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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
  - vi. Protect, enhance and promote waterfront parks;
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;

(j) Mitigation shall be provided for development within the right-of-way of a street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue, except for 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).

#### **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) (Reserved)

(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).

## 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

(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) (Reserved)

(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, or military facility is proposed and the Department determines that perpendicular access and/or a linear area along the entire shore of the tidal waterway 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:

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; or

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.

(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;

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 or beach nourishment project proposed along one of the waterways listed at (e) above and not for other municipally held lands;

3. Prior to commencement of construction or nourishment, provide public access to all tidal waterways and their shores on or adjacent to lands held by the municipality;

4. Prior to commencement of construction or 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 or 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 and beach nourishment projects 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 or 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 project, except those portions of jetties and groins on which public access is not required in accordance with ii below, and all beaches within the municipality along the waterway on which the project occurs. If a municipality cannot obtain the required conservation restriction for all privately held beaches outside of the project area within the municipality along the waterway on which the project

occurs, the shore protection or beach nourishment project can proceed only if the municipality or State has entered into condemnation or other legal proceedings to diligently obtain the necessary easements;

(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 project construction, provide public access to the entire project and to all beaches within the municipality along the waterway on which the project occurs. 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 project construction, provide public accessways to the project and to all beaches within the municipality along the waterway on which the project occurs. The linear distance between public accessways shall not exceed one-quarter mile 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 within the municipality along the waterway on which the project occurs 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 por-

tion 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 project construction, install Department approved public access signs. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding at each public accessway and/or public access area along the waterway on which the project occurs;

8. For shore protection and beach nourishment projects 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 project construction, record in accordance with N.J.A.C. 7:7E-8A.4, a Department-approved conservation restriction that maintains the following for public access in perpetuity:

(1) The entire shore protection project or nourished beach, 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 or nourished beach 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)8iii below; and

(3) All parking areas identified in (p)8iv below;

ii. Immediately upon completion of project construction, permit public access to the entire 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 project construction, provide accessways along a linear shore protection or 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 project structure;

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 project construction, install Department approved public access signs. Signs shall be maintained in perpetuity by the participant in Shore Protection Project funding at the site of the project, except at jetties and groins that are not designed for public use;

9. Within 180 days of completion of an emergency shore protection or beach nourishment project, 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 4 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, prior to 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.

i. An applicant that is a municipality or county shall also submit a draft ordinance adopting the public access plan;

2. 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.

3. Provide public access to all tidal waterways and their shores on or adjacent to lands held by the applicant;

4. 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;

5. In addition to complying with (q)1 through 4 above, an applicant that is a municipality shall:

i. Prior to application for Green Acres funding for a Green Acres project site, submit to the Department for approval, a draft Public Access Instrument that meets the requirements of N.J.A.C. 7:7E-8A.5;

ii. 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

iii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance and record the Public Access Instrument approved by the Department pursuant to (q)1i and 5i above, respectively;

6. In addition to complying with (q)1 through 4 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 above;

7. 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;

8. 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;

9. 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;

10. 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/walkways, and piers and public accessways pursuant to 8 above; and

iii. All parking areas identified in (q)11 below;

11. 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

12. 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".

#### 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

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).

#### 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. However, exceptions may be made for 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.

(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, bay-front 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).

### 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 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 ignitability, 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 live-stock 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 and beach nourishment projects, 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 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.

**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. The coastal town boundary follows the municipal boundary of Mantoloking Borough, but does not include any bay islands.

K. Seaside Park coastal town

1. The coastal town boundary follows the municipal boundary of Seaside Park Borough, but does not include any bay islands.

L. Ship Bottom coastal town

1. The coastal town boundary follows the municipal boundary of Ship Bottom Borough, but does not include any bay islands.

M. Surf City coastal village

1. The coastal village boundary follows the municipal boundary of Surf City, but does not include any bay islands.

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: 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 Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the introductory paragraph.

Administrative change.

See: 39 N.J.R. 2018(b).

**APPENDIX 4**

(RESERVED)

New Rule by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Former N.J.A.C. 7:7E Appendix 4, CAFRA Centers, recodified as N.J.A.C. 7:7E Appendix 5.

Administrative changes.

See: 38 N.J.R. 1669(a).

Amended by R.2006 d.363, effective October 2, 2006.

See: 38 N.J.R. 1921(a), 38 N.J.R. 4214(a).

Added the second paragraph; and inserted asterisks following multiple entries in the list of coastal centers with expired boundaries.

Administrative change. (Administrative notice that Appendix 4 expired.)

See: 39 N.J.R. 2018(b).

**APPENDIX 5**

**CAFRA CENTERS**

This non-regulatory appendix contains the list of CAFRA centers the boundaries of which have been accepted by the Department under N.J.A.C. 7:7E-5B.3(b), and which are incorporated into and shown on the CAFRA Planning Map. As required under N.J.A.C. 7:7E-5B.4(b), an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable impervious cover limits under this chapter.

The Department will update the list of CAFRA centers, in this Appendix by notice of administrative change as part of

the New Jersey Register notice required in N.J.A.C. 7:7E-5B.3(b). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers are listed alphabetically.

I. Atlantic County CAFRA centers and CAFRA cores

A. Atlantic City

1. Atlantic City CAFRA urban center

B. Galloway Township CAFRA centers and CAFRA cores

1. Galloway Downtown CAFRA core
2. Oceanville CAFRA village
3. Smithville CAFRA core
4. Smithville CAFRA town
5. Wrangleboro CAFRA town

II. Cape May County CAFRA centers

A. Avalon Borough

1. Avalon Borough CAFRA town

B. Cape May City

1. Cape May City CAFRA town

C. Cape May Point Borough

1. Cape May Point CAFRA village

D. Stone Harbor Borough

1. Stone Harbor Borough CAFRA town

E. Upper Township

1. Seaville CAFRA Town
2. Marmora CAFRA Town
3. Petersburg CAFRA Village
4. Tuckahoe CAFRA Village

F. Wildwood City/North Wildwood City/Wildwood Crest Borough/West Wildwood Borough

1. The Wildwoods CAFRA regional center

III. Cumberland County CAFRA centers

A. Bridgeton City

1. Bridgeton CAFRA Regional Center

B. Commercial Township CAFRA centers

1. Laurel Lake CAFRA village
2. Mauricetown-Haleyville CAFRA village
3. Port Norris CAFRA village

- C. Lawrence Township
  - 1. Cedarville CAFRA Village
- D. Maurice River Township
  - 1. Delmont CAFRA village
  - 2. Dorchester-Leesburg CAFRA village
  - 3. Heislerville CAFRA village
  - 4. Port Elizabeth Bricksboro CAFRA village
  - 5. Mauricetown Station CAFRA hamlet
- E. Millville City/Vineland City
  - 1. Millville-Vineland CAFRA regional center
- IV. Monmouth County CAFRA centers
  - A. Asbury Park City
    - 1. Asbury Park CAFRA urban center
  - B. Atlantic Highlands Borough
    - 1. Atlantic Highlands Borough CAFRA town
  - C. Long Branch City
    - 1. Long Branch CAFRA regional center
  - D. Manasquan Borough
    - 1. Manasquan Borough CAFRA town
  - E. Red Bank Borough
    - 1. Red Bank CAFRA regional center
- V. Ocean County CAFRA centers
  - A. Brick Township
    - 1. Brick CAFRA town
  - B. Little Egg Harbor Township
    - 1. Mystic Island CAFRA town

- 2. Parkertown CAFRA village
- C. Little Egg Harbor Township/Tuckerton Borough
  - 1. Tuckerton CAFRA town
- D. Ocean Township
  - 1. Waretown CAFRA Town Center
- E. Seaside Heights Borough
  - 1. Seaside Heights CAFRA Town
- F. 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).