Thomas G. Smith, Esquire to act as Special Legal Counsel regarding matters in which the regular Township Solicitor may have a conflict of interest.

TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION NO. 059-2009

RE: APPOINTMENT OF THOMAS G. SMITH, ESQUIRE TO ACT AS SPECIAL LEGAL COUNSEL REGARDING MATTERS IN WHICH THE REGULAR TOWNSHIP SOLICITOR MAY HAVE A CONFLICT OF INTEREST

WHEREAS, the Township requires legal counsel to provide legal services in the event a conflict of interest arises in regard to the services provided by the regular Township Solicitor; and

WHEREAS, a resolution is required authorizing the award of such contract for professional services; and

WHEREAS, Thomas G. Smith, Esquire has completed and submitted a Business Entity Disclosure Certification which certifies that Thomas G. Smith, Esquire 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 Thomas G. Smith, Esquire from making any reportable contributions through the term of the contract; 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. Thomas G. Smith, Esquire with offices at 2106 New Road, Linwood, New Jersey is hereby appointed Special Legal Counsel to handle matters in which the regular Township Solicitor has a conflict of interest as well as other matters directed by the Township Committee.

3. This contract shall have a commencement date as of the date of full execution thereof and shall continue for the length of time necessary for completion of the aforesaid legal services, unless sooner terminated by the Township of Upper, at the option of the Township of Upper.

4. This Contract is awarded without competitive bidding as a "professional service" in accordance with N.J.S.A. 40A:11-5(1)(a) of the New Jersey Local Public Contract Law because Thomas G. Smith, Esquire has professional knowledge as to legal matters which knowledge is particularly valuable to the Township Committee and this service is acquired as a non-fair and open contract pursuant to N.J.S.A. 19:44A-2.05.

NOTICE OF CONTRACT AWARD

The Township Committee of the Township of Upper, State of New Jersey has awarded the contract without competitive bidding as a professional service pursuant to N.J.S.A. 40A:11-5(1)(a) to Thomas G. Smith, Esquire for legal services. This contract and the resolution authorizing same shall be available for public inspection in the office of the municipal clerk of the Township of Upper, State of New Jersey.

5. A certificate from the Chief Financial Officer of Upper Township showing the availability of adequate funds for this contract and showing the line item appropriation of the official budget to which this contract will be properly charged has been provided to the governing body and shall be attached to this Resolution and kept in the files of the municipal clerk.

6. The contractor 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 of Upper.

7. The Mayor and the Township Clerk are hereby authorized and directed to execute, on behalf of the Township of Upper, a Professional Contract with Thomas G. Smith, Esquire in accordance with the terms and provisions of the Local Public Contracts

Law, subject to and in accordance with the limitations imposed herein. Upon execution of all parties thereto said contract shall become effective.

8. A copy of this Resolution shall be published in the official newspaper of the Township of Upper within ten (10) days from the date of adoption.

9. This Resolution shall be effective as of adoption.

Resolution No. 059-2009

Offered by: Palombo, Seconded by: Camp

Adopted: February 23, 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>

ORDINANCES

8. Introduction and First Reading of Ordinance No. 007-2009RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VIII (ANIMAL CONTROL) OF THE CODE OF UPPER TOWNSHIP. Motion was made by Curtis Corson, second by Barbara Camp to introduce Ordinance 007-2009 with Public Hearing and Final Adoption set for 3/23/2009. During roll call vote all five Committee members voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE
ORDINANCE NO. 007-2009**

**RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER VIII (ANIMAL CONTROL) OF THE CODE OF UPPER TOWNSHIP**

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

SECTION 1. Chapter VIII, Section 8-5.4b, of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be revised as follows:

8-5.4b Public Parks, Playgrounds, Public Facilities and Beach Areas;
 Seeing-Eye Dogs; Designated Areas; Exceptions.

No dog, other than a bona fide seeing-eye dog while under the care of its master or trainer as herein above defined, shall be permitted on the beach from March 15 through September 30 of each year. From October 1 through March 14, dogs shall be permitted on the beach, subject to the provisions of subsection 8-5.3 above.

SECTION 2: REPEALER: All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 3: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 4: EFFECTIVE DATE: This Ordinance shall take effect upon final adoption and publication as required by law.

SECTION 5: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 23rd OF February, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF MARCH, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.
BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

9. **Public Hearing and Final Adoption of Ordinance No. 001-2009, RE: AMENDING AND SUPPLEMENTING CHAPTER XX FOR INCLUSIONARY AFFORDABLE HOUSING OVERLAY.** It was discussed that this ordinance replaces our current Growth Shore Ordinance, which requires new developers to provide a COAH obligation and is in accordance to the new rules in affect at this time. During the Public Comment section of the hearing there were no speakers. Motion to adopt by Curtis Corson, second by Barbara Camp. During roll call vote all five Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
ORDINANCE
ORDINANCE NO. 001 -2009
RE: AMENDING AND SUPPLEMENTING CHAPTER XX FOR INCLUSIONARY
AFFORDABLE HOUSING OVERLAY**

Explanation: Revised Ordinance Standards updated to comply with September 22, 2008 COAH rules concerning inclusionary development. This Ordinance replaces Ord. #020-2006.

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”) and the Fair Housing Act, N.J.S.A. 52:27D-301, et seq. (“FHA”) that every municipality in New Jersey has an affirmative obligation to facilitate the provision of affordable housing; and

WHEREAS, the New Jersey Council on Affordable Housing (“COAH”) is the State administrative agency created pursuant to the FHA vested with primary jurisdiction for the administration of affordable housing obligations in accordance with sound regional planning considerations in New Jersey; and

WHEREAS, COAH’s Third Round Substantive Rules (N.J.A.C. 5:94-1 et seq.) implement a “growth share” approach to affordable housing production which requires affordable housing to be produced in conjunction with market-priced residential and nonresidential growth and development within the Township of Upper; and

WHEREAS, the Township of Upper intends to implement the “growth share” policies promulgated by COAH in its Third Round Substantive Rules in an effort to foster the production of affordable housing opportunities for qualified low and moderate income households through COAH’s third round, which extends from 2004 to 2018.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Township Committee of the Township of Upper that the Zoning Chapter XX of the Township of Upper be and is hereby amended as follows:

The following Section 20 -14 entitled “ Inclusionary Affordable Housing Overlay “ is hereby added to replace the existing Section 20-14 entitled “Growth Based Affordable Housing” of the Township of Upper’s Zoning Ordinance, to read as follows:

§20- 14 Inclusionary Affordable Housing Overlay

§20- 14.1 Applicability

a. This subsection of the land use regulations of the Township of Upper sets forth mechanisms by which developers shall provide for a fair share of affordable housing based on growth that is associated with residential development taking place within the Township of Upper.

b. Except as exempted in §20-14.2, all residential development that results in the construction of new market-priced dwelling units in accordance with N.J.A.C. 5:94-1 et seq., shall be subject to the “inclusionary affordable housing ” provisions of this ordinance.

§ 20-14.2 Exemptions

The following are exempted from the provisions of this Chapter:

a. Developments that received preliminary or final subdivision approval from the Planning Board and/or Zoning Board of Adjustment, as applicable, prior to the effective date of this ordinance except as required by conditions of approval.

b. Residential developments that have been zoned to produce an affordable housing set-aside greater than the affordable housing requirements of this Article or that are intended to include only low and moderate income housing units.

c. Residential development that results in less than four market-priced dwelling units; with the provision that any future subdivision of this development which results in four or greater units including units previously subdivided shall be subject retroactively to this inclusionary affordable housing ordinance.

d. As to exemptions c. above, these types of development shall be subject to the developer fee ordinance.

e. Public facilities and public schools.

f. Not-for-profit facilities including churches and private universities.

§ 20-14.3 Inclusionary Affordable Housing Overlay Provisions

a. All residential development which results in the construction of four or more new market-priced dwelling units shall provide non-age restricted affordable housing units at a ratio of one affordable unit for every four market-priced units constructed on-site.

b. For developments that result in a number of market-priced residential units not evenly divisible by four, the developer may construct the additional affordable unit on-site or alternatively, the developer may make a payment in lieu of constructing the additional affordable unit. If the developer selects the latter option, the amount of said payment shall be established by subtracting any whole multiples of four from the total number of market-priced residential units being created, dividing any remaining number of units by four and multiplying the resulting fraction by the established affordable unit cost to construct one affordable residential unit as established by region in N.J.A.C. 5:97G.4(c)3. as revised periodically by COAH.

c. As an alternative to fulfilling the affordable housing requirements set forth in a. and b. above, developers of residential units may elect to provide affordable housing units off-site within existing buildings, but within the Township of Upper in accordance with §20-14.4 and §20-14.5. If the developer elects to provide the affordable unit off-site but within the Township of Upper, each on-site unit otherwise required to be affordable to a low or moderate income household may be converted to a market-priced unit, but the developer's inclusionary housing obligation shall be increased accordingly and reflected in the number of units being constructed off-site but within the Township.

d. All residential development subject to the provisions of a. through c. above shall be provided with a density increase as mandated by current New Jersey Council of Affordable Housing substantive rules under 5:97-6.4 which established the minimum presumptive density and affordable housing obligation for municipalities.

e. All residential development not subject to the provisions of a. through c. above shall be subject to the provisions of development fees as set forth in the Development Fee Ordinance.

f. The following increased density standards apply depending upon the existing density and the availability of public sewer or advanced on site sewerage treatment facilities (sewered areas) to accommodate density as proposed:

1. For residential zones within sewered areas in PA2 and Centers, the residential density shall be increased to a maximum of six (6) dwelling units per acre. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimensions to accommodate the additional density with the single family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

2. For residential zones outside of sewered areas in PA2 and Centers, the residential density shall be increased to a maximum of four (4) dwelling units per acre. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimensions to accommodate the additional density with the single-family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

3. For residential zones within non-sewered areas (conventional on site septic systems) in PA3, PA4, and PA5, the residential density shall be increased by 40% over the maximum density permitted in the zone. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimension to accommodate the additional density with the single family attached buildings. The maximum building coverage and maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

4. For residential zones within non-sewered areas (conventional on site septic systems) in the Pinelands Management Area, the residential density shall be increased by 40% over the maximum density permitted in the zone. The minimum yard requirements shall be reduced by up to 20% of the minimum required dimension to accommodate the additional density with the single family attached buildings. The maximum building coverage and

maximum impervious coverage shall be increased by 20% over the base coverage requirements to accommodate the additional density on an individual lot basis.

5. In the Town Center and Town Center Core zone districts with sewer service, residential development shall provide one affordable housing unit on-site for every four market-priced units. A maximum residential density of 6 dwelling units per acre will be permitted. Housing type shall permit multifamily residential units and attached housing units.

§ 20-14.4 General Provisions for Constructing Affordable Units

a. Affordable housing units being constructed on-site or off-site shall meet the requirements of the Township of Upper's affordable housing ordinance, and shall be in conformance with COAH's third round rules at N.J.A.C. 5:94-1 et seq. and the Uniform Housing Affordability Controls at N.J.A.C. 5:80-26.1 et seq., including, but not limited to, requirements regarding phasing schedule, controls on affordability, low/moderate income split, heating source, maximum rent and/or sales prices, affordability average, bedroom distribution, and affirmative marketing.

b. Developers electing to create affordable housing units elsewhere within the Township may do so within existing buildings, whether converted, reconstructed or purchased for buy down or rental subsidy assistance in any zone of the Township of Upper as set forth and regulated in this article.

c. The renovation or conversion of any existing dwelling in which all such dwelling units are deed restricted for affordability to and occupancy by low and moderate income households shall be permitted as of right, subject to meeting all other requirements of this Section 20-14 notwithstanding any other provision of this Ordinance to the contrary.

d. To the greatest extent possible, affordable housing units being provided within inclusionary developments shall be disbursed throughout inclusionary developments and shall be

located within buildings designed to be architecturally indistinguishable from the market-priced units otherwise being constructed within the development.

e. Residential structures in the form of two-family side-by-side or over-and-under unit buildings shall be deemed to be permitted uses in the underlying zone when created for the purpose of meeting the growth share obligation on site. These units shall be constructed within the development. The remaining portion of the project that is not considered to be an affordable unit shall conform to the requirements of the underlying zone.

§20-14.5 Payment in Lieu Provisions

a. The payment in lieu of construction of affordable units shall be based on N.J.A.C. 5:97-6.4 (c) 3. which is established under the COAH substantive rules and shall be revised by the Council periodically.

b. Development that generates a fraction of an affordable housing unit (because the development contains a number of units not evenly divisible by four) shall be required to make a payment in lieu of construction for that fraction of a unit based upon the pro-rated cost of constructing an affordable housing unit in the Township of Upper.

c. All payments in lieu of constructing affordable housing shall be deposited by the Township of Upper into an affordable housing trust fund to be established by the Township of Upper in conformance with regulations established by COAH and shall at all times be identifiable from development fees. These funds shall be used in accordance with regulations established by COAH to create new affordable housing opportunities within the physical boundaries of the Township of Upper.

§20-14.6 Other Requirements

a. A proposed affordable housing plan shall be submitted to the Board at the time application is made for any development requiring affordable housing pursuant to this Section. The Plan shall be a condition of “completeness” determination. All Plans shall be the subject of review by the Township Affordable Housing Liaison or appointee for consistency with COAH’s Rules and with the Town’s third round Housing Element and Fair Share Plan. Compliance with all of the terms of COAH’s Rules and with the approved plan shall be a condition of development plan approval and may be covered by appropriate performance and maintenance guarantees as with any other required improvement.

b. Where an odd number of low and moderate income housing units are required to be provided, the majority of the units shall be low income units. Where there are an insufficient number of affordable units provided to meet the bedroom distribution requirements of COAH’s Rules, the first unit shall be a two bedroom unit, the second unit shall be a one-bedroom unit and third unit shall be a three bedroom unit. Otherwise, the bedroom distribution shall be in strict accordance with COAH’s Rules.

c. It shall be the developer’s responsibility, at its sole cost and expense, to pay the per unit cost of the initial advertising and ongoing administration of the controls on affordability pursuant to the contract between the Township and the experienced administrative entity. The designated administrative entity shall file with the Township Affordable Housing Liaison or designee such certification, reports and or monitoring forms as may be required by COAH.

d. Developments covered by this Section shall be exempt from the payment of Development Fees under the adopted Development Fee Ordinance.

e. The use of any of the foregoing mechanisms for providing affordable housing within the Township of Upper shall be limited to the provision of non-age restricted affordable housing units in compliance with all of the COAH’s Rules set forth at N.J.A.C. 5:97-1 et seq., unless specifically waived by the Township.

REPEAL OF CONFLICTING ORDINANCES

Any ordinances of the Township of Upper that are in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SEVERABILITY

If any part of this Ordinance shall be deemed invalid, such parts shall be severed and the invalidity thereof shall not affect the remaining parts of this Ordinance.

EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as required by law.

CODIFICATION

This Ordinance shall be codified in Chapter 20 of the Upper Township Code commencing at 20-14.1 and shall replace existing Chapter 20-14 in its entirety.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26th DAY OF JANUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

10. Public Hearing and Final Adoption of Ordinance No. 002-2009, RE: AN ORDINANCE AUTHORIZING SALE OF LANDS, TO WIT BLOCK 497, LOTS 18, 19 AND 20.

During the Public Comment section of the hearing there were no speakers. Motion to adopt by Jay Newman, second by Frank Conrad. During roll call vote all five Committee members present voted in the affirmative.

TOWNSHIP OF UPPER

CAPE MAY COUNTY

O R D I N A N C E

ORDINANCE NO. 002-2009

RE: AN ORDINANCE AUTHORIZING SALE OF LANDS,

TO WIT BLOCK 497, LOTS 18, 19 AND 20

WHEREAS, the Township of Upper is the owner, in fee, of certain parcels of vacant ground located within the Township of Upper, County of Cape May, and State of New Jersey, set forth on the municipal tax map as Block 497, Lots 18, 19 and 20; and

WHEREAS, the Township has received an offer from Eustace Eggie and Janice Eggie, the owners of real property contiguous with said parcels owned by the Township, to purchase said parcels; and

WHEREAS, after discussion and deliberation the Township Committee is of the opinion that the sale of said parcels will be in the best interest of the Township and will provide for the consolidation of existing nonconforming lots with a conforming lot; and

WHEREAS, the Township Committee has determined that the fair market value of such lots is the sum of \$9,000.00 in light of the appraisal prepared by Breazeale & Associates, LLC of October 9, 2008; and

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

SECTION 1: The Township of Upper is hereby authorized to sell to Eustace Eggie and Janice Eggie the real property commonly known as follows:

Block 497, Lots 18, 19 and 20

since said persons are the owners of the only real property contiguous thereto in accordance with N.J.S.A. 40A:12-13(b)(5). Pursuant to said statute such sale shall not be for less than the fair market value of said real property and the fair market value of said parcels sold as well as the purchase price of same is hereby established as follows:

Block 497, Lots 18, 19 and 20

Fair Market Value: \$9,000.00

SECTION 2: Prior to said sale, the Township will obtain a title report from a title company or abstract company licensed to do business in the State of New Jersey. Said report shall be available to the purchaser prior to final adoption of this Ordinance.

SECTION 3: The list of property authorized to be sold together with the minimum price thereof shall be posted at Township Hall and advertisement of the sale shall be made in a newspaper circulating in the Township within 5 days following enactment of this ordinance. Offers for the property may thereafter be made to the Township Committee for 20 days following said advertisement. The Township Committee may reconsider this ordinance not later than 30 days after enactment and thereafter

advertise the property for public sale pursuant to N.J.S.A. 40A:12-13(a). The Township Clerk shall file with the Director of the Division of Local Government Services in the Department of Community Affairs sworn affidavits verifying the publication of the foregoing advertisements.

SECTION 4: Eustace Eggie and Janice Eggie shall pay the following sum to the Township Clerk prior to the adoption of this Ordinance: \$500.00. This amount shall be used by the Township to defray Township expenses involved in Authorizing the Sale and terms thereof; Engineer's review; Attorney's review; legal advertising; title review; closing costs and other expenses.

SECTION 5: In the event the Township Committee receives no offers for the property pursuant to the advertisement of same in accordance with N.J.S.A. 40A:12-13(b), the adjacent property owners requesting such sale, Eustace Eggie and Janice Eggie, shall purchase same in accordance with this Ordinance and shall appear before the Township Clerk and execute the agreement to purchase same pursuant to this Ordinance. The Township Committee expressly reserves the right to revoke its authorization to sell the subject real property at any time prior to said sale. The Township Committee is authorized

to confirm the sale by resolution to complete the transaction pursuant to this Ordinance and N.J.S.A. 40A:12-13.

SECTION 6: In the event the Township Committee revokes its authorization for the sale of the subject property in its sole judgment and discretion, then, all deposit monies made by Eustace Eggie and Janice Eggie shall be refunded except for the \$50.00 application fee which shall be non-refundable.

SECTION 7: All payments required to be made pursuant to said sale to the Township Clerk must be made by personal check, cash or certified check, or any combination of the foregoing. All payments required to be made hereunder to a title company or abstract company conducting the closing shall be made in collected funds, that is, by cash, certified check, cashier's check or wire transfer.

SECTION 8: A sum equal to ten percent (10%) of the purchase price for said parcel or parcels shall be paid to the Township of Upper by Eustace Eggie and Janice Eggie within 14 days of written notice requiring same from the Township Clerk to Eustace Eggie and Janice Eggie. Said notice shall be sent by the Township Clerk after the

posting and advertisement required by SECTION 3 above has not resulted in an offer and the Township Committee has not reconsidered this Ordinance pursuant to N.J.S.A. 40A:12-13(b). The remaining balance of ninety percent (90%) of the highest bid for the parcel or parcels shall be paid to the Township of Upper, and must be received by the Township Clerk, not later than thirty (30) days after the date of said notice. In addition to the deposit of ten percent (10%), Eustace Eggie and Janice Eggie shall also be required to pay or tender within 14 days of said written notice from the Township Clerk the following:

- (A) (i) The sum of \$100.00 for the preparation of the Deed.
- (ii) The sum of \$70.00 for recording the Deed.

AT THE TIME OF CLOSING Eustace Eggie and Janice Eggie shall be required to pay the following sums:

- (B) Any additional sum required for title search or title insurance.
- (C) The cost of any survey ordered by the purchaser. The purchaser shall place such order directly with the surveyor or with the title

company conducting closing, but the survey must be prepared in time to permit the closing to take place as scheduled.

(D) Title company settlement fees covering services to both the Seller and the Buyer.

(E) Any additional fees or costs chargeable by the title company.

SECTION 9: The closing of title shall take place as designated by the

Township as follows:

(A) Township Hall, Petersburg, New Jersey; or

(B) Office of the Township Solicitor; or

(C) At the office of a title insurance company or title abstract company located within Cape May County.

SECTION 10: If the purchaser fails to close or fails to comply with the provisions hereof, the purchaser shall be in default and all amounts paid to the Township by or on behalf of the purchaser shall be retained by the Township as LIQUIDATED DAMAGES AND NOT AS A PENALTY.

SECTION 11: The Deed from the Township of Upper shall be what is commonly known as a Quitclaim Deed.

SECTION 12: The title to be delivered by the Township shall be free and clear of all taxes up to and including the date when the Deed is delivered and closing takes place. Purchaser shall be responsible for all taxes thereafter. Unless otherwise specified herein, the purchaser shall be liable for payment of all assessments, of any nature, against said land.

SECTION 13: The title to be delivered by the Township shall be under and subject to all easements and rights of way, recorded and unrecorded, whether for utilities or for others, and shall also be subject to all conditions, reservations and restrictions of record, if any. If the title report discloses an unmarketable condition of title, except as specified herein, the remedy of the purchaser shall be limited to the return of payments made to the Township of Upper on account of the purchase price and closing costs only. Any and all other amounts paid to the Township shall be non-refundable. This sale is under and subject to any riparian claim which may affect said property. If any such claim exists, it shall be the sole responsibility of the purchaser to meet and satisfy all

requirements of the State of New Jersey with respect to said riparian claim and the payment of any compensation to the State of New Jersey on account thereof. Nothing herein shall be construed as obligating the Township of Upper to construct or maintain access roads to any portion of the property being sold. Such property may not qualify for a building permit due to lack of water supply, lack of sewer or septic facilities, lack of access, inadequate lot size, or other reasons, including those reasons set forth below. The purchaser is required to comply with all applicable zoning, building and health ordinances and codes and regulations. The property being sold may be situate in a Flood Hazard Zone. The Township of Upper makes no warranties or representations, expressed or implied, as to the property being offered for sale, the condition or marketability of the title or any other matter. The Township of Upper makes no warranties or representations, expressed or implied, as to whether or not the property being offered for sale contains wetlands anywhere on the property. The Township makes no warranties or representations as to any matter of an environmental nature, or otherwise, which may prevent or limit building or construction.

SECTION 14: All references to Lots and Blocks described herein are to the

Lots and Blocks as shown on the Current Official Tax Map of the Township of Upper.

SECTION 15: The purchaser shall be required to execute a document

acknowledging that the sale is governed by the provisions of this Ordinance as well as

N.J.S.A. 40A:12-13.

SECTION 16: The provisions of this Ordinance pertaining to this sale shall

survive the closing of title and shall not merge into the Deed.

SECTION 17: It is a requirement of this sale that the purchaser of the

subject property be the only contiguous property owner. Said purchaser shall be required

to take immediate action to cause a consolidation of the property being purchased with all

of the purchaser's existing adjacent lots so as to constitute all such lots in Block 497 as a

single parcel of ground which shall not be further subdivided into more than one lot. This

restriction shall be included in the deed of conveyance and shall run with the land. The

purchaser shall complete the consolidation as a condition of the sale. The provisions of

this Section shall survive closing and shall not merge into the Deed.

SECTION 18: This Ordinance shall take effect immediately upon final

adoption and publication as required by law.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26th DAY OF JANUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

11. Public Hearing and Final Adoption of Ordinance No. 003-2009, RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER VII OF THE CODE OF UPPER TOWNSHIP.

During the Public Comment section of the hearing there were no speakers. Motion to adopt by Jay Newman, second by Barbara Camp. During roll call vote all five Committee members present voted in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E
ORDINANCE NO. 003-2009
RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE
CHAPTER VII OF THE CODE OF UPPER TOWNSHIP**

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

SECTION 1. Chapter 7, Schedule I (entitled “No Parking”) of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be supplemented as hereinafter provided:

SCHEDULE I – NO PARKING

Amend to include the following:

Street	Location
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Vincent Avenue	Both sides of Vincent Avenue a distance of one hundred (100') feet from the curbline of Bayview Drive.
Willard Avenue	Both sides of Willard Avenue a distance of forty five (45') feet from the Easterly terminus of Willard Avenue.
Whittier Avenue	Both sides of Whittier Avenue a distance of forty five (45') feet from the Easterly terminus of Whittier Avenue.
Vincent Avenue	Both sides of Vincent Avenue a distance of forty five (45') feet from the Easterly terminus of Vincent Avenue.
Tecumseh Avenue	Both sides of Tecumseh Avenue a distance of forty five (45') feet from the Easterly terminus of Tecumseh Avenue.
Sumner Avenue	Both sides of Sumner Avenue a distance of forty five (45') feet from the Easterly terminus of Sumner Avenue.
Sherman Avenue	Both sides of Sherman Avenue a distance of forty five (45') feet from the Easterly terminus of Sherman Avenue.
Randolph Avenue	Both sides of Randolph Avenue a distance of forty five (45') feet from the Easterly terminus of Randolph Avenue.
Putnam Avenue	Both sides of Putnam Avenue a distance of forty five (45') feet from the Easterly terminus of Putnam Avenue.
Prescott Avenue	Both sides of Prescott Avenue a distance of forty five (45') feet from the Easterly terminus of Prescott Avenue.

SECTION 2: REPEALER: All Ordinances or parts of Ordinances which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 3: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 4: EFFECTIVE DATE: This Ordinance shall take effect upon final adoption and publication as required by law.

SECTION 5: CODIFICATION: This Ordinance shall be codified in the Upper Township Code at the sections referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26TH OF JANUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

12. Public Hearing and Final Adoption of Ordinance No. 004-2009, RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP.

During the Public Comment section of the hearing there were no speakers. Motion to adopt by Curtis Corson, second by Barbara Camp. During roll call vote all five Committee members present voted in the affirmative.

TOWNSHIP OF UPPER
CAPE MAY COUNTY
O R D I N A N C E
ORDINANCE NO. 004 -2009

RE: AN ORDINANCE AMENDING REVISED GENERAL ORDINANCE CHAPTER XX (ZONING) OF THE CODE OF UPPER TOWNSHIP

WHEREAS, the Township of Upper received a request for a zone change from the Conservation Zone to the Commercial District (CM2) Zone for the property located at 140 Route 50, Greenfield, in Block 453, Lot 176 on the Municipal Tax Map of the Township of Upper, County of Cape May, State of New Jersey; and

WHEREAS, the Township Committee of the Township of Upper does hereby deem it appropriate to undertake a zoning change to a portion of Block 453, Lot 176 from Conservation Zone to Commercial District (CM2) Zone as recommended by the Upper Township Planning Board and outlined in Planning Board Resolution #PB10-08; and

WHEREAS, Notice of the hearing on this Ordinance changing a zone boundary has been given to all affected property owners pursuant to N.J.S.A. 40:55 D-62.1;

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

SECTION 1. Chapter 20 of the revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

20-3.2 ZONING MAP is amended in its entirety as follows:

The Map prepared by the Township Engineer dated January 12, 2004, revised through January 20, 2009 (modified) is

hereby adopted as the Zoning Map of the Township of Upper.

(Ord. #7-1976, §302; Ord. #12-1978, §2; Ord. #4-1981, §3; Ord. #4-1982; Ord. #4-1987, §1; Ord #8-1988, §§1 -3; Ord. #2-1989, §1; Ord. #14-1989, §1; Ord. #17-1990, §1; Ord. #10-1995, §1; Ord. #006-2002, §2; Ord. #001-2004, §3; Ord .#009-2007, §2; Ord. #004-2009, §1).

SECTION 2. EFFECTIVE DATE: This Ordinance shall take effect immediately upon the following: The Ordinance shall take effect upon passage and publication as required by law.

SECTION 3. REPEALER: All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION 4: SEVERABILITY: If any section, paragraph, subdivision, subsection, clause or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 5: CODIFICATION: This Ordinance shall be codified in the Upper

Township Code at the section referred to above.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26th OF JANUARY, 2009 AND WILL BE TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

13. Public Hearing and Final Adoption of Ordinance No. 005-2009, RE: AN ORDINANCE AMENDING CHAPTER 9-6 OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF UPPER. This ordinance allows the skatepark to operate without an attendant; it allows skateboards only, no bicycles. During the Public Comment section of the hearing there were no speakers. Motion to adopt by Frank Conrad Corson, second by Barbara Camp. During roll call vote all five Committee members present voted in the affirmative.

TOWNSHIP OF UPPER

CAPE MAY COUNTY

O R D I N A N C E

ORDINANCE NO. 005-2009

RE: ORDINANCE AMENDING CHAPTER 9-7 OF THE
REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF UPPER

WHEREAS, the Township of Upper (“TOWNSHIP”) operates a skate park (“PARK”) which is open for use by the residents of the TOWNSHIP and Cape May County, and

WHEREAS, the TOWNSHIP desires to amend certain rules and regulations for the management, use and enjoyment of the PARK, so as to permit the PARK to be used without an attendant present.

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

SECTION 1: Chapter 9-7 of the Revised General Ordinances of the Township of Upper, also known as the Code of Upper Township, shall be amended and supplemented as hereinafter provided:

9-7.1 Recreation Committee to Promulgate Rules and

Regulations. The Recreation Committee of the

Township of Upper is hereby empowered to promulgate

and adopt rules and regulations governing the use and

operation of the Skate Park (the "Park") owned and

operated by the Township of Upper. Before taking

effect, any rules and regulations proposed to be

adopted by the Recreation Committee shall be submitted to the Township Committee for approval.

9-7.2 Posting of Rules and Regulations. Any rules and regulations promulgated by the Recreation Committee and approved by the Township Committee shall be appropriately posted, either by sign or some other suitable device, so as to advise all persons desiring to utilize the Park of the nature of the rules and regulations. Such signs shall be approved by the Township Solicitor and Township's insurance carrier.

9-7.3 Use of the Park. The Park shall not be supervised by Township personnel and a notice to this effect shall be prominently posted at the Park. The Park shall be used for skateboards and inline skates only. No bicycles, scooters or motorized vehicles are permitted in the Park. Except on the bicycle and jogging path,

skateboarding and inline skating is prohibited on Township property surrounding the skateboard park.

Any special event to take place at the Park shall be conducted by the Recreation Committee member representing the Park and shall be for non-profit use only. Any outside company, participant or promoter of the event must comply with all applicable Township requirements for the use of Township facilities or for the use of the Park. The approval of the Township Supervisor of Recreation is required.

9-7.4 Safety. All users are required to wear shoes, helmets, kneepads, wrist guards and elbow pads. All equipment must be worn to the manufactures recommendations.

All users must skate safely, responsibly and act respectfully of each other.

9-7.4a No use of the park shall be permitted when equipment is wet or icy.

9-7.4b The Township will determine from time to time the maximum capacity, which may utilize the park.

9-7.4c NO glass, radios or pets shall be permitted within the enclosed park area.

9-7.4d Backpacks, bags, jackets and other articles of clothing and personal belongings must be placed in an appropriate area, outside the enclosed park area, removed from the area where people skate, to avoid the possibility of injury.

9-7.4e The use of alcohol, drugs and tobacco are prohibited. Additionally profanity,

abusive language and vandalism is prohibited.

9-7.5 Days and Hours of Operation. The Township Committee shall determine the hours of operation of the Park from time to time. It is a violation of this ordinance to enter the Park at anytime it is closed.

9-7.6 Supervision of Small Children. Children under twelve (12) years of age must be accompanied by a responsible adult at all times.

9-7.6a Violations of Rules/ Regulations. Any person who violates this Ordinance or the Park rules and regulations shall be immediately removed from the Park. Any person convicted of violating the provisions of this Ordinance or the Park rules shall be guilty upon a first offense

of a fine not to exceed \$100.00 and a
second offense of a fine not to exceed
\$500.00.

SECTION 2: REPEALER: All ordinances or parts of ordinances which are in
conflict or inconsistent herewith are hereby repealed to the extent of any such
inconsistency or conflict only.

SECTION 3: SEVERABILITY: If any section, paragraph, subdivision,
subsection, clause or provision of this Ordinance shall be adjudged invalid, such
adjudication shall apply only to the section, paragraph, subdivision, subsection, clause or
provision declared invalid and the remainder of this Ordinance shall remain in full force
and effect and shall be enforceable.

SECTION 4: EFFECTIVE DATE: This Ordinance will take effect immediately
upon final adoption and publication as required by law.

SECTION 5: CODIFICATION: This Ordinance shall be codified in Chapter 9-
7 of the Upper Township.

NOTICE IS HEREBY GIVEN THAT THE FOREGOING ORDINANCE WAS INTRODUCED FOR FIRST READING AT A MEETING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER HELD ON THE 26th DAY OF JANUARY, 2009 AND WAS TAKEN UP FOR CONSIDERATION AS TO FINAL ADOPTION AT A PUBLIC HEARING OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER TO BE HELD ON THE 23RD DAY OF FEBRUARY, 2009 AT 7:30 P.M. AT THE TOWNSHIP HALL, TUCKAHOE, NEW JERSEY.

BY ORDER OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER.

RESOLUTION

After the adoption of Ordinance 005-2009 which amends the Revised General Ordinances of the Township of Upper to allow the skate board park to be open unattended, a resolution was adopted to set the rules and regulations such as operating times, required equipment-helmets, shoes, etc., that will be posted on sight. Frank Conrad made motion to accept the resolution, Jay Newman seconded, with all five Committee members voting in the affirmative.

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 060 -2009

**RE: APPROVAL OF SKATEPARK RULES AND REGULATIONS PURSUANT TO
ORDINANCE 005-2009**

WHEREAS, the Township Committee of the Township of Upper recently adopted Ordinance No. 005-2009 which amends and supplements Chapter 9-7 of the Revised General Ordinances of the Township of Upper with respect to the use and operation of the Upper Township Skate Park Park; and

WHEREAS, the Township Committee of the Township of Upper desires to approve amended rules and regulations for the management, use and enjoyment of the Upper Township Skate Park; 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. The Township hereby approves the revised Upper Township Skate Park rules and regulations as set forth and attached as Exhibit A hereto.
3. All Township officials and officers are hereby authorized and empowered to take all action deemed necessary or advisable to carry into effect the intent and purpose of this Resolution.

RICHARD PALOMBO, Mayor

WANDA GAGLIONE, Township Clerk

Resolution No. 060-2009
Offered by: Conrad
Adopted: February 23, 2009

Seconded by: Newman

Roll Call Vote:

<u>NAME</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>	_____	_____	_____

EXHIBIT A

UPPER TOWNSHIP SKATE PARK RULES AND REGULATIONS

1. Open - 7 a.m. to dusk. Notice shall be posted at the Park that it is not supervised.
2. Closed in inclement weather or when ramps are wet.
3. Children under twelve (12) must be accompanied by a responsible adult.
4. Safety gear required when using Park: shoes, helmets, kneepads, wrist guards and elbow pads
5. The Park shall be used for skateboards and inline skates only.
6. No bicycles, scooters or motorized vehicles permitted.
7. No glass containers, radios or pets inside fenced area.
8. No personal belongings inside fenced area.
9. No alcohol, drugs or tobacco products.
10. No profanity or abusive language.
11. All park users must skate safely and act respectful of each other.
12. Any person who violates the park rules and regulations shall be removed from the Park and shall be subject to fines.

NEW BUSINESS

13. George Reagan, Block 548 Lot 20, request for resolution for a Water Treatment Works Approval Application. Committeeman Corson did not participate in this matter due to conflict. A water treatment works approval is requested to upgrade the septic system at Frontier Campground. Twenty-one existing sites without sewer connections will be converted to 12 campsites with sewer, water and electric. The application to the NJDEP section A-1 requires "Consent by Governing Body" which only consents to the submission of the application and further certifies that the project as proposed conforms with the requirements of all municipal ordinances. Mr. Dietrich stated that the project does comply with our ordinances and upgrades the present septic system. Motion to approve by Jay Newman, second by Barbara Camp. During roll call vote four Committee members voted in the affirmative, and Mr. Corson abstained. A resolution will be placed on a future agenda.

14. Wesley United Methodist Church of Petersburg, request to waive fees associated with the construction of a new activity center. It was discussed that municipal fees can be waived however the Committee cannot require the professionals to waive their fees. Mr. Dietrich commented that the waiver may not be necessary because the Church has already received their approvals for this project. Motion was made by Curtis Corson, second by Barbara Camp to grant request. During roll call vote all five Committee members voted in the affirmative.

15. Request to increase Construction Department fees. It was discussed that Construction Dept. fees are based on the cost to operate the department. A fee increase was requested by Construction Official Edward Kenney. Motion to accept by Jay Newman, second by Barbara Camp with all five Committee members voting in the affirmative. A resolution will be placed on a future agenda.

UNFINISHED BUSINESS:

16. **NJ Department of Transportation, request for municipal resolution in support of a “No Passing Zone” on Rt. 49 from Mile Post 52.3 (Woodbine Rd.) to Mile Post 53.8 (Route 50).** See Mayor Palombo’s report on page 1. Resolution will be placed on a future agenda.
17. **Review and possible approval of the Recreation Committee By-Laws.** Motion was made by Frank Conrad, second by Jay Newman to approve the Recreation Committee by-Laws as written. During roll call vote all five Committee members present voted in the affirmative. A resolution will be placed on a future agenda.

DISCUSSION

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 by Jay Newman, second by Frank Conrad with all five Committee members present voting in the affirmative.

Payroll: \$177,095.59
Bills approved for payment: \$185,370.59

REPORT OF MUNICIPAL DEPARTMENTS:

18. **Construction Code—2008 Year End Report**
19. **Animal Control**
20. **Tax Collector’s Annual Report-** report accepted by motion, see page 1.
20. **Municipal Court**

Reports are available from the Clerk’s Office.

PUBLIC COMMENT

Ted Kingston, Strathmere, read a statement into the record of the Strathmere Improvement Association’s concern with the erosion problem in Strathmere. He stated that they are hoping for a permanent solution. He also presented an excerpt from a letter written by Charles Shaffer, the former president of Strathmere Improvement Association, dated December 4, 1963, stating similar concerns. He wants the Committee to request from the State that areas further west be included in this project and not to delay the project.

Mr. Corson stated that the Township is not delaying this project, that the beach project has been moving ahead as planned and upcoming dredging projects are online. He commented that he has a picture of Strathmere from 1912 which shows a similar outlay of land that corresponds to the cyclical nature of beach erosion as outlined previously by Dr. Stewart Farrell from the Coastal Research Center at Stockton College.

Mayor Palombo commented that at this point the Township has done everything it can to get the beach fill project underway. Unfortunately some of the neighboring municipalities have not completed all requirements and have slowed down the progress of the state bidding the beach

replenishment project. Once the project is underway there will be substantial improvement to the Strathmere coastline. The Township is empathetic to the residents of Strathmere and is doing everything they can at this time. The word we have right now is that bidding on the project should happen within two weeks.

Paul Dietrich commented that he does not believe the state would extend the project further west. Dr. Steward Farrell's report was referred to which was presented at a meeting earlier this year in that he discussed the beach erosion being a cyclical event, that it has occurred before, and that once the inlet is choked off, eventually the sand will move back.

Mayor Palombo added that a momentous amount of work has been done getting to this point, and the Township is so close to getting the work done that they will not do anything to jeopardize the project by requesting a plan change.

Lynn Fayter, Strathmere, also asked why the State is not looking at the North end; in addition what time frame was expected for the sand to migrate back to the North. A time frame cannot be predicted as the sand migration is a naturally occurring process. She also mentioned an area where pilings are "just covered" and requested that signage be installed to alert jet skis.

Mayor Palombo discussed that Dr. Farrell's September, 2008 report stated that Vincent and Sherman Avenues would fill in naturally, and that has come to fruition; that the Committee understands the severity of the problem; and that they are doing everything they can to get the project started. This started out as a small project and has been changed to include Strathmere, Sea Isle City, Stone Harbor and North Wildwood. The work will start in Strathmere.

Madeline Filipski, Cape May Court House, represents a group of individuals who want to end the use of chaining dogs. She explained that this project started after a chain death of a dog in Cape May County four years ago. The State of New Jersey currently has proposed a bill in the Senate and Assembly to eliminate chaining of dogs. She considers the proposed legislation vague and is requesting the Township go forward with its own ordinance to eliminate or at least limit chaining. She states chaining of dogs tends to lead to aggressive behaviors and most of dog bites come from chained dogs.

Mayor Palombo did ask for clarification between chaining and runs. Mrs. Filipski responded that runs are called "trolleys" and those are acceptable – it's really the 24/7 chaining of dogs they have issue with. State law would over rule a Township Ordinance unless Statute language allows the Township to pass and enforce its own ordinance.

Mr. Corson requested a copy of current proposed legislation be obtained for review. Mayor Palombo said we would consider the matter as well as the proposed State Statute.

Sonia Forry and Daniel Clark, Rep. of Historical Preservation Society, regarding the Tuckahoe Train Station: They submitted a written request for the Township to install surveillance cameras at the train station. Mr. Corson responded that the Budget was just introduced tonight and unfortunately the budget may not have the money to allow for this. He requested that Mr. Dietrich solicit proposals for the equipment but that he could not give them a definite answer at this time.

Mrs. Forry also requested that a "No Passing" zone be established on the curved section of Rt. 50 in Tuckahoe. The Committee will look into it.

Mrs. Nagler, Steelmantown, inquired about the Gypsy Moth Spray Program. Mayor Palombo informed her it has been included in the budget and that her property will be included.

CLOSED SESSION

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

Motion made by Mayor Palombo, second by Mr. Corson, with all five Committee members voting in the affirmative to discuss items previously mentioned as follows: Municipal Attorney Daniel Young---Litigation-letter regarding G.H. vs. Galloway Township; Contract-lease for Township property; Litigation-beach lot condemnation; Contract Negotiation-auditor's contract; Personnel-employee complaint and grievance. The Municipal Engineer, Paul Dietrich has also identified a Litigation matter to discuss, that being the Paynter matter.

22. Personnel Hearing

RECONVENE PUBLIC PORTION OF MEETING

ADJOURNMENT

There was no further business for this evening and the meeting was adjourned at 11:00 P.M.
Next meeting scheduled for March 9, 2009 at 7:30 P.M.

Minutes prepared by

Wanda Gaglione, RMC
Municipal Clerk

Bill List—

48420 02/23/09 A0006 ADVANCE TREADS INC 663.00 2514
48421 02/23/09 A0018 ACTION SUPPLY INC. 589.59 2514
48422 02/23/09 A0020 ACU-THERM SUPPLY CO.,INC. 136.94 2514
48423 02/23/09 A0024 ADVANCE DOOR & SUPPLY CO. 81.00 2514
48424 02/23/09 A0025 ADVANTAGE RENTAL ACE HARDWARE 214.52 2514
48425 02/23/09 A0033 A.M./P.M.SERVICES 99.00 2514
48426 02/23/09 A0071 ANCHOR FIRE PROTECTION CO. 375.00 2514
48427 02/23/09 A0087 AT & T 21.76 2514
48428 02/23/09 A0091 ATLANTIC CITY ELECTRIC 81.68 2514
48429 02/23/09 B0013 BRADCO SUPPLY CORP. 328.00 2514
48430 02/23/09 B0018 BARRETT,GERALD INC. 85.85 2514
48431 02/23/09 B0035 BELMONT & CRYSTAL SPRINGS 305.07 2514
48432 02/23/09 B0070 HORIZON BLUE CROSS/BLUE SHIELD 103,857.03 2514
48433 02/23/09 B0092 BROKER, EUGENE JR. 96.00 2514
48434 02/23/09 B0148 BLUE FLAME/PARACO GAS 704.08 2514
48435 02/23/09 B0160 BONNER, ROSEMARY 46.55 2514
48436 02/23/09 B0187 BIANCO, SILVINO 818.67 2514
48437 02/23/09 B0188 BIANCO, ANTONIO 818.67 2514
48438 02/23/09 B0189 BIANCO, JEANETTE 818.66 2514
48439 02/23/09 C0023 CALLOWAY,ESQUIRE KENNETH 300.00 2514
48440 02/23/09 C0044 CMC ASSESSORS ASSOCIATION 84.00 2514
48441 02/23/09 C0060 CAPRIONI'S PORTABLE TOILETS 467.00 2514
48442 02/23/09 C0068 COMCAST 190.00 2514
48443 02/23/09 C0101 CHATTEN, LINWOOD R. 80.00 2514
48444 02/23/09 C0143 CODY'S POWER EQUIPMENT 256.25 2514
48445 02/23/09 C0171 COLONIAL ELECTRIC SUPPLY CO. 1,369.02 2514
48446 02/23/09 D0077 DIETRICH,PAUL 20.00 2514
48447 02/23/09 D0130 DuBELL LUMBER CO. 983.38 2514
48448 02/23/09 E0030 EXECUTIVE BUSINESS PRODUCTS 1,757.98 2514
48449 02/23/09 F0006 1ST RESPONDER NEWSPAPER 45.00 2514
48450 02/23/09 G0002 GAGLIONE, WANDA 33.00 2514
48451 02/23/09 G0016 GARDNER HARDWARE INC. 55.45 2514

48452 02/23/09 G0094 GRUBB, JON 56.00 2514
48453 02/23/09 H0012 HALL,ARTHUR 175.97 2514
48454 02/23/09 H0018 HAROLD RUBIN/L & H SUPPLY 108.00 2514
48455 02/23/09 H0057 HISTORICAL PRESERVATION 1,387.50 2514
48456 02/23/09 I0001 IAAO-NEW JERSEY 100.00 2514
48457 02/23/09 I0007 INTERCON TRUCK EQUIPMENT, INC. 186.43 2514
48458 02/23/09 J0002 J.P. COLLINS CO. 168.45 2514
48459 02/23/09 J0026 JIMMY'S LAKESIDE GARAGE 431.25 2514
48460 02/23/09 J0040 JOHNSON & TOWERS, INC. 519.62 2514
48461 02/23/09 K0048 KLEPAC, THADDEUS 25.85 2514
48462 02/23/09 K0064 KAMPMEYER, EVELYN O. & ROY A. 2,440.00 2514
48463 02/23/09 L0031 LORCO PETROLEUM SERVICES 290.00 2514
48464 02/23/09 L0072 LLOYD, JOEL 153.91 2514
48465 02/23/09 L0075 LEXISNEXIS T/A MATTHEW BENDER 60.39 2514
48466 02/23/09 M0012 McCAULEY, RICHARD 49.95 2514
48467 02/23/09 M0021 MASER CONSULTING, P.A. 7,961.63 2514
48468 02/23/09 M0080 McMANIMON & SCOTLAND,L.L.C. 210.00 2514
48469 02/23/09 M0103 MODERN GAS COMPANY, INC. 3,353.13 2514
48470 02/23/09 M0180 MED-TECH RESOURE,INC. 376.50 2514
48471 02/23/09 M0193 MAYNE, MICHAEL 80.00 2514
48472 02/23/09 N0043 NAPA AUTO PARTS OF S.JERSEY 319.43 2514
48473 02/23/09 O0006 OCS PRINTING 114.00 2514
48474 02/23/09 O0014 OCEANPORT LLC 6,994.23 2514
48475 02/23/09 O0016 OCEAN CITY WATER SPORTS 90.00 2514
48476 02/23/09 P0032 PEDRONI FUEL CO. 1,133.23 2514
48477 02/23/09 P0060 PATENT-CONSTRUCTION SYSTEMS 535.84 2514
48478 02/23/09 P0064 PITNEY BOWES 210.00 2514
48479 02/23/09 P0073 POGUE INC. 4,466.00 2514
48480 02/23/09 Q0008 QUILL CORPORATION 295.32 2514
48481 02/23/09 R0030 RIGGINS, INC. 2,114.45 2514
48482 02/23/09 R0055 ROSIAK, CAROL 8.00 2514
48483 02/23/09 R0059 RUTGERS, THE STATE UNIVERSITY 830.00 2514
48484 02/23/09 R0062 RUTGERS, THE STATE UNIVERSITY 1,647.00 2514
48485 02/23/09 R0071 REMINGTON VERNICK & WALBERG 2,926.55 2514
48486 02/23/09 R0073 RICOH AMERICAS CORPORATION 374.33 2514
48487 02/23/09 S0001 SAM'S CLUB 226.43 2514
48488 02/23/09 S0003 SAFERSTEIN, RICHARD,Ph.D. 600.00 2514
48489 02/23/09 S0020 AM SAN 412.62 2514
48490 02/23/09 S0031 SCHULER SECURITY, INC. 75.00 2514
48491 02/23/09 S0072 SEGIN, STEWART S. 205.83 2514
48492 02/23/09 S0134 SO. JERSEY GAS COMPANY 3,109.99 2514
48493 02/23/09 S0138 SOUTH JERSEY SOCCER LEAGUE 400.00 2514
48494 02/23/09 S0153 STERICYCLE, INC. 179.22 2514
48495 02/23/09 S0237 SHILLINGFORD, WILLIAM & DIANE 1,459.00 2514
48496 02/23/09 T0018 TEKK COMM COMMUNICATIONS 644.01 2514
48497 02/23/09 T0022 TERMINIX 47.00 2514
48498 02/23/09 T0032 THE PRESS & SUNDAY PRESS 719.36 2514
48499 02/23/09 T0034 THE PAPER OF U.T./GAZETTE 956.00 2514
48500 02/23/09 T0067 TOWNSHIP OF UPPER PETTY CASH 7.50 2514
48501 02/23/09 T0074 TRANSAXLE LLC 419.70 2514
48502 02/23/09 T0080 TREASURER STATE OF N.J. 3,000.00 2514
48503 02/23/09 T0095 TRI-COUNTY ANIMAL CONTROL 1,500.00 2514
48504 02/23/09 T0097 TRICO EQUIPMENT INC. 112.26 2514
48505 02/23/09 T0151 TAUSCHER, ESTATE OF ELIZABETH 4,360.00 2514
48506 02/23/09 U0033 UPPER TOWNSHIP HOCKEY ASSOC. 26.25 2514
48507 02/23/09 V0001 VCI EMERGENCY VEHICLE 2,263.84 2514
48508 02/23/09 V0005 VAN EMBDEN, NATHAN, ATTORNEY 75.00 2514
48509 02/23/09 V0022 VERIZON 1,750.46 2514
48510 02/23/09 V0024 VAL-U AUTO PARTS L.L.C. 335.58 2514
48511 02/23/09 W0020 WEINSTEIN SUPPLY 1,110.43 2514
48512 02/23/09 W0050 WIRELESS ELECTRONICS, INC. 5,400.00 2514
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Total: \$185,370.59
