

(d) Surface mining is conditionally acceptable provided condition (b) above and the mining rule, N.J.A.C. 7:7E-7.8, are met.

(e) Recreational use of wet borrow pits is acceptable provided that wildlife habitat disturbance is minimized.

(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. The dredged material is clean and non-toxic, an appropriate particle size for the site, and will not disturb groundwater flow or quality;

2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in a pattern designed to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1. The fill is clean and will not degrade groundwater quality;

2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit is left as open water;

3. Land-water edges are maximized and vegetated to promote native wildlife;

4. A water quality buffer zone of at least 50 feet is designated in accordance with (j) below around remaining water areas;

5. A program for water quality monitoring and maintenance is included with the application; and

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance.

(h) Discharge of liquid or solid waste, other than clean dredge fill of acceptable particle size, is prohibited.

(i) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(j) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be al-

lowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.

(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).

Section was originally "Estuarine or marine sanctuary"; Section was totally recodified.

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

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

Amended to conform to Freshwater Wetlands Protection Act, which includes wet borrow pits; dredging and filling acceptable, if criteria met.

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), rewrote the third sentence and deleted the fourth sentence; rewrote (d); in (f)2, substituted "surface water in a pattern designed to maximize" for "surface water in pattern design to maximize"; in (g), rewrote 4 and deleted 7; deleted former (j), recodified former (k) as (j) and added the last three sentences; recodified former (l) as (k).

Case Notes

Project encroachment upon historic site. In re North Jersey Dist. Water Supply Comm., 175 N.J.Super. 167, 417 A.2d 1095 (App.Div. 1980), certif. den. 85 N.J. 460, 427 A.2d 559 (1980).

7:7E-3.15 Intertidal and subtidal shallows

(a) Intertidal and subtidal shallows means all permanently or temporarily submerged areas from the spring high water line to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e) and (f) below and with N.J.A.C. 7:7E-4.2 through 4.22.

(c) Maintenance dredging of intertidal and subtidal shallows is acceptable to maintain adequate water depths in accordance with N.J.A.C. 7:7E-4.6.

(d) New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

1. There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;

2. There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other Special Areas; and

3. The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.

(e) The installation of submerged infrastructure within intertidal and subtidal shallows is conditionally acceptable, provided:

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;
2. Where directional drilling is not feasible, there is no feasible alternative route that would not disturb intertidal and subtidal shallows;
3. The infrastructure is located deeply enough to avoid exposure or hazard; and
4. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

(f) The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements of the filling rule at N.J.A.C. 7:7E-4.10(f) and the coastal engineering rule at N.J.A.C. 7:7E-7.11(d).

(g) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (h) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (e)1, 2 and 3;
2. Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;
3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);
4. New dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and
5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(h) Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single family home or duplex property, mitigation shall be performed in accordance with the following hierarchy:

i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;

ii. If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;

iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;

iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;

v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code where the destruction is located;

vi. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:

- (1) Creation of intertidal and subtidal shallows at a creation to loss ratio of 1:1 within the same watershed management area; or

(2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.

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

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

(a) deleted old text and inserted new; old (b) deleted; (b)1 now (b) and text "but may be . . . N.J.A.C. 7:7E-4.4(i)" added; rest of section recodified.

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

Mitigation ratio, sites and exemptions specified at (b)1.

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

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

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

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

Rewrote the section.

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

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

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

Case Notes

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.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

7:7E-3.16 Dunes

(a) A dune is a wind or wave deposited or man-made formation of sand (mound or ridge), that lies generally parallel to, and landward of, the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary or tertiary dune ridges and mounds, and all landward dune ridges and mounds, as well as man-made dunes, where they exist (see Appendix, Figure 1, incorporated herein by reference).

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse longterm impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a compo-

nent of a Department approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7E-3A);

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7E-3A;

5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7E-3A;

6. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7E7.11(e); and

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

(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to or less than 1,100 square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

(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) deleted; new (b)-(f) added; (c) recodified to (h).

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 filled water's edge 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.428, effective October 16, 2000.

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

In (a), inserted "and mounds," following "tertiary dune ridges" in the introductory paragraph; and in (c), substituted "1,100" for "540" preceding "square feet" in the second sentence.

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 all landward dune ridges and mounds," preceding "as well as man-made dunes," in the introductory paragraph; in (b)6, substituted "coastal engineering rule at" for "use conditions of" preceding the N.J.A.C. reference.

7:7E-3.17 Overwash areas

(a) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune (see Appendix, Figure 1).

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.
2. The landward limit of the overwash area is the inland limit of sediment transport.
3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

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

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
4. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7E-7.11(e);
5. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
6. Removal of newly deposited overwash fans from public roads and or developed lots; and
7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7E-3.16(c).

(d) A single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable provided that it meets the following conditions:

1. The site is located within an area currently used and zoned for beach related commercial use, and is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility meets all the flood proofing requirements of the Flood Hazard Area Rule, N.J.A.C. 7:7E-3.25.

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

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

Amended by R.1985 d.715, effective February 3, 1986.
 See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
 Substantially amended and recodified.
 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 existing lagoon edges 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).
 In (d), rewrote the introductory paragraph; inserted a new (e); and recodified former (e) as (f).
 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)4, substituted "coastal engineering rule at" for "use conditions of" preceding the N.J.A.C. reference.

7:7E-3.18 Coastal high hazard areas

(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA), and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. (see Appendix, Figure 2 incorporated herein by reference). The Coastal High Hazard Area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.

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

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 prohibited 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 unforfeited 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.

Case Notes

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

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

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

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

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

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

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

7:7E-3.22 Beaches

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

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

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

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

1. Demolition and removal of paving and structures;
2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;
3. The reconstruction of existing amusement and fishing piers and boardwalks;
4. Temporary recreation structures for public safety such as first aid and lifeguard stations;
5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);
6. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

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

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

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

- i. Development on or over existing ocean piers;
- ii. Pilings necessary to support development proposed on or over existing ocean piers; and
- iii. Development on or over the Boardwalk.

(c) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

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

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

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

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

Text on overwash fans deleted.

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

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

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

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

Inserted (b)9.

Case Notes

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

7:7E-3.23 Filled water's edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of

the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

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

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

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

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

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

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

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

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area (N.J.A.C. 7:7E-3.10) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (that is, modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

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

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

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

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

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;

2. The developed land uses closest to the water's edge are water oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other coastal rules are met.

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront, which are not part of a larger development.

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

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

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

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

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

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

Text on erosion hazard areas deleted.

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

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

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

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

Rewrote (g).

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

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

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

Case Notes

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

7:7E-3.24 Existing lagoon edges

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

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

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

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

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

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

2. Encourage a transportation network that accommodates agriculture and access to markets;

3. Encourage economic activities in centers that complement and support rural and agricultural communities and that provide diversity in the rural economy, accommodate economic activities outside of centers in ways that maintain or enhance the rural environment, have minimal impact on agricultural resources, and minimize the need for infrastructure improvements; and

4. Protect and preserve large contiguous areas of farmland and open space, and protect the critical resources and environmentally sensitive features of the coastal ecosystem, including water resources and wildlife habitat, by maintaining development outside of centers at low densities, and minimize conflicts between development, agricultural practices, resource based activities, and sensitive coastal resources.

(f) The Coastal Environmentally Sensitive Planning Area generally has large contiguous land and water areas with critical coastal ecosystems, wildlife habitats, geological features, and other valuable coastal resources. Some of these lands have remained rural and relatively undeveloped, while others have been dominated by development for many years, such as the coastal barrier islands and spits. The barrier islands represent a major public investment in infrastructure systems that should be maintained while protecting the economic and ecological value of adjacent coastal resources. Centers on the barrier islands are almost all served by public wastewater facilities whereas centers in other environmentally sensitive areas are not often. Centers are usually linked by rural roads and separated by open spaces, or linked to the mainland by State highways crossing coastal wetlands and waterways. Areas outside of centers in the Coastal Environmentally Sensitive Planning Area are by definition more vulnerable to disturbance from new development. Damage may include fragmentation of landscapes, degradation of aquifers and potable water supplies, habitat destruction, extinction of plant and animal species, and destruction of other irreplaceable resources that are vital to the preservation of the ecological integrity of the coastal area. The Coastal Environmentally Sensitive Planning Area also supports recreation and tourism industries, and resource based industries such as mining and forestry. The policy objectives for the Coastal Environmentally Sensitive Planning Area are as follows:

1. Protect environmentally sensitive features by guiding development into centers and maintaining low intensity development patterns elsewhere, carefully link the location, character and magnitude of development to the capacity of natural and built environments to support new growth, accommodate development at higher intensities in the Coastal Environmentally Sensitive Planning Area barrier island centers, compatible with development patterns in existing centers, and discourage the development of public infrastructure facilities outside of centers;

2. Encourage transportation systems that link centers and support the travel and tourism industry, recreational and natural resource-based activities, and address the special seasonal demands of travel and tourism to barrier islands;

3. Locate economic development opportunities in centers that serve the surrounding region and the travel and tourism industry and accommodate in other areas appropriate seasonal, recreational, and natural resource based-activities that have a minimal impact on environmental resources; and

4. Protect sensitive natural resources critical to the maintenance of coastal ecosystems by maintaining large contiguous areas of undisturbed habitat, open space and undeveloped land, maintain the balance of ecological systems and growth, and protect the areas outside of centers from the effects of development by maintaining it as open space.

New Rule, R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

Former N.J.A.C. 7:7E-5B.2, Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers, recodified to N.J.A.C. 7:7E-5B.3.

7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers

(a) The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999 are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA Cores and CAFRA nodes and shall be operative for the purposes of applying the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and this subchapter, unless the Department, in accordance with (b) and (c) below, accepts a State Planning Commission formally approved new or changed boundary, or unless the Department, in accordance with (b) and (e) below, rejects a State Planning Commission formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) Whenever the State Planning Commission formally approves (see (h) below) any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject or reject and revise a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of the

Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., or this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5 and this subchapter.

(c) If the Department determines under (b) above to accept the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in Appendix 2 or Appendix 3, as applicable. CAFRA centers are listed for informational purposes in Appendix 4 of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix 4 by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable impervious cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C. 7:7E-5B.4(b).

(d) If the Department determines under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the boundary incorporated by reference under (a) above shall continue to be operative, except as provided under (e) below.

(e) The Department may determine under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary and to establish a revised Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary by promulgating an amendment to this chapter in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Until the Department promulgates such revised boundary, the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under (a) above shall continue to be operative.

(f) The CAFRA Planning Map, with all Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node boundaries operative under this section for purposes of N.J.A.C. 7:7E-5 and this subchapter, is available on the Department's Geographic Information System (GIS) and may be reviewed at the Department, 401 East State Street, Trenton, New Jersey 08625, (609) 292-1143.

(g) The boundaries delineated by the Department for coastal centers, as defined at N.J.A.C. 7:7E-5.2, are described in Appendices 2 and 3 of this chapter. The boundaries of the coastal centers in Appendix 2 shall expire on February 7, 2005. On and after February 7, 2005, the impervious cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the coastal centers in Appendix 3, shall be determined in accordance with N.J.A.C. 7:7E-5B.4(c), (e) or (f).

(h) For purposes of this section, a State Planning Commission formally approved new or changed boundary is one that the State Planning Commission has amended in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning rules, N.J.A.C. 17:32.

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the impervious cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

(j) Neither formal approval by the State Planning Commission of a new or changed boundary for a Planning Area, a new or changed community development boundary, or a new or changed core or node boundary, nor the incorporation by reference and acceptance or revision by the Department of such boundary as the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under this section shall exempt any development from this subchapter or from any of the requirements in this chapter.

Public Notice: Atlantic Highlands Borough CAFRA center boundary acceptance.

See: 32 N.J.R. 2504(a).

Public Notice: Manasquan Borough CAFRA center boundary acceptance.

See: 32 N.J.R. 3182(a).

Recodified from N.J.A.C. 7:7E-5B.2 and amended by R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In (b), added the second sentence; rewrote (c); in (g), amended the N.J.A.C. reference. Former N.J.A.C. 7:7E-5B.3, Impervious cover limits for a site in the CAFRA area, recodified to N.J.A.C. 7:7E-5B.4.

Public Notice: Planning area boundary acceptance or rejection.

See: 33 N.J.R. 2347(a).

Administrative change.

See: 35 N.J.R. 2263(a).

Petition for Rulemaking.

See: 37 N.J.R. 360(b), 537(a), 794(a).

Case Notes

Procedures of Department of Environmental Protection (DEP) for reviewing and incorporating new or changed boundaries established by State Planning Commission did not amount to rule-making and were not subject to notice and comment requirements of Administrative Procedures Act (APA). In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J. Super. 293.

7:7E-5B.4 Impervious cover limits for a site in the CAFRA area

(a) The impervious cover limit for a site in the CAFRA Area shall be determined as follows:

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is determined under (c) below. Note that the impervious cover limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;

2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (d) below;

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (e) below; and

4. If a site is located on a military installation, the impervious cover limit is determined under (f) below.

(b) To determine the location of a site for the purposes of determining the applicable impervious cover limit:

1. Determine if the site is located in a CAFRA center, CAFRA core, or CAFRA node by referring to the CAFRA Planning Map;

2. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, determine if the site is located in a coastal center by referring to Appendix 2 and 3;

3. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in a coastal center, determine the Coastal Planning Area in which the site is located by referring to the CAFRA Planning Map; and

4. If the site is located on a military installation, see (f) below.

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is the limit at (c)1, 2 or 3 below, whichever is higher:

1. The acreage of the total land area on the site as determined under N.J.A.C. 7:7E-5.3(d)1, multiplied by the impervious cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located;

2. For a site located in the Coastal Metropolitan Planning Area, the acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Metropolitan Planning Area; or

3. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(d) If a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is the limit at (d)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the type of coastal center in which the site is located; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the impervious cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Planning Area in which the site is located; or

2. The acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department, excluding any buildings, asphalt and/or concrete paving placed on a site in accordance with (e)3 below; or

3. For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing impervious cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal impervious cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings include, but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters office(s), and boat repair, maintenance and manufacturing.

(f) If a site is located on a military installation, the impervious cover limit is the limit at (f)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for a military installation; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(g) For the purposes of determining impervious cover limits under (c) 3, (d)2, (e)3, and (f)2 above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;
2. The amount of impervious cover that appears on the applicable 95-97 imagery; or
3. The amount of impervious cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

TABLE H

Percentages For Calculating Impervious Cover
Limits Under N.J.A.C. 7:7E-5B.4

Site Location	Impervious Cover Percentage
CAFRA Urban center	90 percent
CAFRA regional center	80 percent
Coastal regional center	
CAFRA core	
CAFRA node	
CAFRA town	70 percent
Coastal town	
Military installation	
CAFRA village	60 percent
Coastal village	
CAFRA hamlet	50 percent
Coastal hamlet	
Coastal Metropolitan Planning Area	80 percent
Coastal Suburban Planning Area, within a sewer service area*	30 percent

Site Location	Impervious Cover Percentage
Coastal Suburban Planning Area, outside a Sewer service area*	5 percent
Coastal Fringe Planning Area	5 percent
Coastal Rural Planning Area	3 percent
Coastal Environmentally Sensitive Planning Area	3 percent

* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and (c)5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

Recodified from N.J.A.C. 7:7E-5B.3 and amended by R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In Table H, amended the N.J.A.C. reference in the title. Former N.J.A.C. 7:7E-5B.4, Vegetative cover percentages for a site in the CAFRA area, recodified to N.J.A.C. 7:7E-5B.5.

Petition for Rulemaking.

See: 33 N.J.R. 1210(b), 33 N.J.R. 1475(b).

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

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

In (a)3, deleted "based on the Coastal Planning Area in which the site is located"; rewrote (c) and (e); in (g), substituted "(c)3" for "(c)2" and inserted "(e)3".

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 supported by ample evidence. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

iii. Where appropriate, utilizes the water area as the central focus of the development.

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

(c) Standards relevant to convention centers and arenas are as follows:

1. "Convention centers" are facilities designed primarily for holding conventions. "Arenas" are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

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

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

Substantially amended and recodified.

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

References specified in (b)2iii.

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

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

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

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

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

7:7E-7.11 Coastal engineering

(a) Coastal engineering includes a variety of structural and nonstructural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, gabions, revetments and seawalls are all examples of coastal engineering.

1. The standards relevant to shore protection priorities in (b) below do not apply to water dependent uses within existing ports.

(b) Standards relevant to shore protection priorities are as follows:

1. Non-structural solutions to shoreline erosion problems are preferred over structural solutions. Vegetative shore protection measures have been proven effective,

and are preferred at shoreline sites in which they are feasible. Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch). The infeasibility and impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

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

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as nonstructural shore protection measures, including sand fencing, revegetation, additions of nontoxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects shall comply with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

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

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels; and

iv. Public access to the nourished beach is provided in cases where public funds are used to complete the project.

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

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the Coastal Zone Management rules;

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;

iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

v. The structure is consistent with the State's Shore Protection Master Plan;

vi. If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for filling (N.J.A.C. 7:7E-4.10) and all other relevant coastal rules.

2. Maintenance or construction of an existing bulkhead is conditionally acceptable provided that it meets (e)2i, ii or iii below. All measurements shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (e)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead which does not meet (e)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (e)2i or ii above. In such case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

3. Stone rip-rap and sloped concrete and gabion retentions which allow for growth of vegetation are the preferred form of retaining structures.

4. Public access, including parking where appropriate, must be provided to publicly funded shore protection structures and to waterfront land created by public projects, unless public access would create a safety hazard to users. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

5. The construction of bulkheads subject to wave run-up forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runup, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

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

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

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

Expansion or fortification of structures included at (e).
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

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

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

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

Rewrote the section.

Case Notes

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

Issuance of waterfront development permit did not endanger navigation to adjoining bulkhead and dock. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead and dock permit allowed. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

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

7:7E-7.12 Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E-4.8.