

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.

“Water quality certificate” means a determination by the Department of the consistency with this chapter of an activity that proposes a discharge to waters of the United States that requires a Federal license or permit pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. Federal licenses and permits for which water quality certificates are issued include, but are not limited to:

1. NPDES permits by USEPA under Section 402 of the Federal Clean Water Act, 33 U.S.C. § 1342;

2. Permits for the discharge of dredged or fill material issued by the USACE under Section 404 of the Federal Clean Water Act, 33 U.S.C. § 1344;

3. Permits for activities that have a potential to discharge in navigable waters issued by the USACE under Sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. §§ 403 and 404; and

4. Hydropower licenses issued by the Federal Energy Regulatory Commission under Sections 3(11), 4(e) and 15 of the Federal Power Act, 16 U.S.C. §§ 796(11), 797(e), and 808.

“Waters of the State” means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground-water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

“Waters of the United States” means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mud-flats, sand flats, sloughs, wet meadows, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

iii. Which are used or could be used for industrial purposes by industries in interstate commerce;

iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;

v. Which are or would be used as habitat by other migratory birds which cross state lines;

vi. Which are or would be used as habitat for endangered and threatened species; or

vii. Which are used to irrigate crops sold in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial seas; and

7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition, other than those that are themselves wetlands.

“Waterward side of development” means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries (see Appendix A, herein incorporated by reference).

“Working day” means a day on which the offices of the Department are open for business.

The following annotations apply to N.J.A.C. 7:7-1.5 prior to its repeal by R.2015 d.108:

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

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

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

Rewrote the section.

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Added (a)1 and 2.

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 (b); and added (b)19.

The following annotations apply to N.J.A.C. 7:7-1.5 subsequent to its recodification from N.J.A.C. 7:7-1.3 by R.2015 d.108:

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Amended Division and Permit; added pesticide.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

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

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

Rewrote the section.

Amended by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Added “Property as a whole”.

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

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

In “Dune”, inserted “and all landward dune ridges and mounds” preceding “as well as man-made dunes”.

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Added definitions “beach berm” and “charitable conservancy”; updated definition “seasonal or temporary structures related to the tourism industry”.

Amended by R.2007 d.242, effective August 20, 2007.

See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

Added definition “Grace Period”.

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”; in the introductory paragraph of definition “Conservation restriction”, inserted “or for public access to tidal waterways and their shores,” and “of the following”; in paragraph 1 of definition “Conservation restriction”, substituted “of” for “or” following “placing”; and added definitions “Public accessway” and “Public Trust Doctrine”.

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 definitions “Floodway”, “Impervious cover” and “Rotor swept area”.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In definition “Amusement pier”, inserted the next-to-last sentence, and deleted “, bars or restaurants” following the second occurrence of “payoffs”.

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

Added definitions “Living shoreline”, “Non-polluting material” and “Pumpout facility”.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Recodified from N.J.A.C. 7:7-1.3 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section. Former N.J.A.C. 7:7-1.5, Permits and permit conditions, repealed.

Petition for Rulemaking.

See: 47 N.J.R. 3060(b).

Law Review and Journal Commentaries

Watch Out for the CAFRA II Rules. Lewis Goldshore and Marsha Wolf, 159 N.J.L.J. 1196 (2000).

Case Notes

Borough was properly assessed civil administrative penalties by the Department of Environmental Protection for violations of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., as a result of development activities in a coastal zone without a permit, including removing existing vegetation from the site, filling and grading the site with asphalt millings, tamping the asphalt millings, setting telephone poles on the site to create a parking area, and constructing a fence around the site. The Borough’s reliance on the CAFRA exception with respect to the construction of the fence was inapplicable because the fence was not associated with a public highway. N.J. Dep’t. of Env’tl. Prot., Coastal and Land Use Compliance and Enforcement v. Seaside Heights Borough, OAL Dkt. No. ESA 4458-06, 2009 N.J. AGEN LEXIS 924, Final Decision (May 11, 2009).

7:7-1.6 Forms, checklists, information; Department address and website

(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (b) below, by telephone at (609) 984-0162, or through the Division’s website at www.nj.gov/dep/landuse. Further information about the Department can be accessed at www.nj.gov/dep.

(b) Applications, fees, and other correspondence shall be submitted to the following addresses:

1. For regular mail:

New Jersey Department of Environmental Protection
Division of Land Use Regulation
Mail code 501-02A, P.O. Box 420
Trenton, NJ 08625;

2. For hand delivery, courier service, and overnight mail:

They are productive habitats for other game and non-game animals, such as fur bearers and song birds. These wetlands also serve as fire breaks and may limit the spread of forest, brush, or grass fires. They are inappropriate development sites due to poor drainage and load bearing capacity of the underlying soils.

Forested wetlands play a critical role in coastal and other ecosystems. Roots and trunks stabilize shorelines and trap sediment. They are physical and biochemical water filter areas maintaining stream water quality. High productivity, high water availability, and high edge to area ratio make these areas especially productive wildlife areas.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many endangered plant and animal species, as well as game species, such as deer. White cedars also act as forest fire breaks. White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development.

White cedar is New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. To protect development from these forces, shorelines are typically armored with hard structures such as bulkheads, gabions, or revetments. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands, intertidal and subtidal shallows, and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses erosion by providing protection, restoration, or enhancement of vegetated shoreline habitats.

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 cranberry bogs recodified to 3.29; text on wetlands recodified from 3.25 and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

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.428, effective October 16, 2000.

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

In (h)6, substituted "approved by the Department" for "memorialized in a deed restriction meeting the Department's requirements" in the third sentence; and in (h)6 and (h)8, inserted references to conservation restrictions for references to conservation easements and substituted "recorded" for "registered" throughout.

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)1, amended the N.J.A.C. reference; rewrote (h)3.

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

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

Rewrote (b).

Public Notice: Routine Program Change for Coastal Management Program.

See: 41 N.J.R. 3324(b), 4325(b).

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

Added new (d); recodified former (d) through (i) as (e) through (j); and in (j), amended the Rationale statement.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Recodified from N.J.A.C. 7:7E-3.27 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

Petition for Rulemaking.

See: 47 N.J.R. 3060(b).

Case Notes

Federal court finding that land was wetland under federal definition required applicant for permit to concede that activity conflicted with state's coastal zone management program. *Matter of Stoeco Development, Ltd.*, 262 N.J.Super. 326, 621 A.2d 29 (A.D.1993).

Project's exemption from permit requirements does not prevent state from finding proposed activity inconsistent with state's coastal zone management program. *Matter of Stoeco Development, Ltd.*, 262 N.J.Super. 326, 621 A.2d 29 (A.D.1993).

Permit to fill wetlands granted by Army Corps of Engineers was not subject to state regulation. *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).

Exclusive state regulation of isolated wetlands was provided by Freshwater Wetland Protection 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).

State regulation of upland development which had no direct effect on navigable waterways was not authorized by 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).

Department of Environmental Protection was not required, in contested permit proceeding, to give notice that condition of mitigation might be imposed. *Baron v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 75.

7:7-9.28 Wetlands buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem. Wider buffers than those noted below

may be required to establish conformance with this chapter, including, but not limited to, N.J.A.C. 7:7-9.36 and 9.37.

1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).

2. For all other wetlands, including wetlands regulated under the Wetlands Act of 1970, a wetland buffer of up to 300 feet shall be established.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

(e) Rationale: Development adjacent to wetlands can adversely affect the wetlands through increased runoff, sedimentation, and introduction of pollutants.

The coastal zone includes a diversity of types of wetlands, of varying widths, quality and importance to the ecosystem, from large forested freshwater wetlands, to narrow strips of coastal wetlands. For this reason, the appropriate buffer necessary to protect the wetlands adjacent to proposed land disturbance must be determined on a case-by-case basis, but using a standard that requires no significant impact on, and minimum feasible disturbance to, the wetlands.

The preservation of a transitional area of native vegetation in the portion of the wetlands buffer adjacent to a wetlands and the construction of detention basins or berms if necessary to control runoff, could mitigate impacts and make development permissible in the remainder of the wetlands buffer.

Buffers that support strands of native vegetation perform the following ecological and physical functions:

1. Stabilization of soil and prevention of erosion;
2. Filtration of suspended solids (silt) to prevent their deposition on wetlands. Siltation onto wetlands can lead to

undesirable changes in vegetation, e.g. from cord grass (*Spartina*) to reeds (*Phragmites*), which contribute less to the estuarine and marine food chain;

3. Water turbidity control;

4. Inhibition of pollutant introduction into wetlands soil, water and food chains. Without wetlands buffers, "urban" runoff from adjacent housing will almost always cause an increase in contaminants, such as coliform, following rain;

5. Storm water storage;

6. Formation of a barrier to floating debris, and;

7. Contribution to estuarine productivity, especially if the buffer is a forested floodplain.

As transition areas between differing vegetation communities (habitat areas), appropriately vegetated wetlands buffers function as ecotones, supporting a diversity of species and uses, and serving as wildlife movement corridors.

Wetlands buffers are used as lookout perches for raptors; nesting sites for Marsh Hawks, Black Crowned Night Heron, and Osprey; fall migration foraging stopovers for birds, including woodcock; nesting sites for Wood Ducks, Black Ducks, and Mallards; and forage routes into and out of wetlands for Raccoons, Mink Muskrat, Fox, Deer, and others. Grassy wetlands edges serve as feeding sites for Wilson's Snipe, Ruffed Grouse, Quail and song birds.

Wetland buffer requirements may be less restrictive in areas where proposed development is considered infill, and where a majority of the area adjacent to the wetlands is developed. In these areas, the potential adverse impacts to the wetlands from additional development are generally minor. The Department will establish the required wetland buffers for these areas on a case-by-case basis, based on the existing site conditions, including but not limited to elevation, topography and vegetation.

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).

"Policy:" deleted 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).

Text on wet borrow pit margins recodified to 3.30 and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A and N.J.A.C. 7:50-6.14.

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).

Administrative correction.

See: 37 N.J.R. 1516(a).

Recodified from N.J.A.C. 7:7E-3.28 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

7:7-9.29 Coastal bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand,

state – and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the beach and 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).”

Shore protection 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 Public Trust Doctrine in the same manner as municipally owned dry beaches.

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)iv and (e)4.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (d)iv and (e)4, substituted “access” for the second occurrence of “trust rights”.

Emergency Repeal and New Rule, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

Section was “Coastal engineering”.

Adopted Concurrent Repeal and New Rule, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Recodified from N.J.A.C. 7:7E-7.11 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

Case Notes

Property owners’ application for permit to construct a bulkhead on property adjacent to bay failed to satisfy coastal engineering rule establishing 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.

7:7-15.12 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, capping material, 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. 7:7-12.9.

(b) Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of the dredged material may be required as needed to determine the acceptability of the placement of the material on a particular site in accordance with Appendix G.

(c) Dredged material disposal and/or construction of a confined disposal facility is prohibited in wetlands unless the criteria found at N.J.A.C. 7:7-9.27 are met.

(d) The beneficial use of dredged material of appropriate quality and particle size for purposes such as restoring landscape, enhancing farming areas, capping and remediating landfills and brownfields, transportation projects, beach protection, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

(e) Adverse effects associated with the transfer of the dredged materials from the dredging site to the upland confined disposal facility or upland placement site shall be minimized to the maximum extent feasible.

(f) Dredged material placement in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7-9.14 and 9.33).

(g) If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to increasing retention time of water in the disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

(h) All potential releases of water from confined (diked) disposal facilities and rehandling basins shall meet existing State Surface Water Quality Standards (N.J.A.C. 7:9B) and State Ground Water Quality Standards (N.J.A.C. 7:9C).

(i) Rationale: Dredged material disposal and/or beneficial use is an essential coastal land and water use that is linked inextricably to the coastal economy. Dredged material placement on land could have serious impacts in the coastal

environment. In the past decade, evolving State and Federal policies for protection of the marine and estuarine coastal environment have sharply limited the designation of new open water dredged material disposal areas. Yet maintenance dredging must continue if inlets and navigation channels are to be maintained. This rule recognizes the importance of this use of coastal resources and the need for sites landward of the spring high water line where this material can be placed.

Dredged material may contain pollutants and thus dredging and dredged material placement must be managed to minimize impacts on water, air, and habitat. Further, every precaution should be taken to ensure that the placement of dredged material on land does not endanger the natural coastal resources, human health, or the environment. Therefore, due investigation is required prior to approval of dredged material placement on land.

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) 6 and 7 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 the section.

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

In (a), inserted "capping material," and inserted a comma following "bricks"; in (c), inserted "and/or construction of a confined disposal facility" and "are met", substituted "in" for "on", and deleted "the disposal satisfies" following "unless"; in (d), inserted "beneficial" and "transportation projects,"; in (e), substituted "Adverse effects" for "Effects", and inserted "upland confined" and "facility or upland placement"; in (h), substituted "facilities" for "sites", "Ground Water" for "Groundwater", "7:9C" for "7:9"; and in (j), amended the Rationale statement.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

Recodified from N.J.A.C. 7:7E-7.12 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Rewrote the section.

Petition for Rulemaking.

See: 47 N.J.R. 3060(b).

7:7-15.13 National defense facilities

(a) A national defense facility is any building, group of buildings, marine terminal, or land area owned or operated by a defense agency (Army, Navy, Air Force, Marines, Coast Guard) and used for training, research, material support, or any other defenserelevant use.

(b) National defense facilities are conditionally acceptable provided the development meets either (b)1 or 2 below:

1. The proposed facility is consistent with all relevant sections of this chapter; or

2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with this chapter, and will result in minimal feasible degradation of the natural environment.

(c) The construction of new facilities or expansion of existing facilities on land not owned by a defense agency is discouraged, unless it can be shown that the facility cannot feasibly be accommodated on an existing base.

(d) Rationale: Providing for the national defense is the responsibility of the Federal government, and the New Jersey Coastal Management Program will not question the findings of a Federal defense agency with respect to national security needs.

The requirements that coastal dependent facility comply with this chapter only to the maximum extent feasible is in keeping with Section 306(c)(8) of the Federal Coastal Zone Management Act, which requires consideration of the national interest in the siting of facilities necessary to meet requirements which are other than local in nature.

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) deleted; (b)1-2 recodified as (b)-(c); (c) recodified to (d).

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 (b), in main paragraph substituted "provided the development meets either (b)1 or 2 below" for "and will be approved if one of two findings can be made".

Recodified from N.J.A.C. 7:7E-7.13 and amended by R.2015 d.108, effective July 6, 2015.

See: 46 N.J.R. 1051(a), 47 N.J.R. 1392(a).

Section was "National defense facilities use rule". Rewrote the section.

7:7-15.14 High-rise structures

(a) High-rise structures are structures which are more than six stories or more than 60 feet in height as measured from existing preconstruction ground level.

(b) The standards for high-rise structures are as follows:

1. High-rise structures are encouraged to locate in an urban area of existing high density, high-rise and/or intense settlements;

2. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7-9.46;

3. Where the high-rise structure is a building or complex of buildings that comprises both a low-rise component(s) that is six stories or 60 feet or less in height as measured from preconstruction ground level and a component(s) that is more than six stories or more than 60