

(9) Provide meaningful public access to tidal waterways and their shores; and

(10) Preserve and restore significant historic and cultural resources and aesthetic coastal features;

ii. Maintain, enhance and encourage maritime uses;

iii. Preserve and enhance beach and dune systems and wetlands, and manage natural features to protect the public from natural hazards;

iv. Promote public health, safety and welfare;

v. Promote and implement strategies for the development of hazard mitigation plans; and

vi. Promote and implement strategies that eliminate or reduce risks to human health and the ecosystem from coastal activities;

7. Coordinated coastal decision-making, comprehensive planning and research.

i. Promote the attainment of the New Jersey Coastal Management Program goals by encouraging other government agencies to employ the policies which supplement the goals;

ii. Encourage incorporation of the coastal goals and supplemental policies into State, regional and municipal land use management, funding and acquisition programs within the coastal zone;

iii. Coordinate cooperative government sponsored and academic coastal research and information dissemination to foster informed decision-making;

iv. Ensure opportunities for public participation in coastal decision-making;

v. Encourage the preparation of comprehensive plans, including:

(1) Land acquisition plans that further the goals and supplemental policies of New Jersey's Coastal Management Program; and

(2) Special area management plans that protect significant natural resources and provide the opportunity for sound coastal dependent economic development; and

8. Coordinated public education and outreach.

i. Coordinate education and outreach activities on coastal issues; and

ii. Encourage coastal related education and participation opportunities for the public.

(d) The coastal land and water areas of New Jersey are diverse. The Coastal Zone Management rules address a wide range of land and water types (locations), current and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. In developing these

rules, balances were struck among various conflicting, competing, and contradictory local, State, and national interests in coastal resources and in uses of coastal locations. This balancing and conflict-reducing approach reflects that coastal management involves consideration of a broad range of concerns in contrast to other resource management programs which are more limited in scope.

(e) The location rules (N.J.A.C. 7:7E-3 through 6), use rules (N.J.A.C. 7:7E-7) and resource rules (N.J.A.C. 7:7E-8) stem from the coastal goals at (c) above. The Department does not expect each proposed use of coastal resources to involve all location rules, use rules, and resource rules. Decision-making on proposed actions involves examining, weighing, and evaluating complex interests using the framework provided by this chapter. The Coastal Zone Management rules provide a mechanism for integrating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a rule or a combination of rules, may vary depending upon the context of the proposed use, location, and design.

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

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

Added text in (b): "The rules were ... February 7, 1983."

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

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

Chapter name changed to Rules on Coastal Zone Management; references to amendments updated.

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), added a reference to June 23, 1995, August 19, 1996, February 17, 1998, December 7, 1998 and February 7, 2000.

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

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

Added (d).

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), (c) and (d); and added (e).

Case Notes

Numeric limitations on impervious cover established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity were appropriately coordinated with state plan, despite differing goals of Coastal Area Facility Review Act (CAFRA) and state plan. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Principle that the purpose of Department of Environmental Protection regulations is to assure predictability of its actions applied to the Department of Transportation in holding that a municipality was not entitled to any type of hearing concerning the Department's decision to place traffic control signals on a State highway. Cedar Grove Twp. v. Sheridan, 209 N.J.Super. 267, 507 A.2d 304 (App.Div.1986), certification denied 104 N.J. 464, 517 A.2d 448 (1986).

Regulation reflects Department's determination to limit its discretion and assure the greatest possible degree of predictability in its actions.

Crema v. Dept. of Environmental Protection, 94 N.J. 286, 463 A.2d 910 (1983).

General discussion of regulations as policies for the use of coastal resources. Lusardi v. Curtis Point Prop. Owners Ass'n, 86 N.J. 217, 430 A.2d 881 (1981).

CAFRA regulations define standards to be used in reviewing applications for permits to construct coastal area facilities. Lusardi v. Curtis Point Property Owners Assn., 86 N.J. 217, 430 A.2d 881 (1981).

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to six categories, as defined in N.J.A.C. 7:7E-1.2(c) through (h), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

1. Coastal Permits;
2. Program Management Actions;
3. Consistency Determinations;
4. Financial assistance;
5. Department management actions affecting the coastal zone; and
6. Department planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey coastal zone: This chapter shall apply geographically to the New Jersey coastal zone, which is defined as:

1. The coastal area defined in the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.;
2. Coastal waters, which are any tidal waters of the State and all lands lying thereunder. Coastal waters of the State of New Jersey extend from the mean high water line out to the three geographical mile limit of the New Jersey territorial sea, and elsewhere to the interstate boundaries of the States of New York, and Delaware and the Commonwealth of Pennsylvania;
3. All lands outside of the coastal area as defined by CAFRA extending from the mean high water line of a tidal water body to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line;
4. All areas containing tidal wetlands; and
5. The Hackensack Meadowlands District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits: This chapter shall apply to all:

1. Waterfront Development permits (N.J.S.A. 12:5-3);
2. Tidal wetlands permits (N.J.S.A. 13:9A-1 et seq.); and

3. CAFRA permits (N.J.S.A. 13:19-1 et seq.).

(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the coastal zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);
2. Promulgation of regulations concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);
3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1251 et seq. (Water Quality Certification); and
4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.).

(e) Consistency determinations: This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies within or affecting the coastal zone, including, but not limited to, determinations of Federal consistency under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., determinations of consistency or compatibility under the Coastal Zone Management Act, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and comments on other public and private plans, programs, projects and policies.

(f) Financial assistance decisions: This chapter shall apply to State aid financial assistance decisions by the Department under the Shore Protection Program and Green Acres Program within the coastal zone, to the extent permissible under existing statutes and regulations.

(g) Department management activities: In addition to the management activities noted at N.J.A.C. 7:7E-1.1, this chapter shall apply, to the extent statutorily permissible, to the following Department management actions, including permit decisions, approvals, certifications and conveyances, in or affecting the coastal zone:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.);
2. Division of Water Quality:
 - i. Point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.);
 - ii. Wastewater treatment works sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6);
 - iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.);

- iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4);
 - v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44);
 - vi. Fifty or more sewerage (septic) facilities (N.J.S.A. 58:11-23); and
 - vii. Sewerage facilities in critical areas (N.J.S.A. 58:11-45).
3. Land Use Regulation Program:
- i. Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.); and
 - ii. Activities under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.);
4. Water Supply Administration:
- i. Diversion of surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.);
 - ii. Diversions for water supply (N.J.S.A. 58:1A et seq.);
 - iii. Drilling of wells (N.J.S.A. 58:4A-14);
 - iv. Construction of new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.); and
 - v. Installation of or maintenance of a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.);
5. Bureau of Non Point Pollution Control: Discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.);
6. Air Quality Regulation:
- i. Construction, installation or alteration of control apparatus or equipment (N.J.S.A. 26:2C-9.2);
 - ii. Operation of control apparatus or equipment (N.J.S.A. 26:2C-9.2); and
 - iii. Variances to exceed air quality standards (N.J.S.A. 26:2C-9.2);
7. Division of Solid and Hazardous Waste: Management of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.);
8. Green Acres and Division of Parks and Forestry:
- i. Regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19);
 - ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.);
 - iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.); and
- iv. Inclusion of river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.);
9. Division of Fish and Wildlife: Regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28);
10. Natural and Historic Resources, Engineering and Construction: Management of dams (N.J.S.A. 58:4-1); and
11. All Divisions: Management of State-owned lands by the Department.
- (h) Department planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by the Department in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.
- 1. Land Use Regulation Program:
 - i. Coastal zone management;
 - 2. Natural and Historic Resources Programs:
 - i. Navigational dredging; and
 - ii. Shore protection.
 - 3. Division of Watershed Management:
 - i. Areawide water quality management ("208"); and
 - ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.
 - 4. Air Quality Regulation: Air quality planning.
 - 5. Division of Solid and Hazardous Waste: Solid and hazardous waste management.
 - 6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.
 - 7. Division of Water Quality: Issuance of environmental decision documents for environmental infrastructure facilities that receive State financial assistance (P.L. 1985, c.329, N.J.A.C. 7:22-10).
 - 8. Office of Policy, Planning and Science: Implementation and coordination of the Federal Coastal Zone Management Program.
- 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 "Solid Waste Administration" and substituted "Division of Waste Management."
 Old section 2 Authority was repealed.
 Amended by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Responsibility for Stream Encroachment Permits, Dam Permits, Water Quality Certificates, and implementation of the Freshwater Wetlands Protection Act included in jurisdiction of the Division of Coastal Resources; administrative changes reflected.

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.

Case Notes

Coastal Zone Management Act's consistency review requirements were not triggered by power authority's submission to Coast Guard of plan for barge shipments of irradiated fuel from nuclear power plant. State of N.J., Dept. of Environmental Protection and Energy v. Long Island Power Authority, C.A.3 (N.J.)1994, 30 F.3d 403.

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).

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).

CAFRA regulations provide the most detailed expression of the State's policies concerning the appropriate uses of shoreline resources; local zoning ordinance invalid to the extent it prevented owners of undeveloped oceanfront lots from using dry sand beach areas of their property primarily for recreational purposes. Lusardi v. Curtis Point Property Owners Assn., 86 N.J. 217, 430 A.2d 881 (1981).

Department of Environmental Protection not empowered by Executive Order No. 53 (1979) to insist that Department of Corrections obtain Waterfront Development Permit before proceeding with waterfront construction. Concerned Citizens of North Camden v. Dept. of Corrections, 6 N.J.A.R. 140 (1983).

7:7E-1.3 Severability

If any provision of this chapter or the application of this chapter to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

7:7E-1.4 Review, revision, and expiration

The Department shall periodically review this chapter, consider the various national, State, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to this chapter. Under the requirements of the Federal Coastal Zone Management Act, the Department expects to conduct an annual review of the rules and expects to revise, amend or readopt the rules before the five-year deadline under Executive Order No. 66 of 1978 for periodic review of administrative rules.

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).

7:7E-1.5 CAFRA findings

(a) The Department shall issue a permit pursuant to the Coastal Area Facility Review Act (CAFRA) only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;

2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;

3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;

4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;

6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and

7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region.

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

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

Added definitions "Department" or "DEP" and "Division"; substantially amended definitions "Prohibited" and "Water dependent".

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

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

Use of waterfront for water-dependent activities encouraged.

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)1vii, deleted "determined to be needed by the New Jersey State Energy Master Management Plan" following "facilities"; and in (c), inserted "Coastal permit" or "permit", "Conservation restriction", "Impervious cover", "Land area" and "Linear development", and rewrote "Development", "Reconstruction" and "Site".

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

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

Deleted former (a) and (c); recodified former (b) as (a).

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

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

Added (b).

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

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

Section was "Coastal decision-making process". Deleted (a); and recodified (b) as (a).

Case Notes

Definition of "impervious cover" established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity was not arbitrary or otherwise impermissible, despite its inclusion in "impervious cover" of types of cover described in earlier rules as "permeable cover," where intervening rules removed distinction between impervious and permeable cover, establishing single permissible

development intensity regardless of which form of cover was utilized, and where change in definition was supported by DEP's experience with permeable paving. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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

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

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

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

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

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

7:7E-1.6 Mitigation

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

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

New Rule by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

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

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

In (a), substituted "Department" for "Program" in the second sentence and substituted "3.9" for "3.48" in the third sentence. Amended by R.2004 d.43, effective January 20, 2004.

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

In (a), amended N.J.A.C. references.
Amended by R.2008 d.82, effective April 7, 2008.

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

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

7:7E-1.7 Correspondence with the Department

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

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

New Rule, R.2000 d.45, effective February 7, 2000.
See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

7:7E-1.8 Definitions

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

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

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

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

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

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

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

§§1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

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

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

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

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

“Development” means any activity for which a Wetlands Act of 1970 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or

maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

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

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

“Reconstruction” means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change

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

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

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

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

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

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

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

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing

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

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

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

New Rule, R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).
Amended by R.2007 d.374, effective December 17, 2007.
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

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

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

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

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

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

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

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

7:7E-3.1 Purpose and scope

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

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

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. 7:7E-4.7 so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

(h) For the purpose of this rule all docks and piers, except public fishing piers defined in (d)1 above, are considered boat mooring facilities.

(i) Development required for national security for which there exists no other prudent and feasible alternative site is acceptable under this rule, provided that the shellfish resource is salvaged and mitigated pursuant to a plan approved in writing by the Department. The applicant is responsible for all the expenses of resource salvaging and mitigation. All such programs shall be coordinated with the appropriate shellfish management agency.

(j) N.J.A.C. 7:7E-7.3(d)10 shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

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

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

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

Substantially amended.

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).

Petition for Rulemaking.

See: 26 N.J.R. 4450(a), 27 N.J.R. 244(d), 27 N.J.R. 2629(b).

Public Notice: Petition for Rulemaking.

See: 27 N.J.R. 3634(c).

Public Notice: Shellfish habitat proposed interim policy; additional public meeting and extension of comment period.

See: 27 N.J.R. 4011(b).

Petition for Rulemaking.

See: 31 N.J.R. 4341(a), 32 N.J.R. 604(a).

Amended by R.2000 d.154, effective April 17, 2000.

See: 31 N.J.R. 749(a), 32 N.J.R. 1382(a).

In (c), added “, unless the proposed development is a dock, pier, or boat mooring constructed in accordance with (d)3 below” at the end of the introductory paragraph; and in (d), inserted a reference to piers in the introductory paragraph, and added 3.

Amended by R.2001 d.153, effective May 21, 2001.

See: 32 N.J.R. 1274(a), 33 N.J.R. 1581(a).

Rewrote (d).

Amended by R.2002 d.32, effective January 22, 2002.

See: 33 N.J.R. 1524(a), 34 N.J.R. 535(a).

In (d)3, rewrote i(1) and (2), inserted “in order to ensure that the requirements of this chapter are met” following “appropriate” in the introductory paragraph of ii, and added vi.

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

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

In (d)3, substituted “recreational docks and piers rule at N.J.A.C. 7:7E-4.5” for “standards relevant to recreational docks at N.J.A.C. 7:7E-4.2(e)”; in (e), (f) and (g), amended the N.J.A.C. references.

Law Review and Journal Commentaries

Court Says Riparian Rules Don't Warrant Compensation. Matt Ackermann, 151 N.J.L.J. 792 (1998).

Case Notes

Riparian grant from state to original owners of upland property did not create absolute and perpetual right to construct dock, free from all regulatory intervention, and thus subsequent owners did not have reasonable, investment-backed expectation that was destroyed by denial of permit to build dock, sufficient to effect regulatory taking. Karam v. State Dept. of Environmental Protection, 705 A.2d 1221, 308 N.J.Super. 225 (A.D. 1998).

Office of Administrative Law lacked jurisdiction over property owners' constitutional challenge to denial of waterfront development permit on grounds that proposed construction would conflict with shellfish habitat regulation. Rivkin v. Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 353.

Waterfront development permit to construct dock was properly denied where proposed construction was to be located in shellfish habitat. Hedrick v. Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 329.

Department of Environmental Protection must complete toxin study before permit for new waterfront development on Manasquan River may be issued. Nordell v. Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 296.

Boat dock development in area where there existed no presently productive shellfish beds would be allowed. Carozza v. DEPE, 96 N.J.A.R.2d (EPE) 109.

Denial of application to construct dock and boat anchorages on shellfish habitat was not improper. Fahey v. Department of Environmental Protection, 95 N.J.A.R.2d (EPE) 148.

Application for permit to construct dock was properly denied given adverse impact on shallow aquatic environment. Mangel v. Njdepe/LUR, 95 N.J.A.R.2d (EPE) 133.

Waterfront development permits were not issuable due to shellfish habitat regulations. Addiego v. Department of Environmental Energy and Protection, 95 N.J.A.R.2d (EPE) 112.

Construction of dock was not violative of regulations as amounting to a condemnation of currently productive shellfish beds. McCullough v. Njdepe/LUR, 95 N.J.A.R.2d (EPE) 101.

Denial of petitioners' application for a waterfront development permit for the construction of a fixed pier and floating platform was appropriate. Caruso v. Department of Environmental Protection, 94 N.J.A.R.2d (EPE) 204.

Destruction of oyster beds precluded issuance of permit to rebuild dock on river. Brennenstuhl v. Department of Environmental Protection, 93 N.J.A.R.2d (EPE) 125.

7:7E-3.3 Surf clam areas

(a) Surf clam areas are coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams (*Spisula solidissima*), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:2512.1(d)4. Surf clams are a marine fish and therefore are also subject to the marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.

(b) Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited except for the following:

1. Development that is of national interest provided:

- i. There are no prudent and feasible alternative sites; and
 - ii. Impacts to the surf clam area are minimized.
2. Sand and gravel mining to obtain material for beach nourishment provided:
- i. The beach nourishment project is in the public interest;
 - ii. There are no prudent and feasible alternative offshore borrow site that would result in less impact to marine fish and fisheries;
 - iii. The impacts to surf clam areas are minimized through the following:
 - (1) The beach nourishment project is designed to minimize the volume of sand borrowed from the surf clam area;
 - (2) The borrow cut is designed to minimize the area disturbed, for example, by designing a deeper cut;
 - (3) The borrow site is located to avoid those more productive surf clam areas; and
 - (4) When appropriate, notice shall be provided to clambers in advance of the mining operation to allow for surf clam harvest; and
 - iv. The sand mining is not located within a surf clam conservation area as defined at N.J.A.C. 7:25-12.

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

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

7:7E-3.4 Prime fishing areas

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local intensity of recreational or commercial fishing activity. These areas include all coastal jetties, groins, public fishing piers or docks, and artificial reefs. Prime fishing areas also include features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell and tubeworms, slough areas and offshore canyons. Prime fishing areas also include areas identified in "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay" Figley and McCloy (1988) and those areas identified on the map titled, "New Jersey's Specific Sport Ocean Fishing Grounds." This map is available through the Coastal Management Program's website at www.state.nj.us/dep/cmp.

(b) Standards relevant to prime fishing areas are as follows:

1. Permissible uses of prime fishing areas include recreational and commercial finfishing and shellfishing, as presently regulated by the Department's Division of Fish and Wildlife, scuba diving and other water related recreational activities.

2. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards.

(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).

Subsection (a) substantially amended by incorporating (a)1 and (a)2 in (a) and adding text "or as indicated ... Long and Figley (1984)".

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

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

Added source material for Raritan Bay.

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

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

In (a), inserted "and artificial reefs" following "piers or docks" and substituted "coastal waters" for "State of New Jersey's three-mile territorial sea"; in (b), rewrote the introductory paragraph and substituted "the Department's Division of Fish and Wildlife" for "NJDEP Division of Fish, Game, and Wildlife".

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

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

Rewrote (a) and the Rationale statement referenced in (c).

7:7E-3.5 Finfish migratory pathways

(a) Finfish migratory pathways are waterways (rivers, streams, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (*Alosa pseudoharengus*), blueback herring (*Alosa sapidissima*), American shad (*Alosa aspidissima*), striped bass (*Monroe saxatilis*), Atlantic sturgeon (*Acipenser oxyrinchus*), Shortnose sturgeon (*Acipenser brevirostrum*) and American eel (*Anguilla rostrata*).

(b) Development, such as dams, dikes, spillways, channelization, tide gates and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.

(c) Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

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), rewrote the introductory paragraph and added v in 3, and added 7.

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)4, inserted "or (f)" following "N.J.A.C. 7:7E-7.2(e)".

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

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

In (b)3iv, added N.J.A.C. reference.

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

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

In (b)3iv, deleted "flood proofing" preceding "requirements".

Case Notes

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

7:7E-3.20 Barrier island corridor

(a) Barrier island corridors are the interior portions of oceanfront barrier islands, spits and peninsulas. Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Barrier island corridor does not include the headlands of northern Ocean County, Monmouth County, and the southern tip of Cape May County, which are part of the mainland.

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(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).

(b): Old text deleted and new text added; (b)1 through (c) recodified to (c)-(e).

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

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

Text on beaches deleted.

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

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

Rewrote (b).

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

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

Case Notes

Need to preserve undeveloped beach area administratively recognized by former N.J.A.C. 7:7E-3.10. *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

7:7E-3.21 Bay islands

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.

1. In cases where a bay island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

OCEAN COUNTY

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township

Pelican Island, Dover/Berkeley Townships

West Point Island, Lavallette Borough

ATLANTIC COUNTY

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

Shawcrest/Hildreth Island, Lower and Middle

Townships. The areas mapped as Shawcrest/

Hildreth Island are identified in the Department's

Geographic Information System (GIS) coverage,

titled "Shawcrest/Hildreth Island." This coverage

is available as a download at the CAFRA layers

webpage: www.state.nj.us/dep/gis/cafralayers.

[htm](#)

West Wildwood, Wildwood City

West 17th Street, Ocean City

(b) On bay islands which abut either a paved public road or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, or which abut neither a paved public road nor such a conveyance, non-water dependent development is pro-

hibited unless it meets the standards of (d) below and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

1. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

2. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

3. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

(c) On bay islands which abut a paved public road and abut the conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, development is conditionally acceptable as follows:

1. Water dependent development is conditionally acceptable, provided that:

i. Impervious cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

2. Non-water dependent development is conditionally acceptable provided that:

i. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of

the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

3. Impervious cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets (d)1 above, in which case the impervious cover limit shall not exceed 30 percent.

(d) Redevelopment or modification within an existing development on a bay island is conditionally acceptable provided that:

1. The construction of buildings and/or concrete asphalt pavement is located on the area covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department and does not exceed the existing development as to any one of the following:

i. Number of units; or

ii. Square footage of interior floor space; and

2. Trees shall be planted and/or preserved on at least five percent of the bay island portion of the site in accordance with N.J.A.C. 7:7E-5.4(d) and (e).

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

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

Added text to (a): "or man-made"; "as well as man-made dikes."

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

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

Text on dunes deleted.

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

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

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

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

Rewrote the section.

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

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

In (a), substituted "island" for "islands" following "barrier" in the first sentence.

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

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

In (a)2, inserted "Shawcrest/Hildreth Island, Lower and Middle Townships. The areas mapped as Shawcrest/Hildreth Island are identified in the Department's Geographic Information System (GIS) coverage, titled 'Shawcrest/Hildreth Island.' This coverage is available as a download at the CAFRA layers webpage: www.state.nj.us/dep/gis/cafralayers.htm".