

CHAPTER 7E
COASTAL ZONE MANAGEMENT

Authority

N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq.,
13:9A-1 et seq., and 13:19-1 et seq.

Source and Effective Date

R.2003 d.60, effective January 7, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7E, Coastal Zone Management, expires on July 7, 2013. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 7E, Coastal Zone Management, was adopted as R.1978 d.292, effective September 28, 1978. See: 10 N.J.R. 184(a), 10 N.J.R. 384(a).

Public Notice: Federal ruling on N.J.A.C. 7:7E. See: 14 N.J.R. 1467(b).

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1985 d.422, effective July 24, 1985. See: 17 N.J.R. 1465(a), 17 N.J.R. 1797(c), 17 N.J.R. 2021(a).

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1990 d.413, effective July 24, 1990. See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Public Notice: Notice of Routine Program Implementation. See: 25 N.J.R. 1010(a).

Subchapter 3A, Standards for Beach and Dune Activities, Subchapter 3B, Information Required in Wetland Mitigation Proposals, and Subchapter 3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, were adopted as New Rules by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994). See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Appendix to Chapter 7E: Figures 1 through 16 were adopted as a part of R.1994 d.380 and form the Appendix to N.J.A.C. 7:7E. The Figures are not reproduced in this chapter, but can be reviewed by contacting the Office of Administrative Law, Rules and Publications, PO Box 301, Trenton, NJ 08625-0301, or the Department of Environmental Protection.

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1995 d.405, effective June 23, 1995. See: 27 N.J.R. 417(a), 27 N.J.R. 2738(a).

Notice of Routine Program Change. See: 30 N.J.R. 2087(a), 30 N.J.R. 2780(b), 30 N.J.R. 4284(a).

Subchapter 5A, Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area; Subchapter 5B, Impervious Cover Limits and Vegetative Cover Percentages in the CAFTA Area, were adopted as R. 2000 d.45, effective February 7, 2000. See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from June 23, 2000 to March 31, 2001. See: 32 N.J.R. 2591(c).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from March 31, 2001 to March 31, 2002. See: 33 N.J.R. 1370(a).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from September 27, 2002 to January 7, 2003. See: 34 N.J.R. 3641(a).

Chapter 7E, Coastal Zone Management, was readopted as R.2003 d.60, effective January 7, 2003. As part of R.2003 d.60, Subchapter 2, Location, Use and Resource Rules, is repealed. See: Source and Effective Date. See, also, section annotations.

Public Notice: Routine Program Change for Coastal Management Program. See: 35 N.J.R. 4917(a).

Public Notice: Routine Program Change for Coastal Management Program. See: 36 N.J.R. 3304(b).

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program. See: 38 N.J.R. 1587(a).

Subchapter 8A, Information Required to Demonstrate Compliance with the Public Trust Rights Rule, N.J.A.C. 7:7E-8.11; Conservation Restrictions and Public Access Instruments, was adopted as new rules by R.2007 d.374, effective December 17, 2007. See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Public Notice: Coastal Management Office: notice of routine program change to the Coastal Management Program. See: 41 N.J.R. 1272(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from January 7, 2008 to July 7, 2009. See: 40 N.J.R. 781(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from July 7, 2009 to July 7, 2010. See: 41 N.J.R. 2894(a).

Public Notice: Plan Endorsement. See: 42 N.J.R. 523(a).

Petition for Rulemaking. See: 42 N.J.R. 2277(a), 2332(a), 2992(a), 2992(b).

Public Notice: Routine Program Changes for Coastal Management Program. See: 42 N.J.R. 2638(a).

Petition for Rulemaking. See: 43 N.J.R. 451(a).

Public Notice: Determination on Routine Program Changes for Coastal Management Program. See: 43 N.J.R. 681(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from July 7, 2010 to July 7, 2011. See: 42 N.J.R. 468(a).

Case Notes

Department of Environmental Protection (DEP) must make findings under the standards in the statute governing the issuance of permits for development in coastal zones, even if DEP finds that a Coastal Area Facility Review Act (CAFRA) permit application complies with its specific regulations. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) was required to amend its implementing rules with respect to Coastal Area Facility Review Act (CAFRA) to set forth requirement that it make findings under standards set forth in CAFRA prior to issuing permit for development thereunder. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) did not invalidate Coastal Zone management (CZM) rules by giving regulatory effect to state development and redevelopment plan by presuming that boundaries established by state planning commission would function as boundaries pursuant to Coastal Area Facility Review Act (CAFRA), and then by using those boundaries to establish impervious cover limits in CZM rules. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Coastal zone management rules preempted township ordinance governing placement and length of docks. *Tumino v. Long Beach Township*, 319 N.J.Super. 514, 725 A.2d 1173 (N.J.Super.A.D. 1999).

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SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose and scope

(a) This chapter presents the substantive rules of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Land Use Regulation Program in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B. The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy and published the "New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement" in May 1978. The proposed program covered the CAFRA area only. In August 1978, the Governor submitted the revised "New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement" for Federal approval. The approval was received in September 1978. In May 1980, the Department submitted further revisions, published as the "Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement." These revisions incorporated the northern waterfront area, Delaware River area and New Jersey Meadowlands into the Program. In August 1980, the Department submitted the "New Jersey Coastal Management Program and Final Environmental Impact Statement" for Federal approval. The approval was received in September 1980. The Department interprets the "public health, safety and welfare" clause in

CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-4d) as providing for full consideration of the national interest in the wise use of coastal resources as required under the Federal Coastal Zone Management Act (16 U.S.C. §1450).

(c) Both the Coastal Management Program and the Coastal Zone Management rules are founded on the eight broad coastal goals described at (c)1 through 8 below. The coastal goals express results that the Coastal Management Program strives to attain. Each goal is supplemented by related policies that set forth the means to realize that goal. The Coastal Zone Management rules, including the coastal goals and policies set forth below, are enforceable policies of New Jersey's Coastal Management Program as approved under the Federal Coastal Zone Management Act (16 U.S.C. §1450). The New Jersey Coastal Management Program goals and supplemental policies are:

1. Healthy coastal ecosystems.
 - i. Protect, enhance and restore coastal habitats and their living resources to promote biodiversity, water quality, aesthetics, recreation and healthy coastal ecosystems; and
 - ii. Manage coastal activities to protect natural resources and the environment;
2. Effective management of ocean and estuarine resources.
 - i. Develop and implement management measures to attain sustainable recreational and commercial fisheries;
 - ii. Manage commercial uses to reduce conflict between users and encourage water-dependent uses; and
 - iii. Administer the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities;
3. Meaningful public access to and use of tidal waterways and their shores.
 - i. Preserve public trust rights to tidal waterways and their shores;
 - ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;
 - iii. Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;
 - iv. Enhance public access by promoting adequate affordable public facilities and services;
 - v. Balance diverse uses of tidal waterways and their shores; and
4. Sustained and revitalized water-dependent uses.
 - i. Encourage, sustain and enhance active port and other water-dependent facilities, and maritime uses;
 - ii. Encourage the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses;
 - iii. Conserve waterfront sites for water-dependent activities; and
 - iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredge material management practices and preserve historic dredged material placement sites;
5. Coastal open space.
 - i. Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that:
 - (1) Provide opportunities for passive and active recreation;
 - (2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values;
 - (3) Minimize natural hazards; and
 - (4) Abate impacts from nonpoint sources of pollution;
 - ii. Promote and enhance public access to and use of open space where appropriate; and
 - iii. Promote strategies for the creation of open space;
6. Safe, healthy and well-planned coastal communities and regions.
 - i. Manage coastal activities and foster well-planned communities and regions that:
 - (1) Encourage mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites;
 - (2) Promote concentrated patterns of development;
 - (3) Ensure the availability of suitable waterfront areas for water dependent activities;
 - (4) Sustain coastal economies;
 - (5) Create vibrant coastal communities and waterfronts;
 - (6) Conserve water supply;
 - (7) Protect the natural environment;
 - (8) Minimize the threat of natural hazards to life and property;

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.
See: 41 N.J.R. 2343(c).

Case Notes

Definition of "impervious cover" established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity was not arbitrary or otherwise impermissible, despite its inclusion in "impervious cover" of types of cover described in earlier rules as "permeable cover," where intervening rules removed distinction between impervious and permeable cover, establishing single permissible development intensity regardless of which form of cover was utilized, and where change in definition was supported by DEP's experience with permeable paving. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Board's recognition of impact of zoning variance on upland property eliminated the need for reconsideration. *Anfuso v. Seeley*, 243 N.J.Super. 349, 579 A.2d 817 (A.D.1990).

Nonaggrieved third parties lack statutory right to administrative hearing to challenge coastal development. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq. *Spalt v. New Jersey Dept. of Environmental Protection*, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989) certification denied 122 N.J. 140, 584 A.2d 213.

Fears of damage to generalized property rights were insufficient to entitle residents to adjudicatory hearing regarding coastal development. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq., 52:14B-2(b), 52:14B-9. *Spalt v. New Jersey Dept. of Environmental Protection*, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989) certification denied 122 N.J. 140, 584 A.2d 213.

State's interest in waterfront development was rational basis for depriving fisherman of the right to work at that particular site. N.J.S.A. 12:5-1 et seq., 13:19-1 et seq., 52:14B-2(b), 52:14B-9. *Spalt v. New Jersey Dept. of Environmental Protection*, 237 N.J.Super. 206, 567 A.2d 264 (A.D.1989) certification denied 122 N.J. 140, 584 A.2d 213.

Conditional approval of construction permit for large scale development, permitting no construction until statutory standards satisfied, improper as not authorized by enabling legislation and as being a decision deficient in essential findings (citing former N.J.A.C. 7:7D-2.3). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div.1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

Record established that landowner was entitled to waterfront development permit to bulkhead 100 foot lot and relocate drainage pipe. *Baron v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 18.

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, that is, replacement in kind within the same watershed. The Department will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the coastal goals and supplemental policies at N.J.A.C. 7:7E-1.1(c). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.49).

(b) Rationale: This rule is intended to conserve those physical and biological values described under applicable Special Area rules, while allowing development consistent with acceptability criteria. Use of this mitigation rule will result in real gain, or no net loss of habitat productivity or resource value.

New Rule by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text at (a) and (b) deleted; provisions moved to 3.27 and 3.15.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a), substituted "Department" for "Program" in the second sentence and substituted "3.9" for "3.48" in the third sentence.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (a), amended N.J.A.C. references.

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In (a), substituted "coastal goals and supplemental policies at N.J.A.C. 7:7E-1.1(c)" for "basic coastal policies (N.J.A.C. 7:7E-1.5(a)1)".

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

7:7E-1.7 Correspondence with the Department

Correspondence related to this chapter may be submitted to the Department at the following address:

Land Use Regulation Program
New Jersey Department of Environmental
Protection
501 E. State Street
PO Box 439
Trenton, New Jersey 08625-0439

New Rule, R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

7:7E-1.8 Definitions

(a) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Acceptable" means that a proposed use of coastal resources is likely to be approved.

"Action," "activity," "project," "proposal" or "use" are used interchangeably to describe the proposed use of coastal resources that is under scrutiny using the Coastal Zone Management rules.

"Area": See definition for "site" below.

"Bulkhead" means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a "revetment" or a "gabion" as defined elsewhere in this section.

“CAFRA area” means the “coastal area” defined in the Coastal Area Facility Review Act at N.J.S.A. 13:19-4.

“Coastal Permit” or “permit” means a permit or an authorization, including a Federal Consistency determination and Water Quality Certificate, issued by the Department under this chapter pursuant to any of the following statutes: the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-3; Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

“Commercial development” means a development designed, constructed or intended to accommodate commercial, retail or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food or other merchandise, or any establishment used for providing professional, financial or other commercial services.

“Conditionally acceptable” means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the rules are satisfied.

“Conservation restriction” means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or for public access to tidal waterways and their shores, or as suitable habitat for fish or wildlife, to forbid or limit any or all of the following:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

“Development” means any activity for which a Wetlands Act of 1970 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

“Discouraged” means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status, the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern.

“Dwelling unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home or any habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

“11-digit hydrologic unit code area” means an area within which water drains to a particular receiving surface water body, which area is identified by an 11-digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled “Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey.” The HUC codes of New Jersey can be downloaded from www.njgeodata.state.nj.us. The HUC 11 data is entitled “subwatersheds.” Software designed for use with Geographic Information Systems (GIS) will be required to view that downloaded data.

“Encouraged” means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.

“Footprint of development” means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

“Gabion” means a shore protection structure that is comprised of wire mesh basket(s) or mattress(es) filled with rock and used in multiples as a structural unit installed to withstand the forces of waves and currents. A gabion is not a “bulkhead” or a “revetment” as defined elsewhere in this section.

“Habitable structure” means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or can be demonstrated to have been legally occupied as a dwelling unit for the most recent five years.

“Impervious cover” means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar structures, surfaces, or improvements are considered impervious cover. Grass, lawns, or any other vegetation are not considered impervious cover.

“Linear development” means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line.

“Location”: See definition for “site” below.

“Major commercial development” means a commercial development with a cumulative building area of greater than 100,000 square feet.

“Mean high water” (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey coast, the two high waters of each tidal day are included in the mean. This datum is available from the Department, Bureau of Tidelands Management.

“Mean high water line” (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone.

1. For practical purposes, the mean high water line is often referred to as the “ordinary” high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.

“Minor commercial development” means a commercial development with a cumulative building area of 100,000 square feet or less.

“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide.

Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

“Program” means the Department of Environmental Protection’s Land Use Regulation Program.

“Prohibited” means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.

“Reconstruction” means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area covered by buildings and/or asphalt or concrete pavement and does not result in a change in the use of the development. Reconstruction of docks and piers means repair or replacement in the same location and size of the preexisting structure. Reconstruction does not include repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.1(c)4.

“Revetment” means a sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents. A revetment is not a “gabion” or “bulkhead” as defined elsewhere in this section.

“Site” means the lot or lots upon which a proposed development is to be constructed.

“Spring high water line” is the intersection of the land with the water surface at the elevation of spring high tide.

“Spring tide” means a tide that occurs at or near the time of new and full moon and which rises highest (spring high tide) and falls lowest (spring low tide) from the mean level.

“Water dependent” means development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer, long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.

“Water oriented” means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.

“Watershed management area” means an aggregation of the 11-digit hydrologic unit codes designated by the Department as a watershed management area and shown on the map entitled “New Jersey’s Watersheds, Watershed Management Areas, and Water Regions,” dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department’s Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at www.state.nj.us/dep/gis.

New Rule, R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote definition “Coastal Permit”; and in the introductory paragraph of definition “Conservation restriction”; inserted “or for public access to tidal waterways and their shores”.

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

Rewrote (a); and added definition “Footprint of development”.

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

Petition for Rulemaking.

See: 42 N.J.R. 2332(a), 2992(a).

Petition for Rulemaking.

See: 43 N.J.R. 680(b).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

OFFICE OF ADMINISTRATIVE LAW NOTE: Rationale statements were filed as a part of these rules, but have not been reproduced in this subchapter. The rationale statements can be reviewed at the following office:

Office of Administrative Law
 Quakerbridge Plaza
 Bldg. No. 9
 PO Box 049
 Trenton, New Jersey 08625-0049

7:7E-3.1 Purpose and scope

(a) Special Areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. This subchapter divides Special Areas into four categories:

1. Special Water Areas, N.J.A.C. 7:7E-3.2 through 3.15, extend landward to the spring high water line or the level of normal flow in non-tidal waters;

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

In (a)2, under the heading "ATLANTIC COUNTY", inserted "Bader Field, Atlantic City".

Case Notes

Department of Environmental Protection did not abuse its discretion in considering only modifications in its review of developer's application for major-modification permit, and thus, appeal from grant of application did not revive appellant's expired right to challenge Department's prior waiver of island corridor preservation policy; modified project generally fit within "footprint" of original proposal. In re CAFRA Permit No. 87-0959-5 Issued to Gateway Associates, 704 A.2d 1261, 152 N.J. 287 (N.J. 1997).

Regulation authorizing relaxation of application of rules when necessary and in public interest allowed only waiver of procedural rules for Coastal Area Facility Review Act development permits and did not authorize Department of Environmental Protection to waive bay island corridor preservation policy incorporated into separate chapter. In re CAFRA Permit No. 87-0959-5 Issued to Gateway Associates, 290 N.J.Super. 498, 676 A.2d 161 (A.D.1996).

Requirements of Coastal Area Facilities Review Act for coastal area development; waiver. SMB Associates (Anchoring Point) v. New Jersey Dept. of Environmental Protection, 137 N.J. 58, 644 A.2d 558 (1994).

Public interest group; standing to challenge coastal area review board's decision to grant permit. SMB Associates (Anchoring Point) v. New Jersey Dept. of Environmental Protection, 137 N.J. 58, 644 A.2d 558 (1994).

Absent regulations authorizing them to grant waivers, the Commissioner of Department of Environmental Protection and the Coastal Area Review Board had no authority to grant a waiver from compliance with regulations. SMB Associates v. New Jersey Dept. of Environmental Protection, 246 N.J.Super. 38, 624 A.2d 14 (A.D.1993) certification granted 134 N.J. 562, 636 A.2d 520, affirmed 137 N.J. 58, 644 A.2d 558.

Where petitioner sought to demolish the buildings at an existing marina on a bay island, redevelop the marina on a smaller scale, and use the remaining land to construct 10 new single-family homes, the proposed project did not meet the clear provisions of the bay island rule, and any additional exemptions to the rule had to be sought by rulemaking rather than by a contested case; the Department does not have authority to waive its own regulations, and its application of the rule was reasonable and not arbitrary or capricious, notwithstanding that there were no wetlands, forested areas, or threatened or endangered species or habitat on site and that the redevelopment would have yielded some environmental benefits. Landview Property Group v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 4063-04, 2006 N.J. AGEN LEXIS 581, Final Decision (July 12, 2006).

Property between two barrier islands was subject to classification and more restrictive regulation as a bay island. Estate of Sims v. Department of Environmental Protection, 95 N.J.A.R.2d (EPE) 6.

Bay island was dependent upon location coupled with geological characteristics. Sims v. DEPE, 95 N.J.A.R.2d (EPE) 6.

7:7E-3.22 Beaches

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including ocean, bay and river shorelines (see Appendix, Figure 1), that extend landward from the mean high water line to either:

1. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except the sandy areas that extend fully under and landward of an elevated boardwalk are considered beach areas; or

2. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

(b) Development is prohibited on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts to the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;

3. The reconstruction of existing amusement and fishing piers and boardwalks;

4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);

6. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities;

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A; and

9. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:

i. Development on or over existing ocean piers;

ii. Pilings necessary to support development proposed on or over existing ocean piers; and

iii. Development on or over the Boardwalk.

(c) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C.

7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

(Agency Note: N.J.A.C. 7:7E-3.16 through 3.32 are Special Water's Edge Areas. Within these sections, N.J.A.C. 7:7E-3.16 through 3.19 belong to the Oceanfront, and Raritan and Delaware Bayfronts subcategory.)

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on overwash fans deleted.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Inserted (b)9.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (c).

Case Notes

Sand areas adjacent to bay were "beaches," albeit only minimal ones, that were subject to coastal permit program rules governing beaches, for purposes of property owners' application for permit to construct bulkhead. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Public Trust Doctrine requires that once a municipality permits swimming in an area of public beach, it cannot restrict the right of all who wish to swim from doing so; municipal ban on swimming in water adjoining beach owned by religious order whose members were permitted to swim is a violation of the equal protection and due process clauses. *Capano v. Boro. of Stone Harbor*, 530 F.Supp. 1254 (D.N.J.1982).

7:7E-3.23 Filled water's edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following:

1. The waterfront portion of the site shall be:
 - i. Developed with a water dependent use, as defined at N.J.A.C. 7:7E-1.8;
 - ii. Developed with an at-grade deck provided:
 - (1) The deck is open to the general public;
 - (2) The use of the deck is water oriented;
 - (3) The deck is not enclosed; and
 - (4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or
 - iii. Left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

3. On large filled water's edge sites, of about 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July of 1977, development must comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:
 - i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area (N.J.A.C. 7:7E-3.10) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;
 - ii. Marina services are expanded in capacity and upgraded (that is, modernized) to the maximum extent practicable; and
 - iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as de-

terminated by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) In waterfront areas located outside of the CAFRA zone the water dependent use may be a public walkway, provided the upland walkway right-of-way is at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) In the area known as Bader Field, a filled water's edge area located in the City of Atlantic City and described on the 2008 Atlantic City tax duplicate as Block 794, Lot 1, the water dependent use shall be provided in accordance with (c) above or an upland public walkway along the water's edge, no less than 20 feet wide, with a 40-foot-wide right-of-way shall be provided.

(h) The development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(i) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;
2. The developed land uses closest to the water's edge are water oriented;
3. Currently active maritime port and industrial land uses are preserved;
4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and
5. All other coastal rules are met.

(j) On all filled water's edge sites, development must comply with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

(k) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(a)2 text deleted "if no shore ... erosion hazard area." (b) deleted; (b)1i.-ii. recodified to (b)1.-2.; (b)2 deleted.

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on erosion hazard areas deleted.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Rewrote (g).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "development shall comply with the following:" for "development must comply with the following conditions:" in the introductory paragraph and rewrote 1.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (i).

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

Added new (g); and recodified former (g) through (j) as (h) through (k).

Case Notes

Project promoting public access and water dependent uses of waterfront property complied with Waterfront Development Act. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

7:7E-3.24 Existing lagoon edges

(a) Existing lagoon edges are defined as existing manmade land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of existing lagoon edges is acceptable provided:

1. The proposed development is compatible with existing adjacent land and water uses;

2. Existing retaining structures are adequate to protect the proposed development;

3. New or reconstructed retaining structures are consistent with the filling rule at N.J.A.C. 7:7E-4.10 and structural shore protection rule N.J.A.C. 7:7E-7.11(e); and

wintering areas, and muskrat habitats, are singled out as water or water's edge areas.

3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish and Wildlife.

(b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

1. Minimal feasible interference with the habitat can be demonstrated;

2. There is no prudent or feasible alternative location for the development; and

3. The proposal includes appropriate mitigation measures.

(c) The Department will review proposals on a case-by-case basis.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on special hazard areas recodified to 3.41; text on critical wildlife habitats recodified from 3.37.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a)3, deleted “, Game” following “Fish” throughout.

Case Notes

Where a municipality applied for a permit to reduce the height of certain dunes within its municipal jurisdiction to 15 feet so that it could comply with easements it entered into with several beach front property owners in connection with a 1989 beach replenishment and dunes restoration program, whereby it agreed to maintain the dunes at an elevation not to exceed three feet above bulkhead height, reducing the dune height would significantly reduce the dunes' shore protection value and the municipality's application failed to meet the criteria embodied in N.J.A.C. 7:7E-3.19 (erosion high hazard areas), N.J.A.C. 7:7E-3.38 (endangered or threatened wildlife or plant species habitat), and N.J.A.C. 7:7E-3.39 (critical wildlife habitat) (adopting Initial Decision as modified). *Ocean City v. N.J. Dep't of Env't. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 10103-05, 2007 N.J. AGEN LEXIS 498, Final Decision (April 27, 2007).

7:7E-3.40 Public open space

(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State

Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.

(b) New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.

(c) Development that adversely affects existing public open space is discouraged.

(d) Development within existing public open space is conditionally acceptable, provided that the development is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7E-3.49(e) through (j).

(f) Provision of barrier free access to public open space is encouraged.

(g) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(h) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section recodified; new (e).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on excluded Federal lands recodified to 3.42; text on public open space recodified from 3.38.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Inserted a new (e); and recodified former (e) through (g) as (f) through (h).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (d), deleted “complies with the Rules on Coastal Zone Management and” preceding “is consistent with”.

Petition for Rulemaking.

See: 42 N.J.R. 2277(a), 2992(b).

Petition for Rulemaking.

See: 43 N.J.R. 451(a).

7:7E-3.41 Special hazard areas

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to

public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11bk are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) Approvals from the Department's Division of Solid and Hazardous Waste shall be obtained prior to the commencement of any hazardous substance investigations or cleanup activities at contaminated sites.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Added text in (b), "and areas where . . . including adjacent areas."
Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Text on special urban areas recodified to 3.43; text on special hazard areas recodified from 3.39, with reference to N.J.S.A. 58:10-23.11b-k added at (a) and (c) added.

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "Department's Division of Solid and Hazardous Waste shall" for "DEP's Division of Hazardous Waste management shall".

7:7E-3.42 Excluded Federal lands

(a) Excluded Federal lands are those lands, the use of which is, by law, subject solely to the discretion of or held in trust by the Federal Government, its officers or agents. These lands are excluded from the coastal zone as required by Section 304 of the Federal Coastal Zone Management Act.

1. The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.

(b) Federal actions on excluded Federal lands that affect any land or water use, or natural resource of the coastal zone shall be consistent with the Coastal Zone Management rules to the maximum extent practicable. The effects on the land or water use or natural resource maybe direct, indirect, cumulative, secondary or reasonably foreseeable effects.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Added text in (b), "They are listed ... at page 370."
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Pinelands National Reserve and Pinelands Protection Area recodified to 3.44; text on excluded Federal lands recodified from 3.42.

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).
Rewrote the section.

7:7E-3.43 Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative which is more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, the public trust rights rule, N.J.A.C. 7:7E-8.11, and the Hudson River Waterfront Area rule, N.J.A.C. 7:7E-3.48, where applicable, are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;
2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or
3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the filled water's edge rule at N.J.A.C. 7:7E-3.23 and public access is provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially recodified and amended.

Amended by R.1988 d.338, effective August 15, 1988.

See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Added text in (c) "and the Hudson River Waterfront Policy (7:7E-3.46) where applicable".

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Hackensack Meadowlands District recodified to 3.45; text on special urban areas recodified from 3.41, with the addition of Commercial Twp., Gloucester City, Kearny, Paulsboro, Pennsauken, Penns Grove, Pleasantville, Salem and Woodbury.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote (a); in (d), inserted "the public access to the waterfront rule at" preceding "N.J.A.C. 7:7E-8.11".

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote the introductory paragraph of (c); and rewrote (d).

7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;

2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;

3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;

4. A single crossing is used where feasible;

5. There is no reduction of the total width and volume of the water body passing under the bridge;

6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and

7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;

2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and

3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(i) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Hudson River Waterfront Area recodified to 3.48; text on wild and scenic river corridors recodified from 3.44, expanded to include those corridors protected under the Federal Wild and Scenic River Act (16 U.S.C. §§ 1271-1278); development restricted by new (b)4 and 5.

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

7:7E-3.47 Geodetic control reference marks

(a) Geodetic control reference marks are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, c.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb,

ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

New Rule R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on geodetic control reference marks recodified from 3.45.
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

7:7E-3.48 Hudson River Waterfront Area

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level.

2. "The Hudson River Waterfront Area" extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee subject to the Waterfront Development Law.

3. "Landward end of pier" means the end of the pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.

5. "Pier deck level" means the lowest deck surface that is at or above the flood hazard area design flood elevation as defined at and determined in accordance with N.J.A.C. 7:13.

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.

(b) Non-industrial development within the Hudson River Waterfront Area shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing and public access. Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Zone Management rules with particular attention given to N.J.A.C. 7:7E-3.40, Public open space, N.J.A.C. 7:7E-3.41, Special hazards areas, N.J.A.C. 7:7E-3.43, Special urban areas, N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights, N.J.A.C. 7:7E-7.14, High rise structures, N.J.A.C. 7:7E-8.11, Public trust rights, N.J.A.C. 7:7E-8.12, Scenic resources and design, and N.J.A.C. 7:7E-8.4, Water quality.

(d) The following standards apply to all developments proposed on piers and will be used by the Department as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under rules that regulate upland development.

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of landward open space} = \frac{(ABH)^2}{40 \text{ feet}} - (2 \times ABH) + 60 \text{ feet}$$

Example:	Average Height	Minimum Landward Open Space Length
	80 feet	60 feet
	70 feet	42.5 feet
	60 feet	30 feet
	50 feet	22.5 feet
	40 feet	20 feet;

iii. The minimum length of distal public open space at the waterward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

iv. The minimum length of public open space at the waterward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of waterward open space} = \frac{(ABH)^2}{16 \text{ feet}} - (5 \times ABH) + 120 \text{ feet}$$

Example:	Average Height	Minimum Waterward Open Space Length
	80 feet	120 feet
	70 feet	76 feet
	60 feet	45 feet
	50 feet	26 feet
	40 feet	20 feet;

v. The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) Public open space at each pier end, that covers the full width of the pier, shall be at least 20 feet in length or 70 percent of the minimum length, as determined above at (d)1i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 percent of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 percent of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;

vi. At least one public access walkway of at least 16 feet in width shall be provided along the entire length of a pier, from the waterward end to the landward end at the point at which it abuts the Hudson River Waterfront

Walkway. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;

vii. Where piers are less than 400 feet apart, the heights, as allowed by this section, shall be further reduced by 20 percent for each pier. No reduction of open space will be allowed as a result of this height reduction; and

viii. Development that reuses existing structures on piers shall comply with the above criteria to the maximum practical extent; and

ix. All pier structures shall meet the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation restriction in favor of the Department. The conservation restriction shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. Public access to and along the main route of the Hudson Waterfront Walkway and on the adjacent piers shall be on a 24-hour basis, except as provided by N.J.A.C. 7:7E-8.11(f).

2. Within all public access corridors and public open space areas on piers, pedestrians shall have a declared right of way over vehicles. Public access corridors may be used for emergency vehicular access, but shall not serve as service or general vehicular roadways. All instances of vehicular/pedestrian crossing shall be designated to assure motorists are aware they are crossing a pedestrian right of way. Stop signs, speed bumps and similar design techniques shall be used as necessary.

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule and the development, as proposed, would remain in compliance with the public trust rights rule, N.J.A.C. 7:7E-8.11. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

New Rule, 1988 d.338, effective August 15, 1988.
See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).
Amended by R.1989 d.271, effective May 15, 1989.
See: 20 N.J.R. 1982(a), 21 N.J.R. 1332(b).

Change at (d) from all walkways being 15 feet in width to providing at least one of at least 16 feet in width.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Hudson River Waterfront Area recodified from 3.46; requirement for easement to DEP added at (e) design standards and guideline references updated.

Amended by R.2000 d.428, effective October 16, 2000.
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(a).

In (e), substituted "restriction" for "easement" throughout introductory paragraph.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "Zone Management rules" for "Resource and Development Policies"; in (d), substituted "Department" for "Division" and "rules" for "policies" and deleted the last sentence in the introductory paragraph; in (e)1, substituted "Department" for "Division"; rewrote (f).
Amended by R.2004 d.43, effective January 20, 2004.
See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (c), amended N.J.A.C. references.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Rewrote (a)5 and (d)1ix.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (c), inserted "N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights," and substituted "Public trust rights" for "Public access to the waterfront"; in the introductory paragraph of (e); substituted "restriction" for "easement" twice; rewrote (e)1; deleted former (e)2; recodified former (e)3 as (e)2; and in (f), inserted "and the development, as proposed, would remain in compliance with the public trust rights rule, N.J.A.C. 7:7E-8.11".

Law Review and Journal Commentaries

Environmental Law. On the Waterfront. Lewis Goldshore and Marsha Wolf, 157 N.J.L.J. 1180.

7:7E-3.49 Atlantic City

(a) Atlantic City is those lands within the municipal boundary of the City of Atlantic City.

(b) "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

1. Casino hotel development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable. For the purpose of this section, the State Marina area is the area bounded by Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to Magellan Avenue, across Delta Basin.

i. Casino hotel development is discouraged in existing residential areas and in areas where access by public transportation between the proposed hotel-casino and the Boardwalk is limited.

ii. Casino hotel development is discouraged along the access highways to Atlantic City that is, along the entire Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal.

iii. Casino development is encouraged in Atlantic City to ensure that the objectives of the 1976 con-

stitutional referendum on casino gambling, including the stimulation of new construction and the revitalization of Atlantic City and its region, are achieved.

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

- i. Garden Pier;
- ii. Steel Pier;
- iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;
- iv. Central Pier; and
- v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by the Federal Emergency Management Agency for a hotel to be located over the water.

3. The development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management.

4. A minimum of 50 percent of the total floor area of any building constructed on the pier shall be devoted to publicly accessible, non-casino entertainment and recreation.

5. The height of structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements, amusement rides, and wind turbines, which shall not exceed 200 feet. The height of the wind turbine shall be measured from the decking of

the pier to the tip of the blade at its highest position. There shall be no occupancy above the 100-foot elevation.

6. The height of the structures on the pier shall not exceed 50 feet above the deck surface of the Boardwalk within 100 feet of the property line in common with the Boardwalk.

7. A building setback of 50 feet shall be maintained from the seaward end of the pier. If a building is 50 feet or more in height, an additional 20 feet setback from the seaward end of the pier is required.

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude such passage;

ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach on the southwesterly side of the pier, where the pier intersects the Boardwalk and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk;

iii. Publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas, shall be provided at the seaward end of the pier at the level of the deck surface of the Boardwalk. The publicly accessible open space shall occupy the entire width of the pier (parallel to the ocean shoreline in a northeast-southwest direction) for a distance of 50 feet landward from the end of the pier. The area between 30 and 50 feet inland from the end of the pier may be occupied by outdoor dining and food concessions and be partially enclosed, through the use of awnings, canopies, and windbreaks. No other structures shall be placed in this area;

those developments listed in (i) above, in accordance with the following:

1. The amount to be paid in mitigation shall be calculated as follows:

i. For development within a street right-of-way at grade, or below a height of 14 feet six inches above grade, the amount of mitigation is five times the property tax on the assessed value of the right-of-way area to be developed. The assessed value is an average of the value of the land on both sides of the area to be developed; and

ii. For development within a street right-of-way at a height of 14 feet six inches or greater above grade, the amount of mitigation is three times the Atlantic City tax on the assessed value of the right-of-way area to be covered by development. The assessed value is an average of the value of the land on both sides of the right-of-way area to be covered by development;

2. Mitigation monies shall be paid in full to the Casino Reinvestment and Development Authority prior to the commencement of construction; and

3. Mitigation monies paid to the Casino Reinvestment and Development Authority in accordance with (j)1 and 2 above, shall be designated only for acquisition and/or improvement of lands for public access and public parks along the oceanfront and inlet. If the money is used for these improvements within a street-end, the money shall be used only in a street-end listed in (f) above.

(k) Standards relevant to intercept parking are as follows:

1. Each hotel-casino facility located in Atlantic City shall provide one of every five non-Absecon Island and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor and Longport. Brigantine Island residents are residents of the City of Brigantine. Nobsecon Island and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon Island and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon Island and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine Islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

2. Alternatives that would reduce vehicle miles traveled and peak hour employee travel demand may be substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the Department of Transportation. The Department will approve alternatives, which it determines will reduce vehicle miles

traveled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

3. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island resident employees. This information shall be provided to the Department along with the necessary data used to establish the vehicle miles traveled and peak hour employee travel demand with and without the proposed peak hour traffic reduction program. All proposals shall include a monitoring program to be submitted to the Department to verify the success of the proposed traffic reduction program, update the employee travel characteristics pattern, and serve as a basis for future adjustments if necessary.

(l) Development in Atlantic City shall be constructed in conformance with this section and with all other applicable provisions in this chapter.

New Rule, R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

Rewrote (f) and (g).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Rewrote (c)5.

7:7E-3.50 Lands and waters subject to public trust rights

(a) Lands and waters subject to public trust rights are tidal waterways and their shores, including both lands now or formerly below the mean high water line, and shores above the mean high water line. Tidal waterways and their shores are subject to the Public Trust Doctrine and are held in trust by the State for the benefit of all the people, allowing the public to fully enjoy these lands and waters for a variety of public uses.

(b) Development that adversely affects lands and waters subject to public trust rights is discouraged.

(c) In accordance with the moratorium imposed under the Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq., the requirements of this section shall not apply to marinas until January 1, 2011.

(d) Public access to lands and waters subject to public trust rights shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7E-8.11.

(e) Rationale: See the OAL Note at the beginning of this subchapter.

New Rule, R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c).

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Purpose and scope

(a) This subchapter sets forth the standards applicable to routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks. These standards are referenced at N.J.A.C. 7:7E-3.16, Dunes; N.J.A.C. 7:7E-3.17, Overwash areas; N.J.A.C. 7:7E-3.19, Erosion hazard areas; N.J.A.C. 7:7E-3.22, Beaches; and N.J.A.C. 7:7E-7.11, Coastal engineering. In addition, N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 are the standards for the coastal general permit for beach and dune maintenance activities, N.J.A.C. 7:7-7.6.

1. The standards applicable to routine beach maintenance, including debris removal and clean-up; mechanical sifting and raking; maintenance of access ways; removal of sand from street ends; boardwalk promenades and residential properties; repairs or reconstruction of existing gazebos and dune walkover structures, and limited sand transfers from the lower beach to the upper beach or alongshore are found at N.J.A.C. 7:7E-3A.2;

2. The standards that apply to the restoration of all beaches that are impacted by coastal storms with a recurrence interval to or exceeding a five-year storm event are found at N.J.A.C. 7:7E-3A.3;

3. The standards for dune creation and maintenance including the placement and/or repair of sand fencing, the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width; and the construction or repair of approved dune walkover structures are found at N.J.A.C. 7:7E-3A.4; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. 7:7E-3A.5.

New Rule, R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Former N.J.A.C. 7:7E-3A.1, Standards applicable to routine beach maintenance, recodified to N.J.A.C. 7:7E-3A.2.

Case Notes

New Jersey Department of Environmental Protection's broad scope of authority under the New Jersey Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 through 13:19-21, included jurisdiction to review fees proposed by a private beach club for the public's use of its beach. *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40, 879 A.2d 112, 2005 N.J. LEXIS 932 (2005).

7:7E-3A.2 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to

the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the DEP, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

3. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*) and Least Terns (*Sterna albifrons*), no beach raking or other mechanical manipulation of the beach shall take place between April 1 and August 15.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting season. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and be available upon request from the Department's Land Use Regulation Program at PO Box 439, Trenton, New Jersey 08625-0439 (609) 292-0060. The updated list shall be provided by the Department to each permittee prior to April 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (a)3i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no beach raking or other mechanical

SUBCHAPTER 7. USE RULES

OFFICE OF ADMINISTRATIVE LAW NOTE: Rationale statements were filed as a part of these rules, but have not been reproduced in this subchapter. The rationale statements can be reviewed at the following office:

Office of Administrative Law
Quakerbridge Plaza
Bldg. No. 9
PO Box 049
Trenton, New Jersey 08625-0049

7:7E-7.1 Purpose and scope

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules must be satisfied in addition to the location rules (N.J.A.C. 7:7E-2 through 6), and the resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

Case Notes

Construction permit application denied due to anticipated nitrate production; testing to challenge application denial found to not meet acceptable scientific standards. *Andover Mobile Home Park v. Dept. of Environmental Protection*, 4 N.J.A.R. 420 (1981).

7:7E-7.2 Housing use rules

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in Water Areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of

the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

iii. New housing acceptable under this rule shall be consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule, N.J.A.C. 7:7E-3.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11. The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the existing lagoon edge rule (N.J.A.C. 7:7E-3.24) and the filling rule (N.J.A.C. 7:7E-4.10) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

7. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to floating homes are as follows:

1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

2. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (e)2i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach

nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the Dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)10i below, unless the development meets either (e)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of

the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Except as provided in (e)5i below, public access shall be provided in accordance with the Public trust rights rule, N.J.A.C. 7:7E-8.11. Public access requirements may also be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).

i. In accordance with N.J.A.C. 7:7E-8.11(f)5, the Department shall not require public access for the development listed under (e) above provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores.

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25;

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before

construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)10i above;

12. The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(f);

13. Rationale: See the OAL Note at the beginning of this subchapter.

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunc-

tion with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (f)2i through iv below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The single family home or duplex legally existed on July 19, 1993;

(2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;

(3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;

(4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The development is the enclosure of a deck, patio, or porch;

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;

(3) The deck, patio, or porch legally existed on July 19, 1993;

(4) The deck, patio, or porch abuts the dwelling;

(5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;

(6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;

(7) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single

family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)10i below, unless the development meets either (f)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Except as provided in (f)5i below, public access shall be provided in accordance with the Public trust rights rule, N.J.A.C. 7:7E-8.11. Public access requirements may also be imposed as a condition of Shore Protection Program funding, pursuant to N.J.A.C. 7:7E-8.11(p).

i. In accordance with N.J.A.C. 7:7E-8.11(f)5, the Department shall not require public access for the development listed under (f) above provided no beach and dune maintenance activities are proposed and the site does not include a beach on or adjacent to the

Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay or their shores.

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the

existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)10i above;

12. The standards for the development of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(e);

13. Rationale: See the OAL Note at the beginning of this subchapter.

(g) The standards relevant to housing and transportation are as follows:

1. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

4. Rationale: See the OAL Note at the beginning of this subchapter.

Correction: Subsection (e)—Inserted omission concerning affordable housing.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended.

Petition for Rulemaking: Petitioned for a departmental level "conceptual approval"; denied.

See: 21 N.J.R. 1912(a).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

New housing policy replaced outmoded affordable housing use policy at (f).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Public Notice: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 5333(b); 30 N.J.R. 494(a).

Administrative correction.

See: 30 N.J.R. 217(a).

Petition for Rulemaking.

See: 30 N.J.R. 2525(a), 30 N.J.R. 4077(a).

Amended by R.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

Rewrote (e)1iii(3).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (b)3, rewrote the second sentence.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Deleted former (e), inserted new (e) and (f), and recodified former (f) as (g).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (e)8 and (f)8, deleted "elevation and flood proofing" preceding "requirements" and substituted "Flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "National Flood Insurance Program regulations at 44 CFR Chapter 1".

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (b)2iii, substituted "lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate"; in (b)3, substituted "N.J.A.C. 7:7E-3.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "(N.J.A.C. 7:7E-3.23) and the Public Access to Waterfront Rule (N.J.A.C. 7:7E-8.11)"; added new (e)5; recodified former (e)5 through (e)12 as (e)6 through (e)13; added new (f)5; and recodified former (f)5 through (f)12 as (f)6 through (f)13.

Case Notes

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)lii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an ocean-front home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J. Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Regulation noted as being responsive to both CAFRA directions and to the fair share housing constitutional mandate of the Mount Laurel I decision. *Southern Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.*, 92 N.J. 158, 456 A.2d 390, on remand 207 N.J. Super. 169, 504 A.2d 66 (1983).

Department of Environmental Protection to impose "fair share" housing conditions to provide for low and moderate income housing (citing former N.J.A.C. 7:7E-8.6 and 7:7E-8.11). In re *Egg Harbor Associates*, 185 N.J. Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 465 A.2d 1115 (1983).

Former rules for large scale residential development do not support conditional approval of construction permit for large scale development because of serious deficiencies in essential findings (citing former regulations and former N.J.A.C. 7:7E-8.11). *Crema v. Dept. of Environmental Protection*, 182 N.J. Super. 445, 442 A.2d 630 (App.Div.1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

Where a Settlement Agreement and Letter of Authorization (LOA) following alternative dispute resolution authorized the reconstruction and expansion of the footprint of an existing single-family dwelling located on the property adjacent and easterly to that owned by the petitioners but there were no houses or commercial buildings within 100 feet of the property on either the northerly or southerly sides, the LOA was not a "waiver" of the third prong of the infill development rule of N.J.A.C. 7:7E-7.2(f)4 but rather a settlement based on the totality of the facts of a case in litigation. The Department of Environmental Protection has the ability to enter into reasonable settlements on a case-by-case basis that are in the best interest of the environment and that are consistent with the purpose of Coastal Area Facility Review Act, and in this case, the settlement mitigated the litigation risk and required the homeowner to enhance the dune area with plantings, to file a deed restriction prohibiting any future development seaward of the proposed reconstructed home, and to come into compliance with FEMA requirements governing flooding and storm damage prevention. *Dragon v. N.J. Dep't*

of Env'tl. Prot., Land Use Regulation Program, OAL Dkt. No. ESA 2988-06, 2007 N.J. AGEN LEXIS 919, Final Decision (June 25, 2007).

Activity fit within the "repair, replacement or renovation" exemption from requirement for Waterfront Development Permit. N.J.S.A. 12:5-3. *Ward v. Department of Environmental Protection*, 91 N.J.A.R.2d 1 (EPE).

7:7E-7.3 Resort/recreational use

(a) Resort/recreation uses include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging.

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. The marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions.

ii. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-8.21; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

3. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

4. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

5. Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause

minimum feasible interference with the commercial boating industry.

7. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A to the maximum extent practicable.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with on-board septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project. This restriction applies only to bulkhead sheathing and planking, and dock planking, and does not apply to pilings. In addition, this restriction does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calendar days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in

the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calendar days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading

at that site by 100 percent, the property owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

11. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. For the purposes of this subsection, "amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" do not include games for cash payoffs, or bars or restaurants;

2. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;

iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;

iv. The pier expansion is constructed on pilings at the same elevation as the existing pier;

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion; and

vi. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11;

3. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

4. Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended and recodified.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Marina redefined; pump out requirements specified further.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (a), deleted N.J.A.C. reference; and in (e), inserted a new 1, and recodified former 1 through 3 as 2 through 4.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (d)2iii(2), amended the N.J.A.C. reference.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (d)2iv, substituted "lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11)"; in (e)2iv; deleted "and" from the end; in (e)2v, inserted "; and"; and added (e)2vi.

Case Notes

CAFRA definition of "facilities" includes cabanas. State, Dept. of Environmental Protection v. Stavola, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

Resort-recreation uses have priority over all other uses with highest priority reserved for those uses that serve a greater rather than a lesser number of people; rationale (citing former N.J.A.C. 7:7E-8.13). Lusardi v. Curtis Point Property Owners Assn., 86 N.J. 217, 430 A.2d 881 (1981).

Permit to install septic systems by filling in area back of bay was not issuable absent satisfaction of waterfront development criteria. *Myles v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 232.

7:7E-7.3A Marina development

(a) The following pertains to marina project design:

1. The following should be followed to promote water quality in the marina basin:

i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.

ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.

iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).

iv. Sharp angles are to be avoided; corners should be gently rounded, never square.

v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.

vi. Entrance channels should not be located on corners.

vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promote wind-driven circulation.

viii. Enclosed basins should include openings at opposite ends to promote circulation.

ix. Slips should be oriented parallel to currents, never broadside; this promotes circulation and reduces the load on the pier structure.

x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.

xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.

xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.

2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.

3. To avoid standing waves, bulkheads should never be parallel to one another.

4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the

structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.

5. The distance from a parked car to a slip should never exceed 180 meters.

6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.

7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.

8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The marina shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marina (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large marina (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

- (B) One toilet stall per 60 boats (men);
- (C) One toilet stall per 30 boats (women);
- (D) One washbasin per 30 boats (men and women);
- (E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

(b) The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.
2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.
3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.
4. Erosion and sediment controls shall be in place prior to construction.
5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during dredging.
6. Clean dredged material with adequate grain size shall be used for beach nourishment.

(c) The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbant materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.
2. Operators shall immediately notify the Department and the Coast Guard of all significant hydrocarbon spills.
3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.
4. Waste receptacles shall be emptied daily.
5. Boat maintenance shall be undertaken as far from the water as possible.
6. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well-ventilated condition.
7. No-discharge signs shall be posted through-out the marina basin.

New Rule, R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b)6, substituted "dredged material" for "dredge spoil"; in (c)2, substituted "the Department" for "DEP".

7:7E-7.4 Energy facility use rule

(a) Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in Special Areas as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

- i. The CAFRA area; and

- ii. The Western Ocean, Southern, Mullica Southern Ocean, Great Egg Harbor River and Delaware Estuary regions, as defined at N.J.A.C. 7:7E-5A.2(d);

3. Notwithstanding (b)2 above, wind and solar energy facilities, including blades, towers and site disturbance, shall be sited at least 50 feet inland of the mean high water line of tidal waters, excluding manmade lagoons and manmade ditches, in the areas identified at (b)2i and ii above, except for the following:

- i. A wind energy facility that meets N.J.A.C. 7:7E-3.49(c)5;

- ii. A wind energy facility that meets (b)3ii(1) and (2) below. The Department shall limit approvals under this subparagraph to ensure that the cumulative number of wind turbines approved does not exceed five, each with a power rating as determined by the manufacturer of five megawatts or less, or six, each with a power rating as determined by the manufacturer of four megawatts or less. The wind energy facility shall be:

- (1) Located in the Atlantic Ocean within State waters between latitude 39 degrees 55 minutes 56 seconds N (offshore of Seaside Park) and latitude 39 degrees 01 minute 58 seconds N (offshore of Stone Harbor); and

- (2) No closer than 2.5 nautical miles to the mean high water line; or

iii. A wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for, the pier;

4. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11; and

5. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.12.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is discouraged, as long as there are other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, which have not been fully explored. Should exploration occur and commercially recoverable amounts of oil or natural gas be found, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including, but not limited to, facilities for work boats, crew boats and helicopters, pipe-laying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in the Urban Area, Delaware River and Northern Waterfront regions and discouraged in the CAFRA area.

i. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry.

ii. Small facilities for storing oil spill containment and cleanup equipment for offshore operations, and emergency crew transport facilities, including crew boat operations, will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location would facilitate and expedite offshore emergency operations.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in the Urban Area, Delaware River and Northern Waterfront regions, which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(g) Standards relevant to repair and maintenance facilities are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Urban Area, Delaware River and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area as defined at N.J.A.C. 7:7E-1.8, but not on a continual, longterm basis.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged in the CAFRA area and encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by interested Federal, State and local agencies, affected industries, and the general public;

associated with the operation of large scale wind turbines, the Department shall:

- (1) Revise the map as the Department deems necessary;
- (2) Publish a description of the revision in the New Jersey Register, including a response to any public comments;
- (3) Publish a public notice describing the revision in a newspaper of general circulation in each affected county; and
- (4) Post the revised map on the Department's interactive mapping website at www.nj.gov/dep/gis.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:1910f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. §§ 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including, but not limited to:

- (1) The risks inherent in tankering LNG along New Jersey's waterways;
- (2) The risks inherent in transferring LNG on-shore; and
- (3) The compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended and recodified.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

NJDOE changed to BPU.
Amended by R.1993 d.549, effective November 15, 1993.
See: 25 N.J.R. 5(a), 25 N.J.R. 5146(b).
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.
Amended by R.2007 d.374, effective December 17, 2007.
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (b)3.
Amended by R.2010 d.193, effective September 7, 2010.
See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Added new (b)3, (r)1v, (r)1vii, (r)1viii and (r)3; recodified former (b)3 and (b)4 as (b)4 and (b)5, former (r)1v as (r)1vi and former (r)3 as (r)4; and rewrote (r)1vi.

Special amendment, R.2011 d.101, effective March 3, 2011 (to expire March 3, 2012).

See: 43 N.J.R. 886(a).

In (b)3i, deleted "or" from the end; in (b)3ii(2), inserted "or" at the end; and added (b)3iii.

Readopted by R.2012 d.138, effective June 19, 2012.

See: 44 N.J.R. 12(a), 44 N.J.R. 1972(a).

Provisions of R.2011 d.101 readopted without change.

7:7E-7.5 Transportation use rule

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the rule on location of linear development at N.J.A.C. 7:7E-6.1, and shall be limited to situations where:

i. A clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need;

ii. Provision is made to include construction of bicycle and foot paths, except where these would not be feasible;

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby waterbodies.

iv. Provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible;

v. Visual and physical access to the coastal waters is maintained, to the maximum extent practicable; and

vi. Induced development in conflict with coastal rules would not be expected to result.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(b) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to bicycle and foot paths are as follows:

1. The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb Special Areas, excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26), or subject the user to danger.

3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.);

ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.

3. Rationale: See OAL Note at the beginning of the subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended and recodified.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Intercept parking facilities encouraged/required at (d)3.

Amended by R.1993 d.140, effective April 5, 1993.

See: 24 N.J.R. 1986(a), 25 N.J.R. 1549(a).

Amended to allow alternative traffic reduction programs to be used in place of the employee intercept lot requirement for casinos located in Atlantic City.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (d), deleted a former 3 and recodified former 4 as 3.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a)1, substituted "rule on location of linear development at N.J.A.C. 7:7E-6.1;" for "Rule on Location of Linear Development".

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (c)2, inserted " , excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26)."

7:7E-7.6 Public facility use rule

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Solid waste facility means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. Solid waste facilities are conditionally acceptable provided:

i. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction are explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable;

ii. The solid waste facility is not located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b); and

iii. The solid waste facility complies with the Solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. The wastewater treatment facility, including sewer lines, is consistent with an approved Water Quality Management (208) Plan;

2. The secondary impacts associated with the facility are consistent with the Coastal Zone Management rules; and

3. The facility shall provide for multiple use of the site, including open space and recreation use, to the maximum extent feasible.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(d) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

3. The public facility would not generate significant secondary impacts inconsistent with the Coastal Zone Management rules.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended and recodified.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
Amended by R.2003 d., effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).
Rewrote the section.

7:7E-7.7 Industry use rule

(a) Industry uses are uses that involve industrial processing, manufacturing, storage or distribution activities. These uses include, but are not limited to, electric power production, food and food byproduct processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore, subject to the standards of N.J.A.C. 7:7E-7.4.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32); to the buffers and compatibility of uses rule, N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11, which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(e) Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(f) The cogeneration of electricity with process steam is encouraged.

(g) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
(a)8 added.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Stylistic changes.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).
Rewrote (a) and (b).
Amended by R.2007 d.374, effective December 17, 2007.
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (b), substituted "lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule" for "public access to the waterfront rule".

7:7E-7.8 Mining use rule

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;

2. The location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas;

3. Buffer areas are provided in accordance with N.J.A.C. 7:7E-8.13, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development;

4. The mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted;

5. The mineral extraction areas shall be reclaimed, contoured and replanted to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site within two years of the termination of mining operations;

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;

7. The mineral extraction operation will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal rules.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(a)8 added.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Disruption of agricultural activities permitted under certain circumstances.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Section was "Mining Use rule". In (b), substituted "flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.)".

7:7E-7.9 Port use rule

(a) Port uses are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Port-related development and marine commerce is encouraged in and adjacent to established port areas. Water-dependent development shall not be preempted by non-water dependent development in these areas.

(c) New port uses outside of existing ports as defined at N.J.A.C. 7:7E-3.11(a) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or expanded ports must also not interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.

(e) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access, with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(f) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill cleanup storage, is acceptable at the small commercial harbors in the coastal zone.

(g) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Old (b) deleted; (b)1.-5. now (c)-(f); (c) now (g).
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), amended N.J.A.C. reference.

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Environmental Law—Waterfront Development. P.R. Chenoweth, 137 N.J.L.J. No. 10, 66 (1994).

Case Notes

Compatibility test is consistent with Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Developer failed to demonstrate need for new port facility. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Evidence supported denial of port development application. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at at least one existing port. In *Matter of Bridgeton Bulk Materials Handling Facility*, 93 N.J.A.R.2d (EPE) 203.

Waterfront development permit sought for containerized freight facility; failure to satisfy requirements for "new port". *Distributec Inc. v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 198.

7:7E-7.10 Commercial facility use rule

(a) Standards relevant to hotels and motels are as follows:

1. Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. Rationale: See the OAL Note at the beginning of this subchapter.

(b) Standards relevant to retail trade and services are as follows:

1. Retail and trade service is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rule on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

- i. Complies with all applicable Location and Resource rules;
- ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to convention centers and arenas are as follows:

1. "Convention centers" are facilities designed primarily for holding conventions. "Arenas" are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended and recodified.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

References specified in (b)2iii.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Deleted a former (b); and recodified former (c) and (d) as (b) and (c).

7:7E-7.11 Coastal engineering

(a) Coastal engineering includes a variety of structural and nonstructural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, gabions, revetments and seawalls are all examples of coastal engineering.

1. The standards relevant to shore protection priorities in (b) below do not apply to water dependent uses within existing ports.

(b) Standards relevant to shore protection priorities are as follows:

1. Non-structural solutions to shoreline erosion problems are preferred over structural solutions. Vegetative shore protection measures have been proven effective, and are preferred at shoreline sites in which they are feasible.

Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch). The infeasibility and impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as nonstructural shore protection measures, including sand fencing, revegetation, additions of nontoxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects shall comply with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels; and

iv. Public access to the nourished beach is provided in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

2. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas

in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the Coastal Zone Management rules;

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;

iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

v. The structure is consistent with the State's Shore Protection Master Plan;

vi. If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for filling (N.J.A.C. 7:7E-4.10) and all other relevant coastal rules.

2. Maintenance or construction of an existing bulkhead is conditionally acceptable provided that it meets (e)2i, ii or iii below. All measurements shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches offshore of the existing bulkhead, except in accordance with (e)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches offshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead which does not meet (e)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (e)2i or ii above. In such case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

3. Stone rip-rap and sloped concrete and gabion revetments which allow for growth of vegetation are the preferred form of retaining structures.

4. Public access to the shore protection project is provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11.

5. The construction of bulkheads subject to wave runup forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runup, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

6. Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Section substantially amended and recodified.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Expansion or fortification of structures included at (e).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (d)1iv and (e)4.

Case Notes

Property owners' application for permit to construct a bulkhead on property adjacent to bay failed to satisfy coastal engineering rule es-

tablishing standards applicable to structural shore protection, where there was no evidence that approval of construction of bulkhead was essential to protect existing structures. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Permit to install septic systems by filling in area back of bay was not issuable absent satisfaction of waterfront development criteria. *Myles v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 232.

Issuance of waterfront development permit did not endanger navigation to adjoining bulkhead and dock. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead and dock permit allowed. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

Record established that landowner was entitled to waterfront development permit to bulkhead 100 foot lot and relocate drainage pipe. *Baron v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 18.

7:7E-7.12 Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E-4.8.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, in accordance with the traffic rule, N.J.A.C. 7:7E-8.14.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended.

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text added at (b)1, 2 and (c) to require developments to monitor and mitigate impact.

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "in accordance with the traffic rule, N.J.A.C. 7:7E-8.14" for "as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b))".

7:7E-8.11 Public trust rights

(a) Public trust rights to tidal waterways and their shores (public trust rights) established by the Public Trust Doctrine include public access which is the ability of the public to pass physically and visually to, from and along lands and waters subject to public trust rights as defined at N.J.A.C. 7:7E-3.50, and to use these lands and waters for activities such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating. Public trust rights also include the right to perpendicular and linear access. Public accessways and public access areas provide a means for the public to pass along and use lands and waters subject to public trust rights.

(b) When used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Green Acres funding" means a loan or matching grant, or both, to a local government unit, or a matching grant to a nonprofit, for the acquisition of land or the development of outdoor recreation and conservation facility(ies) provided by the Department's Green Acres Program in accordance with N.J.A.C. 7:36.

"Held" when used with reference to land means owned, leased, or otherwise controlled.

"Natural area" means an area that has retained its natural character, as evidenced by the presence of woody vegetation (trees, saplings, scrub-shrub vegetation) or rare or endangered plants. A disturbed area may be considered a natural area if such vegetation is present. A natural area does not include maintained lawns or areas landscaped with non-native herbaceous plants.

"Paper street" means the street shown on a recorded plan but never built.

"Public accessway" means a route that provides a means for the public to reach, pass along, and/or use lands and waters subject to public trust rights. Public accessways include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way.

"Shore Protection Program funding" means monies from the Shore Protection Fund established by N.J.S.A. 13:19-16 and any other Department money provided for shore protection projects associated with the protection, stabilization, restoration or maintenance of the shore and adjacent land, including beach nourishment projects and land acquisitions. A State Aid Agreement is the means by which a municipality participates in Shore Protection Program funding.

"State Aid Agreement" means a cost sharing agreement entered into by the Department and a municipality for the construction of a shore protection or beach nourishment project. The State Aid Agreement shall describe the project and project area for purposes of compliance with (p)7ii through vi and (p)8ii through v below in recognition of the phasing of a large-scale or multi-phase shore protection or beach nourishment project.

(c) In accordance with the moratorium imposed under the Public Access and Marina Safety Task Force Act, N.J.S.A. 13:19-38 et seq., the requirements of this section shall not apply to marinas until January 1, 2011. Prior to January 1, 2011 marinas shall be subject to the requirements of this section in effect as of December 16, 2007, incorporated by reference herein as chapter Appendix 6.

(d) Except as otherwise provided at (f) below, development on or adjacent to all tidal waterways and their shores shall provide on-site, permanent, unobstructed public access to the tidal waterway and its shores at all times, including both visual and physical access. Specific requirements for sites located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansey River in Bridgeton City, and Maurice River in Millville City are found at (e) below. Public accessways and public access areas shall:

1. Include perpendicular access and a linear area along the tidal waterway and its entire shore; and
2. If located in a natural area of a tidal waterway, be designed to minimize the impacts to the natural area and tidal waterway including impacts to habitat value, vegetation and water quality.

(e) Except as provided in (f) below, in addition to the requirements of (d) above, the perpendicular access and linear area provided for sites located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansey River in Bridgeton City, and

Maurice River in Millville City, shall comply with the following. The standards for public access along the Hudson River Waterfront Area are set forth at N.J.A.C. 7:7E-3.48.

1. The linear area shall consist of a walkway that meets the following:

- i. The minimum width of walkway free of obstruction shall be 16 feet; and
- ii. An area a minimum of 30 feet wide, including the walkway area, shall be permanently protected by a conservation restriction; and

2. The perpendicular access shall consist of a walkway that meets the following:

- i. The minimum width of the walkway free of obstruction shall be 10 feet;
- ii. An area a minimum of 20 feet wide, including the walkway area shall be permanently protected by a conservation restriction; and
- iii. The linear distance between perpendicular accessways shall not exceed one-half mile as measured generally parallel to the waterway; and

3. The Department may reduce the walkway width requirements at (e)1i and 2i above, as necessary to protect endangered and threatened wildlife or vegetation species habitat, critical wildlife habitat as defined at N.J.A.C. 7:7-3.39, natural areas or existing infrastructure.

(f) The permanent on-site public access required at (d) and (e) above may be modified in the following circumstances. However, in no case shall such modification constitute permanent relinquishment of public trust rights of access to and use of tidal waterways and their shores.

1. Public access to tidal waterways and their shores shall be available at all times. However, the Department may allow closure of an area otherwise available for public access during specified late night hours upon documentation of unique circumstances, other than the risk associated with tidal waterways, that threaten public safety and warrant such closure. In no case shall physical barriers be used to close public access. This exception does not apply to the Hudson River Waterfront Area or to the waterways listed in (e) above;

2. The Department may allow, require or impose temporary restrictions to public access, including closure of an area otherwise subject to public access, when it determines:

- i. Exigent circumstances of public safety or security, or repair, maintenance, or construction relating to any public access infrastructure such as a walkway or boardwalk exist, with such closure to terminate immediately when such exigent circumstances cease to exist;

ii. Restrictions are necessary to protect endangered or threatened wildlife or plant species from disturbance or destruction; or

iii. Restrictions are necessary to protect other critical wildlife resources such as seasonal assemblages of wildlife in areas that provide critical feeding, roosting, resting or staging habitat;

3. Where development of a new or at an existing energy facility, industrial use, port use, airport, railroad, military facility, or superhighway is proposed and the Department determines that perpendicular access and/or a linear area along the entire shore of the tidal waterway at the site is not practicable based on the risk of injury from existing or proposed hazardous operations, or substantial existing and permanent obstructions, and no measures can be taken to avert these risks, public access shall be provided in accordance with (f)3i or ii below. For the purposes of this paragraph, "superhighway" shall mean the Garden State Parkway, New Jersey Turnpike, Atlantic City Expressway, and Interstates 76, 78, 80, 95, 276, 278, 195, 295, and 676.

i. The linear public access that would be required in accordance with (d) above on site shall be reconfigured and enhanced to accommodate such structures and address such risks; or

ii. If public access on site is not practicable in accordance with (f)3i above, alternate public access of comparable use to the public shall be provided at a nearby off site location;

4. Where development of a new or at an existing two-unit (excluding duplexes) or three-unit residential development, or associated accessory development or associated shore protection structure is proposed, the Department may allow the provision of alternate public access on-site or at a nearby offsite location based on an evaluation of the size of the site, the character of the waterway, and the availability and type of public access in the vicinity, provided (f)4i through iii below are met. This paragraph does not apply to the Hudson River Waterfront Area and the waterways listed at (e) above. Public access requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below.

i. The development does not result in the development of more than three residential units either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;

ii. No beach and dune maintenance activities are proposed; and

iii. The site is not located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores;

5. Where development of a new or at an existing two-unit or three-unit (excluding duplexes) residential development, or associated accessory development, or associated shore protection structure is proposed that meets (f)4i above and is located on a site that is located along the Arthur Kill, Kill Van Kull west of Bayonne Bridge, Newark Bay, Delaware River from the Trenton Makes Bridge to the CAFRA boundary, Elizabeth River, Hackensack River, Passaic River, Rahway River, Raritan River, Cohansy River in Bridgeton City, and Maurice River in Millville City, linear and perpendicular public access shall be provided in accordance with the following:

i. The linear area shall consist of a walkway, that meets the following:

(1) The minimum width of walkway free of obstruction shall be 10 feet; and

(2) An area a minimum of 20 feet wide, including the walkway area shall be permanently protected by a conservation restriction; and

ii. The perpendicular access shall consist of a walkway that meets the following:

(1) The minimum width of the walkway free of obstruction shall be 10 feet;

(2) An area a minimum of 10 feet wide, including the walkway area shall be permanently protected by a conservation restriction;

6. Except as provided in (f)7 below, the Department shall not require public access where development of a new or at an existing single family home, duplex, or associated accessory development or associated shore protection structure is proposed, provided (f)6i through iii below are met. Public access requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below. This paragraph does not apply to the Hudson River Waterfront Area at N.J.A.C. 7:7E-3.48.

i. The development does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;

ii. No beach and dune maintenance activities are proposed; and

iii. The site does not include a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores;

7. Where development of a new or at an existing single family home, duplex, or associated accessory development, or associated shore protection structure is proposed that meets (f)6i above and is located on a site that includes a beach on which beach and dune maintenance activities are proposed or a beach on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their

shores, public access along and use of the beach and the shore shall be provided. Additional requirements may be imposed as a condition of Shore Protection Program funding, pursuant to (p) below; or

8. Where development impacting a facility subject to a Federal or State homeland security statutory scheme is proposed and the Department determines, upon consultation with the Office of Homeland Security and Preparedness, that perpendicular public access and/or a linear public access area along the entire shore of the tidal waterway is not practicable because it poses an unacceptable homeland security risk:

i. The linear public access that would be required in accordance with (d) above on site shall be reconfigured and enhanced to address such homeland security risk; or

ii. If public access on site is not practicable in accordance with (f)10i above, alternate public access of comparable use to the public shall be provided at a nearby off site location.

(g) Public access must be available on a nondiscriminatory basis. All establishments, including municipalities, counties, marinas, condominium associations, homeowner associations and beach clubs, which control access to tidal waterways and their shores shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(h) Public access to tidal waterways and their shores shall be clearly marked. Department approved public access signs shall be installed at each public accessway, public access area and/or public parking area at the development site and maintained in perpetuity by the permittee and its successors in title and interest. N.J.A.C. 7:7E-8.11(p) contains the standards for signs for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the standards for signs for municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site.

(i) Activities that have the effect of discouraging or preventing the exercise of public trust rights are prohibited. These activities include, but are not limited to, requiring photographic identification, requiring a liability waiver, requiring the purchase of drinks or food from a specific vendor, or prohibiting bringing beach equipment such as blankets or beach chairs.

(j) Parking shall be provided for the public to access tidal waterways and their shores, except where public access is not required in accordance with (f)6 above or the project is limited in scope in accordance with (f)7 above. Subsection (p) below contains the parking standards for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the parking standards for municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site. All other development shall provide parking as follows:

1. For developments which propose to reduce existing on-street or off-street parking that is used by the public for access to tidal waterways and their shores, mitigation for the loss of these public parking areas shall be required at a minimum creation to loss ratio of 1:1. This mitigation shall occur through the creation of new parking spaces within the proposed development site or at another location within 250 feet of the proposed development site, except as provided at (j)1i below:
 - i. For public roadway projects, where mitigation cannot be accomplished within 250 feet of the proposed development site, mitigation shall occur within one-quarter mile of the proposed development site;
 2. The area set aside for off-street parking shall be dedicated for public access parking through the recording of a conservation restriction maintaining the parking spaces in perpetuity; and
 3. The area set aside for on-street parking shall be dedicated for public access parking through municipal ordinance.
- (k) Development on or adjacent to tidal waterways and their shores shall provide barrier free access where feasible and warranted by the character of the site.
- (l) Development on or adjacent to tidal waterways and their shores shall incorporate fishing access and associated amenities to the maximum extent practicable within the area provided for public access. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming.
- (m) A fee for use of bathing and recreational facilities and safeguards, such as lifeguards, toilets, showers, and parking, at publicly or privately owned beach or waterfront areas, may be charged in accordance with (m)1 through 6 below. However, no fees shall be charged solely for access to or use of tidal waterways and their shores. The fee schedule and documentation of compliance with this paragraph shall be submitted to the Department by the permittee, Shore Protection Program participant or recipient of Green Acres funding for a Green Acres project site, and its successors in title and interest upon request.
1. Fees shall be no greater than that which is required to operate and maintain the facility, taking into consideration basic support amenities provided, such as lifeguards, restroom/shower facilities and trash pickup. This requirement applies to facilities and services directly associated with using the tidal waterways and their shores and does not apply to additional amenities such as cabanas, pools, or restaurants;
 2. Fees shall not discriminate between residents and non-residents or on any other basis, except as allowed by this rule or other law;
 3. Fees shall not be charged for children under the age of 12 years;
 4. Badges or passes must be available for sale at times and places that are reasonably convenient for the public. Badges and passes shall be offered for sale in person at the beach or waterfront area during the hours that the beach is staffed. In addition, if the entity that owns or operates the beach or waterfront area offers private memberships, public badges or passes must be offered for sale to the public in the same manner, times and places as private memberships;
 5. Weekly, monthly or seasonal badges or passes shall be transferable at the discretion of the badge or pass holder; and
 6. Public access to and use of tidal waterways and their shores may not be conditioned upon providing identification or signing or otherwise agreeing to any waiver or similar disclaimer of rights.
- (n) The areas set aside for public access to tidal waterways and their shores shall be permanently dedicated for public use through the recording of a Department approved conservation restriction under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., maintaining the publicly dedicated areas in perpetuity. Subsection (p) below contains the conservation restriction standards for municipalities that participate in Shore Protection Program funding. Subsection (q) below contains the conservation restriction standards for municipalities, counties and nonprofits that receive Green Acres funding for a Green Acres project site. N.J.A.C. 7:7E-8A.4 contains the recording requirements for all conservation restrictions.
- (o) No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights.
- (p) Municipalities that participate in Shore Protection Program funding through a State Aid Agreement shall:
1. Submit the following to the Department for approval prior to issuance of a coastal permit:
 - i. A draft public access plan that meets the requirements of N.J.A.C. 7:7E-8A.2 and 8A.3 and a draft ordinance adopting the public access plan; and
 - ii. A draft Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5;
 2. Comply with (c) through (m) above, as applicable for municipally held lands on or adjacent to tidal waterways and their shores. Compliance with (e) above will be required only at a shore protection project, including beach nourishment, proposed along one of the waterways listed at (e) above and not for other municipally held lands;
 3. Prior to commencement of construction, including beach nourishment, provide public access to all tidal water-

ways and their shores on or adjacent to lands held by the municipality;

4. Prior to commencement of construction, including beach nourishment, adopt the ordinance and record the Public Access Instrument approved by the Department pursuant to (p)1 above;

5. Prior to commencement of construction, including beach nourishment, repeal any ordinance that limits access to or use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine;

6. Not enact or adopt ordinances or engage in activities in conflict with public access to or use of tidal waterways and their shores, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

7. For shore protection projects, including beach nourishment, described in the State Aid Agreement and located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores:

i. Prior to commencement of construction, including beach nourishment, record in accordance with N.J.A.C. 7:7E-8A.4, a Department-approved conservation restriction that maintains the following areas for public access in perpetuity:

(1) The entire shore protection project, except those portions of jetties and groins on which public access is not required in accordance with (p)7ii below, and where the shore protection project is a structure, the entire beach or shore outshore of the project;

(2) The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument approved by the Department pursuant to (p)1 above, including paths, trails, dune walkovers/walkways, and piers, and public accessways proposed pursuant to (p)7iii below; and

(3) All parking areas identified in (p)7v below;

ii. Immediately upon completion of construction, including beach nourishment, provide public access to the entire shore protection project, and where the shore protection project is a structure, the entire beach or shore outshore of the project. Public access is not required to those portions of jetties and groins where it is demonstrated that access poses an extraordinary risk of injury;

iii. Immediately upon completion of construction, including beach nourishment, provide public accessways to the shore protection project, and where the shore protection project is a structure, the entire beach or shore outshore of the project. The linear distance between public accessways shall not exceed one-quarter mile for the length of the shore protection project, as measured

generally parallel to the beach/shore, except as provided at (p)7iii(1) below. In areas where existing public accessways, including, but not limited to, streets, roads, paper streets, paths, trails, easements, dune walkovers/walkways, piers and other dedicated public rights-of-way are closer than one-quarter mile apart, the number of existing access points shall not be reduced;

(1) The linear distance between public accessways can exceed one-quarter mile provided:

(A) The average interval between public accessways to the shore protection project within the municipality is one-quarter mile; and

(B) In no case is the interval between public accessways greater than three-eighths mile;

iv. Immediately upon completion of project construction, the public restroom facilities that are identified in the approved public access plan required in accordance with (p)1 above and located within the project area and within one-quarter mile of the project area, as measured generally parallel to the beach/shore, shall be open to the public for use. The restroom facilities shall be open to the public for use from the beginning of Memorial Day weekend through September 30, at minimum;

v. Immediately upon completion of project construction, provide parking sufficient to accommodate public demand to access the project and the beach capacity of all beaches within the municipality along that portion of the waterway on which the project occurs. The Department may allow a reduction in the number of parking spaces required upon documentation that the municipality has exhausted all possibilities to provide the required number of parking spaces. Alternative methods of providing adequate parking that must be considered include land acquisition, restriping or reconfiguring parking, removing existing parking restrictions and providing remote/offsite parking with shuttle service; and

vi. Immediately upon completion of construction, including beach nourishment, install Department approved public access signs at each public accessway to the shore protection project, except at jetties and groins that are not designed for public use. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding;

8. For shore protection projects, including beach nourishment, described in the State Aid Agreement and located on or adjacent to waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores:

i. Prior to commencement of construction, including beach nourishment, record in accordance with N.J.A.C. 7:7E-8A.4, a Department-approved conserva-

tion restriction that maintains the following for public access in perpetuity:

(1) The entire shore protection project, except for those portions of jetties and groins on which public access is not required in accordance with (p)8ii below;

(2) The public accessways held by the municipality that lead to or provide access to the shore protection project and are not listed in the Public Access Instrument approved by the Department pursuant to (p)1 above, including paths, trails, dune walkovers/walkways, and piers, and public accessways proposed pursuant to iii below; and

(3) All parking areas identified in (p)8iv below;

ii. Immediately upon completion of construction, including beach nourishment, permit public access to the entire shore protection project. Public access is not required to those portions of jetties and groins where it is demonstrated that access poses an extraordinary risk of injury;

iii. Immediately upon completion of construction, including beach nourishment, provide accessways along a linear shore protection project, including a beach nourishment project, of one-half mile or more in length at an interval not to exceed one-quarter mile as measured parallel to the shore protection project structure or nourished beach;

iv. Immediately upon completion of project construction, provide parking sufficient to accommodate public demand to access the entire project, taking into account the availability of existing public parking; and

v. Immediately upon completion of construction, install Department approved public access signs at the site of the shore protection project, except at jetties or groins that are not designed for public use. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding;

9. Within 180 days of completion of an emergency shore protection project, including beach nourishment, comply with (p)1 through 8 above; and

10. Any municipality that participates in Shore Protection Program funding after December 17, 2007, that undertakes any action that is determined by the Department to be in conflict with this section or the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with this regulation or the Public Trust Doctrine. If the Shore Protection Program funding participant does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

i. Withhold Shore Protection Program funding;

ii. Terminate the State Aid Agreement;

iii. Demand immediate repayment to the Shore Protection Fund of all Shore Protection Program funding for the project(s) in which the municipality participated; and/or

iv. Pursue any other specific remedies in the State Aid Agreement.

(q) To be eligible for Green Acres funding for a Green Acres project site, a municipality, county, or nonprofit organization shall comply with (q)1 through 5 below. For the purposes of this subsection, the "Green Acres project site" is the land that is the subject of an application for Green Acres funding that contains or is adjacent to tidal waterways and their shores. Applicants for Green Acres funding for a Green Acres project site shall:

1. Submit to the Department for approval, as part of an application for Green Acres funding for a Green Acres project site, a public access plan that meets the requirements at N.J.A.C. 7:7E-8A.2 and 8A.3, and, if the applicant is a municipality, a Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5. In lieu of these documents, any applicant may submit a certification described at (q)1i below.

i. The certification shall certify that, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36 notifying the applicant that its application for Green Acres funding has been approved, the applicant shall:

(1) Submit such public access plan;

(2) Comply with (q)2 through 5 below; and

(3) For an applicant that is a municipality, submit a Public Access Instrument complying with N.J.A.C. 7:7E-8A.5;

ii. An applicant that is a municipality or county shall also submit with the plan, a draft ordinance adopting the public access plan;

2. If not submitted as part of an application for Green Acres funding for a Green Acres project site all documents at (q)1i and ii above, within 90 days of receipt of the letter from the Department pursuant to N.J.A.C. 7:36 notifying the applicant that its application for Green Acres funding has been approved, submit to the Department for approval. The Department will not enter into a Green Acres project agreement pursuant to N.J.A.C. 7:36 prior to Department approval of the public access plan and Public Access Instrument, as applicable;

3. Comply with (c) through (m) above, as applicable. Compliance with (e) above will be required only where the project site is located along one of the waterways listed at (e) above.

4. Provide public access to all tidal waterways and their shores on or adjacent to lands held by the applicant;

5. Not enact or adopt ordinances or engage in activities in conflict with the Public Trust Doctrine, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

6. In addition to complying with (q)1 through 5 above, an applicant that is a municipality shall:

i. Prior to disbursement of Green Acres funding for a Green Acres project site, repeal any ordinance that limits access to and use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine; and

ii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance adopting the public access plan required at (q)1ii above and record the Public Access Instrument approved by the Department pursuant to (q)1 or 2 above, respectively;

7. In addition to complying with (q)1 through 5 above, prior to disbursement of Green Acres funding for a Green Acres project site, an applicant that is a county shall adopt an ordinance adopting the public access plan approved by the department pursuant to (q)1 and 2 above;

8. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide public access along the tidal waterway and its entire shore at the Green Acres project site;

9. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide at least one accessway to the tidal waterway, its shore and the project site across land held by the recipient of Green Acres funding. Additional accessways shall be provided as necessary given the size, location, and proposed use of the site;

10. Immediately upon disbursement of Green Acres funding for a Green Acres project site, install and maintain in perpetuity Department approved public access signs at each public accessway and/or public access area at the project site;

11. Immediately upon disbursement of Green Acres funding for a Green Acres project site, record a Department-approved conservation restriction maintaining the following areas for public access in perpetuity. All lands held by the municipality or county for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory for the municipality and county, respectively, as required by Green Acres as a condition of funding pursuant to N.J.A.C. 7:36.

i. The project site;

ii. The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument, including paths, trails, dune walkovers/walk-

ways, and piers and public accessways pursuant to (q)9 above; and

iii. All parking areas identified in (q)12 below;

12. Within 10 days of completion of a Green Acres funded development for a Green Acres project site or within 180 days of disbursement of Green Acres funding for acquisition for a Green Acres project site, provide public restrooms and parking for the project site as directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and

13. Any Green Acres funding recipient for a Green Acres project site that, after December 17, 2007, undertakes any action that is determined by the Department to be in conflict with the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with the Public Trust Doctrine. If the Green Acres funding recipient for a Green Acres project site does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

i. Withhold Green Acres funding;

ii. Terminate the Green Acres Project Agreement executed pursuant to N.J.A.C. 7:36; and/or

iii. Demand immediate repayment of all Green Acres funding that has been disbursed to funding recipient.

(r) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b)3-7 added.

Amended by R.1988 d.338, effective August 15, 1988.

See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Deleted (b)7 and substituted new.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (b), inserted a new 9, and recodified former 9 through 13 as 10 through 14.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b)11, substituted "restriction" for "easements".

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Repeal and New Rule, R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Section was "Public access to the waterfront".

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c); in (f)3, deleted "or" preceding "military facility"; inserted "or superhighway" and "at the site", and substituted "public access shall be provided in accordance with (f)3i or ii below" for a colon and inserted the final sentence; in (f)6iii, deleted "or" from the end; in (f)7, substituted "or" for a period at the end; added (f)8; in the introductory paragraph of (j)1, substituted "except as provided at (j)1i below:" for a

semicolon at the end; added (j)1i; and rewrote (p)2 through (p)5, (p)7 through (p)9, and (q).

Law Review and Journal Commentaries

Resolving State Title Claims to Tidelands: Practice and Procedure. William E. Andersen, 168 N.J.Law. 8 (Mag.) (April 1995).

Case Notes

New Jersey Department of Environmental Protection (DEP) rules that require a municipality to allow public access to tidal waterways and their shores "at all times" unless it obtains the DEP's permission to close the area and that require a municipality that seeks an appropriation from the Shore Protection Fund to enter into a State Aid Agreement that obligates the municipality to provide such additional parking spaces and restroom facilities in proximity to the oceanfront as the DEP may mandate are declared invalid. *Borough of Avalon v. New Jersey Dep't of Env'tl. Prot.*, 403 N.J. Super. 590, 959 A.2d 1215, 2008 N.J. Super. LEXIS 239 (App.Div. 2008).

Department of Environmental Protection (DEP) had jurisdiction under the Coastal Area Facility Review Act (CAFRA) to determine the appropriate fee that beach club could charge the public for use of its private beach; boardwalk extension over the dune leading to the beach and waterfront that was maintained by club qualified as development and triggered the DEP's jurisdiction over all related issues of use and public access. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Beach club's minimum fee for access to private beach, which required the minimum seasonal payment of \$700 for up to eight household members, discriminated against individuals and small families by forcing them to pay an amount bearing no rational relationship to the cost associated with individual use of the property, and thus, the fee was exclusionary and undermined the objectives of the public trust doctrine by limiting public access to the beach; fee should be limited to expenses actually incurred by the club for reasonable management services in addition to reimbursement for other costs incurred for the services provided. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Regulation requiring coastal development to permit access to the waterfront to the maximum extent practicable, including both visual and physical access, did not impose absolute prohibition against oceanfront development which interferes with the view of inland property owners. *Bubis v. Kassin*, 323 N.J. Super. 601, 733 A.2d 1232 (N.J. Super. A.D. 1999).

Project promoting public access and water dependent uses of waterfront property complied with Waterfront Development Act. *Matter of Waterfront Development Permit No. 87-1235-1* by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J. Super. 524, 608 A.2d 973 (A.D. 1992).

Shoreline development that limits public access and the diversity of shorefront experiences is discouraged (citing former N.J.A.C. 7:7E-9.12). *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

Where petitioner applied for a Coastal Area Facility Review Act Coastal General Permit, proposing remediation of oil and gasoline product soil contamination at petitioner's industrial property on the Cohansey River waterfront, DEP properly required the petitioner to sign and record a Department-approved conservation restriction for the entire waterfront portion of the site in order to guarantee the public's ability to access the waterfront in the event the property's land use changed. *J.A. Petrunis, Inc. v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 6547-06, 2007 N.J. AGEN LEXIS 389, Initial Decision (June 5, 2007).

7:7E-8.12 Scenic resources and design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall comply with the following, unless it meets the requirements at (e) below:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure, except for the following:

- i. Infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area; and

- ii. Wind turbines.

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development as defined at N.J.A.C. 7:7E-1.8.

1. The development preserves the historic structure; and

2. The development will not detract from, damage, or destroy the value of the historic structure.

(f) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Enhancement of scenic resources required at (d).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In the introductory paragraph of (d), inserted "comply with the following, unless it meets the requirements at (e) below"; added new (e); and recodified former (e) as (f).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Section was "Scenic Resources and Design". Rewrote (d)2.

Petition for Rulemaking.

See: 42 N.J.R. 2277(a), 2992(b).

Petition for Rulemaking.

See: 43 N.J.R. 451(a).

7:7E-8.13 Buffers and compatibility of uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case by case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include

use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Deleted "policy" from (b).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Administrative change to (b)1.

See: 23 N.J.R. 1662(b).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b)1, amended N.J.A.C. reference; in (b)2, substituted "standards for" "rule regarding" and "is" for "are".

Case Notes

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at least one existing port. In Matter of Bridgeton Bulk Materials Handling Facility. 93 N.J.A.R.2d (EPE) 203.

7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the

Amended by R.2007 d.340, effective November 5, 2007.
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).
Rewrote (b)3.

7:7E-8.22 Solid and hazardous waste

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

- i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;
- ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26; and
- iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

New Rule, R.2002 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

SUBCHAPTER 8A. INFORMATION REQUIRED TO DEMONSTRATE COMPLIANCE WITH THE PUBLIC TRUST RIGHTS RULE, N.J.A.C. 7:7E-8.11; CONSERVATION RESTRICTIONS AND PUBLIC ACCESS INSTRUMENTS

7:7E-8A.1 Purpose and scope

(a) This subchapter sets forth information that shall be included in the public access plan developed in accordance

with subsections (p) and (q) of the public trust rights rule, N.J.A.C. 7:7E-8.11. N.J.A.C. 7:7E-8A.2 sets forth the information requirements for the public access plan that is required for municipalities to participate in Shore Protection Program funding or to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.3 sets forth the information requirements for the public access plan that is required for counties and nonprofit organizations to be eligible for Green Acres funding. N.J.A.C. 7:7E-8A.4 sets forth the requirements for the form and recording of conservation restrictions required pursuant to the N.J.A.C. 7:7E-8.11(n), (p) and (q). N.J.A.C. 7:7E-8A.5 sets forth the requirements for Public Access Instruments required pursuant to the N.J.A.C. 7:7E-8.11(p) and (q).

(b) When used in this section, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

"Green Acres project site" means the land that is the subject to an application for Green Acres funding that contains or is adjacent to tidal waterways and their shores.

"Held" when used with reference to land means owned, leased or otherwise controlled.

"Paper street" means the street shown on a recorded plan but never built.

7:7E-8A.2 Information requirements for public access plans submitted by municipalities to participate in Shore Protection Program funding or be eligible for Green Acres funding

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(p)1 and (q)1 for a municipality to participate in Shore Protection Program funding or be eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(p) and (q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan shall include the following:

1. A current tax map identifying:

i. All tidal waterways and their shores within the municipality and all lands held by the municipality adjacent thereto;

ii. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers, and other public dedicated rights-of way held by the municipality;

2. Copies of all existing and proposed conservation restrictions required pursuant to N.J.A.C. 7:7E-8.11(p)7i and 8i, and (q)10;

3. A draft Public Access Instrument as described at N.J.A.C. 7:7E-8A.5 and required pursuant to N.J.A.C. 7:7E-8.11(p)1ii and (q)5i;

4. A fee schedule for use of bathing and recreational facilities and safeguards, at tidal waterways and their shores held by the municipality if fees are charged.

i. For shore protection projects, including beach nourishment, a fee schedule shall also be provided for lands subject to a conservation restriction at N.J.A.C. 7:7E-8.11(p)7i(1) and 8i, if a fee is charged;

5. Draft ordinances required pursuant to N.J.A.C. 7:7E-8.11(p)1i or (q)1i as applicable. The ordinances shall provide that they may not be modified or repealed without prior approval of the Department;

6. Copies of all ordinances addressing use of the beach, tidal waterways and their shores and parking proximity to tidal waterways and their shores; and

7. A compliance statement, including supplemental documents as needed, demonstrating how the municipality and the proposed project comply with N.J.A.C. 7:7E-8.11(p) or (q) as applicable.

(c) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(p) shall include the following:

1. Copies of prior State Aid Agreements;

2. For shore protection and beach nourishment projects located on or adjacent to the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a current tax map identifying:

i. All existing and proposed public restrooms within the municipality located within one-quarter mile of the landward edge of the beach or dune along the waterway on which the project occurs. The site plan shall provide that:

(1) There is at least one restroom facility every one-half mile within the municipality as measured generally parallel to the beach except in accordance with (c)2i(4) below;

(2) A restroom facility shall be located within one-quarter mile of each municipal boundary. The one-quarter mile from the municipal boundary can be increased provided the one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the one-quarter mile is increased and the distance from the municipal boundary is no greater than three-eighths mile;

(3) Each restroom facility shall be located within one-quarter mile of the landward edge of the beach or dune; and

(4) The one-half mile interval between restrooms required at (c)2i(1) above can be increased provided:

(A) The average interval between restrooms within the municipality is one-half mile, as measured generally parallel to the beach;

(B) The one-quarter mile maximum distance from the landward edge of the beach or dune to the restroom is reduced by the amount the distance between restrooms is increased; and

(C) In no case is the interval between restrooms greater than five-eighths mile, as measured generally parallel to the beach; and

ii. All existing and proposed parking for the public to access the project and the beach along the waterway on which the project occurs; and

3. For shore protection and beach nourishment projects located on or adjacent to waterways other than the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay and their shores, a site plan identifying all existing and proposed parking for the public to access the entire shore protection project and/or nourished beach.

(d) In addition to the information required in (b) above, a public access plan required pursuant to N.J.A.C. 7:7E-8.11(q) shall also include a site plan for the Green Acres project site identifying:

1. All tidal waterways and their shores located on or adjacent to the Green Acres project site;

2. All existing and proposed public accessways to tidal waterways and their shores including streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, piers and other dedicated public rights-of-way located on the site, and municipally held public accessways within one-quarter mile of the Green Acres project site; and

3. All existing and proposed restrooms and parking held by the municipality for the public to access tidal waterways and their shores on and within one-quarter mile of the Green Acres project site.

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

In (b)4i, substituted "projects, including" for "and" and deleted "projects" following "nourishment".

Case Notes

New Jersey Department of Environmental Protection (DEP) rules that require a municipality to allow public access to tidal waterways and their shores "at all times" unless it obtains the DEP's permission to close the area and that require a municipality that seeks an appropriation from the Shore Protection Fund to enter into a State Aid Agreement that obligates the municipality to provide such additional parking spaces and restroom facilities in proximity to the oceanfront as the DEP may mandate are declared invalid. *Borough of Avalon v. New Jersey Dep't of Env'tl. Prot.*, 403 N.J. Super. 590, 959 A.2d 1215, 2008 N.J. Super. LEXIS 239 (App.Div. 2008).

7:7E-8A.3 Information requirements for public access plans submitted by counties or nonprofit organizations to be eligible for Green Acres funding

(a) A public access plan is required pursuant to N.J.A.C. 7:7E-8.11(q) for a county or nonprofit organization to be

eligible for Green Acres funding. A public access plan demonstrates how compliance with N.J.A.C. 7:7E-8.11(q) will be achieved. A public access plan shall not be modified or repealed without prior approval of the Department.

(b) A public access plan under this section shall include the following:

1. A site plan of the Green Acres project site identifying:

i. All tidal waterways and their shores located on or adjacent to the Green Acres project site;

ii. All existing and proposed public accessways to tidal waterways and their shores including streets, paths, trails, easements, paper streets, dune walkovers/walkways, piers and other dedicated public rights-of-way located on the Green Acres project site;

iii. All existing and proposed restrooms and parking for the public to access tidal waterways and their shores on the Green Acres project site;

2. Copies of all existing and proposed conservation restrictions required pursuant to N.J.A.C. 7:7E-8.11(q)10;

3. For an applicant that is a county, a draft ordinance required pursuant to N.J.A.C. 7:7E-8.11(q)1; and

4. A compliance statement demonstrating how the county or nonprofit organization and the proposed project comply with N.J.A.C. 7:7E-8.11(q).

7:7E-8A.4 Conservation restriction form and recording requirements

(a) A conservation restriction required at N.J.A.C. 7:7E-8.11(n), (p) or (q) shall be recorded in the chain of title for all properties affected by the restriction.

(b) A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department and in accordance with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq.;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.; and

3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof.

(c) A conservation restriction required pursuant to N.J.A.C. 7:7E-8.11(n), (p) and (q) shall be recorded within the time frames specified therein and prior to any Department permit becoming effective.

(d) Proof that a conservation restriction required in (c) above has been recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development, project, or project site is located shall be submitted to the Department prior to the commencement of site preparation or construction, or permit effectiveness except as provided at (d)1 and 2 below:

1. For developments receiving Green Acres funding that do not require a coastal permit, proof that the conservation restriction has been recorded shall be submitted

within 90 days of the disbursement of Green Acres funding; and

2. For acquisitions receiving Green Acres funding, proof that the conservation restriction has been recorded shall be submitted within 90 days of the disbursement of Green Acres funding.

(e) Authorizations and approvals issued by the Department shall not be valid authority to begin site preparation or construction until the Department approved conservation restriction is recorded, except as provided at (d)1 above.

7:7E-8A.5 Public Access Instrument requirements

(a) A Public Access Instrument required pursuant to N.J.A.C. 7:7E-8.11(p)1i and (q)5i is a conservation restriction recorded by a municipality that transfers to the Department the municipality's right to vacate, dispose of, or divert the lands listed and identified in (b) below to a use that precludes public access to tidal waterways and their shores at those lands.

(b) The Public Access Instrument shall list and identify by name all streets, roads, paper streets, easements, or other dedicated public rights-of-way held by the municipality that lead to tidal waterways and their shores. These shall be listed by block, lot and property owner on which the street, road, paper street, easement, or other dedicated public right-of-way is located and the lot, block and property owner of the lots that abut the street, road, paper street, easement, or other dedicated public right-of-way.

1. The portion of the street, road, paper street, easement, or other dedicated public right-of-way subject to the Public Access Instrument is:

i. Where a beach or dune is present:

(1) The portion of a street, road, paper street, easement, or other dedicated public right-of-way located on the beach or dune; and

(2) The portion of a street, road, paper street, easement, or other dedicated public right-of-way extending landward of the beach or dune to the first cross street or for a distance of one-quarter mile whichever is less; or

ii. Where no beach or dune is present:

(1) The portion of a street, road, paper street, easement, or other dedicated public right-of-way extending landward of the mean high water line to the first cross street or for a distance of one-quarter mile whichever is less.

2. To be eligible for Green Acres funding, all lands held by a municipality for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory required by Green

Acres as a condition of funding pursuant to N.J.A.C. 7:36.

(c) The Public Access Instrument is a conservation restriction and shall comply with N.J.A.C. 7:7E-8A.4.

APPENDIX 1

DESIGN STANDARDS AND SPECIFICATIONS

(OAL NOTE: None of the figures comprising N.J.A.C. 7:7E Appendix 1 are reproducible in the New Jersey Administrative Code, but may be reviewed or a copy obtained by contacting the Office of Administrative Law, PO Box 049, Trenton, NJ 08625-0049.)

Amended by R.2000 d.45, effective February 7, 2000.
See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).
Amended by R.2007 d.340, effective November 5, 2007.
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).
Repealed Figure 6.
Amended by R.2008 d.82, effective April 7, 2008.
See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).
Repealed Figure 11.

APPENDIX 2

(RESERVED)

New Rule, R.2000 d.45, effective February 7, 2000.
See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).
Administrative change.
See: 32 N.J.R. 1803(b).
Administrative change.
See: 32 N.J.R. 3828(a).
Petition for Rulemaking.
See: 33 N.J.R. 329(b), 33 N.J.R. 590(b).
Amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).
Rewrote the section.
Amended by R.2001 d.152, effective May 7, 2001.
See: 33 N.J.R. 156(a), 33 N.J.R. 1371(a).
Rewrote the section.
Petition for Rulemaking.
See: 33 N.J.R. 1475(a).
Administrative change.
See: 34 N.J.R. 1421(b).
Administrative change.
See: 34 N.J.R. 4196(a).
Petition for Rulemaking.
See: 35 N.J.R. 3720(a), 4786(a).
Administrative change.
See: 36 N.J.R. 5674(a).
Amended by R.2006 d.46, effective February 6, 2006.
See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).
Heading was "Boundaries of Coastal Centers in the CAFRA Area Not Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the section.
Administrative changes.
See: 38 N.J.R. 1669(a).
Administrative change (effective March 5, 2007 and operative April 4, 2007).
See: 39 N.J.R. 768(b).
Administrative change. (Administrative notice that Appendix 2 expired.)
See: 39 N.J.R. 2018(b).

APPENDIX 3

BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of the non-mainland coastal centers in the CAFRA area.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. Atlantic County coastal centers on barrier islands, spits, and peninsulas

A. Brigantine coastal town

1. The coastal town boundary follows the municipal boundary of the City of Brigantine, but does not include any bay islands or the Absecon Wildlife Management Area.

II. Cape May County coastal centers on barrier islands, spits and peninsulas

A. Lower Township coastal centers

1. Diamond Beach coastal town

a. The coastal town boundary extends from the intersection of the Wildwood Crest/Lower Township municipal boundary and Park Boulevard thence southwest on Park Boulevard to North Station Avenue, thence southeast on North Station Avenue to Ocean Drive (County route 621), thence southwest on Ocean Drive (County route 621) to Madison Avenue, thence southeast on Madison Avenue to its end, thence southeast on the same bearing to the water's edge, thence northeast along the water's edge to the municipal boundary, and thence northwest along the municipal boundary to Park Boulevard.

B. Sea Isle City coastal town

1. The coastal town boundary follows the municipal boundary of Sea Isle City, but does not include the area north of a line that extends along 22nd Street and along the same bearing from either end of 22nd Street to the mean high water line.

III. Monmouth County coastal centers on barrier islands, spits and peninsulas

- E. Red Bank Borough
 - 1. Red Bank CAFRA regional center
- V. Ocean County CAFRA centers
 - A. Brick Township
 - 1. Brick CAFRA town
 - B. Barnegat Township
 - 1. Barnegat CAFRA Town Center
 - 2. Barnegat CAFRA Core
 - C. Little Egg Harbor Township
 - 1. Mystic Island CAFRA town
 - 2. Parkertown CAFRA village
 - D. Little Egg Harbor Township/Tuckerton Borough
 - 1. Tuckerton CAFRA town
 - E. Ocean Township
 - 1. Waretown CAFRA Town Center
 - F. Seaside Heights Borough
 - 1. Seaside Heights CAFRA Town
 - G. Stafford Township
 - 1. Stafford/Manahawkin CAFRA regional center
- VI. Salem County CAFRA centers and CAFRA nodes
 - A. Lower Alloways Township CAFRA centers
 - 1. PSE & G Energy Facility node
 - B. Salem City
 - 1. Salem City CAFRA regional center

New Rule, R.2001 d.81, effective March 5, 2001.
 See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).
 Administrative change.
 See: 34 N.J.R. 1421(b).
 Administrative change.
 See: 34 N.J.R. 4196(a).
 Administrative change.
 See: 36 N.J.R. 5674(a).
 Administrative change.
 See: 37 N.J.R. 4435(a).
 Recodified from N.J.A.C. 7:7E Appendix 4 by R.2006 d.46, effective February 6, 2006.
 See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Administrative change (effective March 5, 2007 and operative April 4, 2007).
 See: 39 N.J.R. 768(b).
 Administrative correction.
 See: 39 N.J.R. 2536(a).
 Administrative change (effective March 3, 2008 and operative April 2, 2008).
 See: 40 N.J.R. 1085(a), 1088(a).
 Administrative correction.
 See: 40 N.J.R. 4320(a).
 Administrative change (effective September 8, 2009 and operative October 8, 2009).
 See: 41 N.J.R. 3245(a).
 Administrative change (effective April 19, 2010 and operative May 19, 2010).
 See: 42 N.J.R. 787(a).
 Administrative change (effective May 7, 2012 and operative June 6, 2012).
 See: 44 N.J.R. 1521(a), 1524(a).

APPENDIX 6

PUBLIC ACCESS REQUIREMENTS FOR MARINAS THROUGH DECEMBER 31, 2010

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures, beaches nourished with public funds and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure or beach are prohibited.

7. Development located within the Hudson River Waterfront Special Area shall comply with the additional requirements of the Hudson River Waterfront rule, N.J.A.C. 7:7E-3.48.

8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).

9. Development within the Atlantic City Special Area shall comply with the additional requirements of the Atlantic City rule at N.J.A.C. 7:7E-3.49.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Coastal Zone Management rules.

11. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as a conservation restriction.

12. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

13. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

14. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

(d) Rationale: New Jersey's coastal waters and adjacent shorelands are a valuable limited public resource. They are protected by New Jersey's Shore Protection Program and patrolled by the New Jersey Marine Police which are both financed by all State residents.

Existing development often blocks the waters from public view and/or makes physical access to the waterfront difficult or impossible. In addition, private ownership of land immediately inland from publicly owned tidelands often limits public access to those lands and the waters which flow over them. This has limited access to and enjoyment of public resources by citizens who, through taxes, support their protection and maintenance.

The Public Trust Doctrine, which was enunciated by the New Jersey Supreme Court in *Neptune v. Avon-by-the-Sea* 61 NJ 296 (1972) and reaffirmed and expanded in *Van Ness v. Borough of Deal* 78 NJ 174 (1978) requires that tidal water bodies be accessible to the general public for navigation, fishing and recreation. The New Jersey Supreme Court, in *Matthews v. Bay Head Improvement Association* has extended the public right established by these cases to beaches which, though privately owned, are leased to an improvement association and are operated in a public manner. The most significant aspect of the decision is that it was not based entirely on the quasi-public nature of the Bay Head Improvement Association, but on the unique importance of the public's right of access to the shore, regardless of ownership. The Court said "recognizing the increasing demand for our State's beaches and the dynamic nature of the Public Trust Doctrine, we find that the public must be given both access to and use of privately-owned dry sand areas as reasonably necessary. While the public's rights in private beaches are not co-extensive with the rights enjoyed in municipal beaches, private landowners may not in all instances prevent the public from exercising its rights under the Public Trust Doctrine. The public must be afforded reasonable access to the foreshore as well as a suitable area for recreation on the dry sand." DEP, therefore, has an obligation to ensure that the common law right is not abridged. This obligation remains even after the State has conveyed tidelands to a private owner.

The Public Trust Doctrine requires that access be provided to publicly funded shore protection structures and that such structures not be used to impede access. The New Jersey Supreme Court in *Borough of Neptune v. Avon-by-the-Sea* 61 NJ 296 (1972) held that:

"... at least where the upland sand area is owned by a municipality a political subdivision and creature of the state and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the

beach and the ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (61 N.J. at 308-309, emphasis added).”

Such structures, when located on wet sand beaches, tidally-flowed or formerly tidally-flowed lands are subject to the Public Trust Doctrine. Once built, most publicly funded shore protection structures become municipal property and are, therefore, subject to the Doctrine in the same manner as municipally owned beaches. The developed waterfront, due to its past industrial utilization, has been closed to the people that live adjacent to the waterfront. DEP intends to promote a

horizontal network of open space at the water which could be visualized as a narrow strip used for walking, jogging, bicycling, sitting or viewing, which is contiguous, even if the path must detour around existing or proposed industry due to security needs or the lack of pre-existing access. These linear walkways will connect future and existing waterfront parks, open space areas, and commercial activities. The goal of the rule is the piecing together of a system that will provide continuous linkages and access along the entire waterfront.

New Rule, R.2009 d.34, effective January 20, 2009.
See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).