

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, in accordance with the traffic rule, N.J.A.C. 7:7E-8.14.

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

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

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

Text added at (b)1, 2 and (c) to require developments to monitor and mitigate impact.

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

In (c), substituted "in accordance with the traffic rule, N.J.A.C. 7:7E-8.14" for "as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b))".

#### **7:7E-8.11 Public access to the waterfront**

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked, provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

N.J. STATE LIBRARY  
P.O. BOX 520  
TRENTON, NJ 08625-0520

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures, beaches nourished with public funds and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure or beach are prohibited.

7. Development located within the Hudson River Waterfront Special Area shall comply with the additional requirements of the Hudson River Waterfront rule, N.J.A.C. 7:7E-3.48.

8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).

9. Development within the Atlantic City Special Area shall comply with the additional requirements of the Atlantic City rule at N.J.A.C. 7:7E-3.49.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Coastal Zone Management rules.

11. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as a conservation restriction.

12. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

13. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

14. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

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

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

(b)3-7 added.

Amended by R.1988 d.338, effective August 15, 1988.  
See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Deleted (b)7 and substituted new.

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

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

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

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

In (b), inserted a new 9, and recodified former 9 through 13 as 10 through 14.

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

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

In (b)11, substituted "restriction" for "easements".

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

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

Rewrote the section.

#### Law Review and Journal Commentaries

Resolving State Title Claims to Tidelands: Practice and Procedure.  
William E. Andersen, 168 N.J.Law. 8 (Mag.) (April 1995).

#### Case Notes

Regulation requiring coastal development to permit access to the waterfront to the maximum extent practicable, including both visual and physical access, did not impose absolute prohibition against oceanfront development which interferes with the view of inland property owners. *Bubis v. Kassin*, 323 N.J.Super. 601, 733 A.2d 1232 (N.J.Super.A.D. 1999).

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

Shoreline development that limits public access and the diversity of shorefront experiences is discouraged (citing former N.J.A.C. 7:7E-9.12). *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

#### 7:7E-8.12 Scenic Resources and Design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

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

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

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

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted. Amended by R.1990 d.413, effective August 20, 1990.

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

Enhancement of scenic resources required at (d). Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

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

### 7:7E-8.13 Buffers and compatibility of uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case by case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

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

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

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

Deleted "policy" from (b).

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

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

Stylistic changes.

Administrative change to (b)1.

See: 23 N.J.R. 1662(b).

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

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

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

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

In (b)1, amended N.J.A.C. reference; in (b)2, substituted "standards for" "rule regarding" and "is" for "are".

### Case Notes

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at at least one existing port. In Matter of Bridgeton Bulk Materials Handling Facility. 93 N.J.A.R.2d (EPE) 203.

### 7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e)1, 2 or 3 below, shall provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;

ii. Brick, Dover and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;

iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and

iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofare and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;

2. The Department shall reduce the parking requirement for developments restricted to senior citizen housing that is, restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit; or

3. Nursing homes and assisted living facilities are excluded from the parking requirement at (e) above.

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

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

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

Old 8.14 Solid Waste was repealed and section 8.16 was recodified here. Amendments to old 8.14 listed below.

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).

(c) added.

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).

Rewrote (b).

#### 7:7E-8.15 (Reserved)

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

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

Original 8.18 was "Neighborhoods and special communities", which 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).

Old section 8:15 on energy conservation repealed; text on fertile soils recodified from 8.18.

Repealed 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).

Section was "Fertile Soils".

#### 7:7E-8.16 (Reserved)

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): "policy" deleted; "shall" substituted for "must".

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

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

Section recodified from 8.20. Old section 8.16 Traffic recodified to 8.14.

Repealed 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).

Section was "Noise Abatement".

#### 7:7E-8.17 (Reserved)

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.

Repealed 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 soils and high permeability moist soils deleted.

#### 7:7E-8.18 (Reserved)

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

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

Old section Fertile soils recodified to 8.15.

#### 7:7E-8.19 (Reserved)

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

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

Old (b)2.-5. deleted and (c)-(e) added; old (c) now (f).

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

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

Old section was Flood prone areas.

#### 7:7E-8.20 (Reserved)

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

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

Text on noise abatement recodified to 8.16.

#### 7:7E-8.21 Subsurface sewage disposal systems

(a) Subsurface sewage disposal system means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field.

(b) Acceptability conditions for subsurface sewage disposal systems are as follows:

1. Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

2. For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

3. Construction of subsurface sewage disposal systems ~~must comply with all~~ applicable standards of the National Flood Insurance Program Regulations (44 CFR 60) prepared by the Federal Emergency Management Agency (FEMA).

(c) Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety and environment, potable water supplies, and safeguard fish and aquatic life while preserving their ecological values. In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas (V-zones) is prohibited in accordance with the National Flood Insurance Program Regulations.

New Rule, R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

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

#### 7:7E-8.22 Solid and hazardous waste

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;

ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26; and

iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

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

New Rule, R.2002 d.60, effective February 3, 2003.

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