

CHAPTER 7E

COASTAL ZONE MANAGEMENT

Authority

N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq.,
12:5-1 et seq., and 13:9B-1 et seq.

Source and Effective Date

R.1995 d.405, effective June 23, 1995.
See: 27 N.J.R. 417(a), 27 N.J.R. 2738(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7E, Coastal Zone Management, expires on June 23, 2000.

Chapter Historical Note

Chapter 7E, Coastal Zone Management, became effective September 28, 1978, as R.1978 d.292. See: 10 N.J.R. 184(a), 10 N.J.R. 384(a). Amendments became effective September 26, 1980, as R.1980 d.375. See: 12 N.J.R. 252(a), 12 N.J.R. 576(a). Further amendments became effective May 15, 1981 as R.1981, d.186. See: 13 N.J.R. 76(a), 13 N.J.R. 338(a). Further amendments became effective February 16, 1982, as R.1982 d.31. See: 13 N.J.R. 864(a), 14 N.J.R. 206(a). Further amendments became effective April 19, 1982, as R.1982 d.114. See: 13 N.J.R. 565(a), 14 N.J.R. 385(c), 14 N.J.R. 1155(a). A public notice regarding a Federal ruling on certain Chapter 7E rules was published at 14 N.J.R. 1467(b). Pursuant to Executive Order No. 66(1978), Chapter 7E was readopted as R.1985 d.422, effective July 24, 1985. See: 17 N.J.R. 1465(a), 17 N.J.R. 1797(c), 17 N.J.R. 2021(a). Pursuant to Executive Order No. 66(1978), Chapter 7E was readopted as R.1990 d.413, effective July 24, 1990. See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b). Subchapters 3A, Standards for Beach and Dune Activities, 3B, Information Required in Wetland Mitigation Proposals, and 3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, were adopted as New Rules 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). Chapter 7E was readopted as R.1995 d.405, effective June 23, 1995. See: Source and Effective Date.

Public Notice: Notice of Routine Program Implementation. See: 25 N.J.R. 1010(a).

See section annotations for specific rulemaking activity.

Appendix to Chapter 7E: Figures 1 through 16 were adopted as a part of R.1994 d.380 and form the Appendix to N.J.A.C. 7:7E. The Figures are not reproduced in this chapter, but can be reviewed by contacting the Office of Administrative Law, Rules and Publications, CN 301, Trenton, NJ 08625, or the Department of Environmental Protection.

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SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive rules of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Land Use Regulation Program in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B. The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final Environmental Impact Statement (EIS) for Federal approval, which was received in September 1978. In August 1978 the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement for Federal approval, which was received in September 1980. The Rules on Coastal Zone Management (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988, May 15, 1989, August 20, 1990, April 5, 1993, November 15, 1993 and July 18, 1994.

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Rules on Coastal Zone Management of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

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

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

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

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

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

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

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

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

Case Notes

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

Regulation reflects Department's determination to limit its discretion and assure the greatest possible degree of predictability in its actions. *Crema v. Dept. of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

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

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

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

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

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

1. The coastal area under the jurisdiction of the Coastal Area Facility Review Act (CAFRA);
2. Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west;
3. The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a);

4. All areas containing tidal wetlands; and

5. The Hackensack Meadowlands Development Commission District as defined by N.J.S.A. 13:17-4.

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

1. Waterfront Development permits (N.J.S.A. 12:5-3);
2. Wetlands permits (N.J.S.A. 13:9A-1 et seq.); and
3. CAFRA permits (N.J.S.A. 13:19-1 et seq.).

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

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

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

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

(g) DEP management activities: This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.).
2. Division of Water Quality:
 - i. Permits for point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.).

- ii. Approval of wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6).
 - iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).
 - iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4).
 - v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44).
3. Land Use Regulation Program:
- i. Permits for 50 or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23).
 - ii. Approval for Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).
 - iii. Permits to Perform Regulated Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.).
 - iv. Issuance of Permits pursuant to the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.).
4. Water Supply Regulation:
- i. Permit to divert surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.).
 - ii. Approval of diversions for water supply (N.J.S.A. 58:1A et seq.).
 - iii. Permits to drill wells (N.J.S.A. 58:4A-14).
 - iv. Certifications to construct new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.).
 - v. Permits to install or maintain a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.).
5. Bureau of Stormwater Permitting: Permits for the discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.).
6. Air Quality Regulation Program:
- i. Permit to construct, install, or alter control apparatus or equipment (N.J.S.A. 26:2C-9.2).
 - ii. Certificate to operate control apparatus or equipment (N.J.S.A. 26:2C-9.2).
 - iii. Approvals of variances to exceed air quality standards (N.J.S.A. 26:2C-9.2).
7. Division of Solid Waste Management: Certification of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.).
8. Green Acres and Division of Parks and Forestry:
- i. Adoption of regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19).
 - ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.).
 - iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.).
 - iv. Inclusion of and adoption of regulations concerning river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).
9. Division of Fish, Game and Wildlife: Adoption of regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28).
10. Natural and Historic Resources, Engineering and Construction Section: Dam Permit (N.J.S.A. 58:4-1).
11. All Divisions: Management of State-owned lands by DEP.
- (h) DEP planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.
- 1. Land Use Regulation Program:
 - i. Coastal zone management;
 - 2. Natural and Historic Resources Program:
 - i. Navigational dredging; and
 - ii. Shore protection.
 - 3. Land and Water Planning:
 - i. Areawide water quality management ("208");
 - ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.); and
 - iii. Allocation of Wastewater Treatment Construction Grants (P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).
 - iv. Implementation and coordination of the Federal Coastal Zone Management Program.
 - 4. Air Quality Regulation: Air quality planning.
 - 5. Division of Solid Waste Management: Solid waste management.
 - 6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.

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

Deleted "Solid Waste Administration" and substituted "Division of Waste Management."

Old section 2 Authority was repealed.

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

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

Responsibility for Stream Encroachment Permits, Dam Permits, Water Quality Certificates, and implementation of the Freshwater Wetlands Protection Act included in jurisdiction of the Division of Coastal Resources; administrative changes reflected.

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

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

Case Notes

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

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

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

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

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

7:7E-1.3 Severability

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

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

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

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

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

7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three step process comprising the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to involve all Location Rules, Use Rules, and Resource Rules. Rather, the applicable rules are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

(b) Principles: The Coastal Zone Management Rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management Rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent", "feasible", "minimal", "practicable", and "maximum extent", as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Rules on Coastal Zone Management provides a mechanism for incorporating professional judgment by DEP officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, DEP officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

i. Protect and enhance the coastal ecosystem.

ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.

iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.

iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.

v. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.

vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities determined to be needed by the New Jersey State Energy Master Management Plan in a manner consistent with the rules of this Coastal Management Program.

viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

(c) Definitions: The Rules on Coastal Zone Management are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some rules include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Rules on Coastal Zone Management and the principles defined in (b) above, the following words have the following meanings.

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

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

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

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

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

“Development” means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. “Development,” for an application under the Coastal Area Facility Review Act, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. For the purposes of these rules, “development” pursuant to CAFRA does not include the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard and/or act of God. Such reconstruction must be in compliance with existing requirements or codes of municipal, State and Federal law, but does not require a CAFRA permit provided that the reconstruction does not result in the enlargement or relocation of the footprint of the development or an increase in the number of dwelling units or parking spaces within the development. Development does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.

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

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

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

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

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

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

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

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

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone. (Note: For practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.)

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

"Program" means NJDEP Land Use Regulation Program.

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

"Reconstruction" means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area of impervious coverage associated with the development, and does not result in a change in the use of the development. Reconstruction does not include repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with expansions.

"Site" means the geographic scope of the proposed use of coastal resources that is under scrutiny using the Rules on Coastal Zone Management. "Site" also means the land or area upon which a proposed development is to be constructed.

"Spring tide" means a tide that occurs at or near the time of new and full moon and which rises highest and falls lowest from the mean level. "Spring high water line" is the intersection of the land with the water surface at the elevation of spring high tide.

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

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

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

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

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

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

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

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

Use of waterfront for water-dependent activities encouraged.

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

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

Case Notes

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

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

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

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

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

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

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The Program will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the Basic Location Policies (N.J.A.C. 7:7E-1.5(b)1). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.48).

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

New Rule by R.1985 d.715, effective February 3, 1986.

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

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

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

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

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

SUBCHAPTER 2. LOCATION, USE AND RESOURCE RULES

7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different rules are therefore required for different locations. This subchapter and subsequent subchapters defines the Location, Use and Resource Rules of the Coastal Program. This presentation of the rules is lengthy and detailed because the coast is large, varied, and complex. The method of applying the rules is, however, relatively simple.

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

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

Stylistic changes.

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

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

7:7E-2.2 Classification of land and water types

(a) The Location rules classify all land and water locations into a General Area and some into one or more Special Areas.

1. Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special rules in subchapter 3. Special Area types are grouped under four broad headings: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

2. General Areas are general types of locations which classify the whole coastal zone with the exception of the Special Water's Edge, which is entirely a Special Area. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general rules in subchapters 4 and 5. General Area types are grouped under two broad headings: General Water Areas (subchapter 4) and General Land Areas (subchapter 5).

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-2.3 (Reserved)

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

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

CLAM steps 7 and 8 described.

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 "Mapping and acceptability determination".

SUBCHAPTER 3. SPECIAL AREAS

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

Rules and Publications

Office of Administrative Law

Quakerbridge Plaza

Bldg. No. 9

CN 301

Trenton, New Jersey 08625

7:7E-3.1 Introduction

(a) Special Areas are those 48 types of coastal areas which merit focused attention and special management rules. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).

1. Special Water Areas extend landward to the spring high water line or the level of normal flow in non-tidal waters.

2. The Special Water's Edge Areas can be found at N.J.A.C. 7:7E-3.16 through 3.32 and are divided into three subcategories, depending on their locations:

i. Oceanfront, and Raritan and Delaware Bayfronts (N.J.A.C. 7:7E-3.16 through 3.19);

ii. Barrier and Bay Islands (N.J.A.C. 7:7E-3.20 and 7:7E-3.21); and

iii. Coastwide Special Water's Edge Areas (N.J.A.C. 7:7E-3.22 through 3.32).

3. Special Water's Edge Areas in (a)2i and ii above are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.

4. Special Land Areas are landward of the Water's Edge.

5. Coastwide Special Areas may include Water, Water's Edge or Land Areas.

(b) All land or water locations, except Special Water's Edge Areas, are subject to either the Land Area or Water Area General rules. In addition, certain locations are subject to one or more Special Area rules. All Special Water's Edge Areas are subject to one or more Special Area rules. Where the applicable General and Special Area rules differ, the Special Area rules shall be applied.

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

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

Coastal areas changed from 44 types to 45 types.

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

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

Coastal High Hazard Areas and Bay Islands added; water's edge areas regrouped geographically; References to Figley 1988 and 1989 fishing guides 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).

7:7E-3.2 Shellfish habitat

(a) Shellfish habitat is defined as an estuarine bay or river bottom which has a history of production for hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), eastern oysters (*Crassostrea virginica*), bay scallops (*Argopecten irradians*), or blue mussels (*Mytilus edulis*), or otherwise listed below in this section. A shellfish habitat area is defined as an area which meets one or more of the following criteria:

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;

2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (U.S. Department of the Interior, 1963), "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993);

3. The area is designated by the State of New Jersey as a shellfish culture area as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or

4. The area is designated as productive at N.J.A.C. 7:25-24, Leasing of Atlantic and Delaware Bay Bottom for Aquaculture.

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The

Final Short List, prepared by the Department pursuant to the Federal Clean Water Act 33 U.S.C.A. Section 1313(c) (1), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population, excluding those waterways listed at N.J.A.C. 7:7E-7.3(d)10 and (j) below.

(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to "prohibited" status pursuant to N.J.A.C. 7:12-2.1(a)1ii. Development which would result in the destruction, condemnation (downgrading of the shellfish growing water classification) or contamination of shellfish habitat is prohibited.

1. The term "destruction" includes actions of filling to create fast land, overboard dumping or disposal of solids or spoils which would smother shellfish populations, or create unsuitable conditions for shellfish colonization or the creation of bottom depressions with anoxic conditions.

(d) Construction of a dock or boat moorings in shellfish habitat is prohibited, except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing; and

2. In waters which have been classified as "prohibited" for the purpose of harvesting shellfish.

(e) New dredging (defined at N.J.A.C. 7:7E-4.11(g)) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

1. The expanded portion of the marina, other than the access channel, will not be located within the shellfish habitat;

2. The marina provides on site restrooms, a marine sanitation disposal device and pumpout station; and

3. The width, depth and length of the to-be-dredged channel and boat basin are limited to the minimum dimensions needed to service the existing or expanded facilities.

(f) Maintenance dredging (defined at N.J.A.C. 7:7E-4.11(f)) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. 7:7E-4.11(g) so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

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

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

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

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

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

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

Substantially amended.

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

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

Petition for Rulemaking.

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

Public Notice: Petition for Rulemaking.

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

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

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

Case Notes

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

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

7:7E-3.3 Surf clam areas

(a) "Surf clam areas" are waters within the territorial sea of the State of New Jersey which can be demonstrated to support significant commercially harvestable quantities of surf clams (*Spisula solidissima*), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:25-12.1(d)4.

(b) Policy relevant to surf clam areas is as follows:

1. Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited.

2. Development within surf clam areas is conditionally acceptable only if the development is of national interest and no prudent and feasible alternative sites exist.

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

7:7E-3.4 Prime fishing areas

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins and public fishing piers or docks. Prime fishing areas also include all red line delineated features within the State of New Jersey's three-mile territorial sea illustrated in: B.L. Freeman and L.A. Walford (1974) *Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities*, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay". While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone.

(b) Policy relevant to prime fishing areas is as follows:

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

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

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

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

Subsection (a) substantially amended by incorporating (a)1 and (a)2 in (a) and adding text "or as indicated . . . Long and Figley (1984)". Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Added source material for Raritan Bay.

7:7E-3.5 Finfish migratory pathways

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

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

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

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

1. Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, entrainment of fish eggs, larvae or juveniles, causing siltation, or raising turbidity levels during migration periods.

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the NJDEP, Division of Fish, Game and Wildlife approves the design of the access structure. As of January, 1994, the NJDEP Division of Fish, Game and Wildlife is currently evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(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).

(a)1 added text "Atlantic sturgeon (*Acipenser oxyrinchus*), Shortnose sturgeon (*Acipenser brevirostrum*)" and (*Anguilla rostrata*)."; deleted (b) and recodified rest of section.

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-3.6 Submerged vegetation habitat

(a) A Submerged vegetation special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (*Ruppia maritima*), sago pondweed (*Potamogeton pectinatus*), horned pondweed (*Zannichellia palustris*) and eelgrass (*Zostera marina*). In New Jersey, submerged vegetation is most prevalent in the shallow portions of the Navesink, Shrewsbury, Manasquan and Metedeconk Rivers, and in Barnegat, Manahawkin and Little Egg Harbor Bays. Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (*Elodea nuttalli*), *Eriocaulon parkeri*, *Liaecopsis chinesis*, *Naja flexilis*, *Nuphar variegatum*, *Potamogeton crispus*, *Potamogeton epiphydrus*, *Potamogeton perfoliatus*, *Potamogeton pusillus*, *Scirpus subterminalis* and *Vallisneria americana*. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation and also on "Eelgrass Inventory" maps prepared by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.

(b) Regulated activities in submerged vegetation habitat are prohibited except for the following:

1. Trenching for utility pipelines and submarine cables in the public interest, provided there is no practicable or feasible alternative alignment, the impact area is minimized and that, following pipeline or cable installation, the disturbed area is restored to its preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;

2. New dredging of State and Federal navigation channels provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possess submerged aquatic vegetation;

3. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) of previously authorized, existing State and Federal navigation channels and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f), of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging as defined at N.J.A.C. 7:7E-4.2(f) to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. Construction of a single noncommercial dock or pier provided that:

- i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;

- ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;

- iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

- iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;

- v. No dredging shall be performed in conjunction with the use of the dock or pier;

- vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and

- vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation; and

7. The extension of existing piers or floating docks through submerged vegetation habitat to water at least four feet deep at mean low water, for the purpose of eliminating dredging or boating through submerged vegetation habitat, provided the width of the extended portion of the pier does not exceed four feet (except for the portion of the pier adjacent to the mooring area where the width shall not exceed six feet), there will be no increase in the number of boat moorings, and no dredging will be performed in conjunction with the use of the structure.

(c) Regulated activities in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which result in erosion or turbidity increases in the waters supporting submerged vegetation are prohibited unless mitigating measures are provided.

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and re-planting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).

(e) 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).

Green algae added to (a).
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-3.7 Navigation channels

(a) Navigation channels include water areas in tidal rivers and bays presently maintained by DEP or the Army Corps of Engineers and marked by US Coast Guard with buoys or stakes, as shown on NOAA/National Ocean Survey Charts: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363.

1. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the State of New Jersey, access channels and anchorages.

2. Navigation channels include all areas between the top of the channel slopes on either side.

(b) Standards relevant to navigation channels are as follows:

1. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging rule is met (see N.J.A.C. 7:7E-4.2(f) and (g)).

2. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.

3. Development which would result in loss of navigability is prohibited.

4. Any construction which would extend into a navigation channel is prohibited.

5. The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation.

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

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-3.8 Canals

(a) "Canals" are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, Bay Head-Manasquan, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

(b) Policy: The Cape May and Bay Head-Manasquan Canals are man-made tidal guts. Development in these canals must be consistent with the General Water Area policies for Tidal Guts (N.J.A.C. 7:7E-4.7) as well as with the following policies.

1. In canals presently used for navigation, such as the Cape May and Bay Head-Manasquan canals, the following policies shall apply:

i. Aquaculture, filling, dams and impoundments, and any other use which would interfere with existing or proposed canal boat traffic is prohibited;

ii. Maintenance dredging is encouraged as needed provided that an acceptable spoil disposal site is available and turbidity is controlled.

2. In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistent with the rules and regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45-1).

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

7:7E-3.9 Inlets

(a) "Inlets" are natural channels through barrier islands allowing movement of fresh and salt water between the ocean and the back bay system. Inlets naturally have delta fans of sediment seaward and landward, deposited by the ebb and flow of the tide.

1. The seaward limit of an inlet is defined as the seaward extent of the ebb delta fan. The landward limit is defined as the inland extent of the flood delta fan.

2. If there is doubt about the extent of these fans, the applicant shall submit up-to-date bathymetric surveys and DEP staff will determine the boundary on a case-by-case basis.

(b) Policy: Inlets consist of an ocean portion and a semi-enclosed or back bay portion. Development in inlets must be consistent with the General Water Area Policy for one of these water area types, and with the following policies.

1. Filling is prohibited.
2. Submerged infrastructure is discouraged.

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

7:7E-3.10 Marina moorings

(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for five or more recreational boats.

(b) Non-water dependent development in a marina mooring area is prohibited.

(c) Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

(d) New or maintenance dredging in marina mooring areas and access channels is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new and maintenance dredging, N.J.A.C. 7:7E-4.2(f) and (g).

(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).
Substantially amended (b); recodified (b)1 and 2 to (c) and (d); (c) recodified to (e).
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Dredging conditionally acceptable.
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).

Case Notes

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

7:7E-3.11 Ports

(a) Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

1. Port locations in New Jersey include, among others, Newark, Elizabeth, Bayonne, Jersey City, Weehawken, Hoboken, Woodbridge, Perth Amboy, Camden, Gloucester City, Paulsboro and Salem.

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility may be found under the General Water Area rule for Docks and Piers (commercial) (N.J.A.C. 7:7E-4.2).

(b) Any use which would preempt or interfere with port uses of this water area is prohibited.

(c) Aquaculture and dumping of solid waste or semi-solid waste is prohibited.

(d) Boat ramps for recreational boating are conditionally acceptable provided the ramp complies with all Special Areas Rules (N.J.A.C. 7:7E-3) and provided it does not interfere with the port use.

(e) Docks and piers for cargo movements are encouraged.

(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).
(b) deleted; (b)1-4 recodified to (b)-(e); (c) recodified to (f).
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).

Law Review and Journal Commentaries

Environmental Law—Waterfront Development. P.R. Chenoweth, 137 N.J.L.J. No. 10, 66 (1994).

Case Notes

“Port Use Rule” satisfies legislative objective of the Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

“Ports Rule” is not inconsistent with legislative purpose of Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Proposed facility for container-cargo vessels was “port” under the Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

7:7E-3.12 Submerged infrastructure routes

(a) A “submerged infrastructure route” is the corridor in which a pipe or cable runs on or below a submerged land surface.

(b) Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(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).

“Policy:” deleted from (b).

7:7E-3.13 Shipwrecks and artificial reefs

(a) A “shipwrecks and artificial reefs” special area includes all permanently submerged or abandoned remains of vessels which serve as a special marine habitat or are fragile historic and cultural resources. This policy applies to tidal and ocean waters of the State of New Jersey three mile territorial sea, but outside of navigation channels.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed in the definition above of the Navigation Channel Special Area, or listed in the definition of the Navigation Channel Special Area (N.J.A.C. 7:7E-3.7(a)), or listed in: W. Krotee and R. Krotee, *Shipwrecks Off the New Jersey Coast* (1966), and B.L. Freeman and L.A. Walford, *Angler’s Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities* (1974). In addition to known sites, unidentified remains of vessels may exist within tidal water.

2. Also included in this category are artificial fishing reefs which serve the same natural function as a habitat for living marine resources. (See also 7:7E-3.35, *Historic and Archeological Resources*).

(b) Acceptable uses of these submerged habitats include recreational and commercial finfishing and shellfishing, and scuba diving. In addition, construction of new or expanded

artificial reefs by the deposition of weighed non-toxic material is conditionally acceptable provided that:

1. It can be demonstrated that the material will not wash ashore and interfere with either navigation as regulated by U.S. Coast Guard or commercial fishing operations; and

2. Placement of the material and ultimate management of the habitat is coordinated with the DEP Division of Fish, Game and Wildlife.

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fisheries resource is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef or equal habitat value.

(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.

7:7E-3.14 Wet borrow pits

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, Wetlands and/or Wetlands Buffers Rules shall apply. (See N.J.A.C. 7:7E-3.27 and 3.28).

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, such activities must receive a Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities.

(c) Proposed uses which would promote the wildlife habitat and scenic amenity values of wet borrow pits are encouraged.

(d) Surface mining is conditionally acceptable provided condition (b) above is met and the Use Rules for Mining (see N.J.A.C. 7:7E-7.8) are complied with.

(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 pattern design 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. There is designation of a water quality buffer zone around water areas of at least 50 feet. Structures and paving, except at limited water access points, are prohibited in the water quality buffer. In general, the water quality buffer area shall be allowed to succeed naturally to water's edge wetland and forest with minimum disturbance and runoff;

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

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

7. All requirements of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., are satisfied.

(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) Limited recreational use of wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.

(k) 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.

(l) 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).

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 twice daily submerged areas from the spring high tide 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 the acceptability conditions found at N.J.A.C. 7:7E-4.2. Dredging is acceptable only if the following criteria are satisfied in addition to the acceptability conditions found at N.J.A.C. 7:7E-4.2:

1. The dredging of intertidal and subtidal shallows may be acceptable to maintain adequate water depths for any existing or new marinas with 25 or more slips or public launching facilities and existing ports.

2. Maintenance dredging of intertidal and subtidal shallows for legally constructed, existing docks other than those identified in (b)1 above, is acceptable provided the following criteria are met:

i. The depth of the proposed dredge area does not exceed four feet mean low water;

ii. The width of the access channel is the minimum width required to moor a boat at the dock; and

iii. The maintenance dredging complies with all applicable Special Water Area Rules (N.J.A.C. 7:7E-3).

3. Submerged infrastructure is conditionally acceptable, provided that:

i. There is no feasible alternative route that would not disturb intertidal and subtidal shallows;

ii. The infrastructure is buried deeply enough to avoid exposure or hazard;

iii. Directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching where feasible; and

iv. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

4. The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements found under the Filling rule (N.J.A.C. 7:7E-4.2(j)) and the Coastal Engineering rule (N.J.A.C. 7:7E-7.11(d)).

(c) If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. Specific filling activities acceptable under N.J.A.C. 7:7E-4.2(j)2iii(1) and 7.11(d) are exempt from this mitigation requirement.

1. Dredging activities for residential noncommercial docks will not require mitigation. Dredging activities for projects which do not meet the criteria at (b)1 and 2 above, marinas and ports will not require mitigation provided the dredged area is reduced to the minimum extent practicable (minimum being the smallest area compared to the area needed to develop the same project at another site).

(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).

(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).

Case Notes

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection and Energy*, 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 between the upland limit of the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary and tertiary dune ridges, 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 modifica-

tion 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 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. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component 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 use conditions of N.J.A.C. 7:7E-7.11(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 540 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).

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 use conditions of 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 an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City 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) 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).

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.

(b) Residential development, including hotels and motels is prohibited in coastal high hazard areas except for single family and duplex infill developments which are conditionally acceptable provided that the standards of N.J.A.C. 7:7E-7.2(f) are met.

(c) In general, commercial development is discouraged in the coastal high hazard areas. Beach use related commercial development in coastal high hazard areas is conditionally acceptable within areas that are already densely developed, provided that:

1. The site 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 complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood hazard areas.

(d) All permanent structures shall be set back a minimum of 25 feet from oceanfront shore protection structures, typically including bulkheads, revetments and seawalls and occasionally jetties and groins if constructed at inlets. This condition is applicable only to shore protection structures that are of sufficient height and strength to provide resistance to storm waves.

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.

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 natural water's edge floodplains 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).

7:7E-3.19 Erosion hazard areas

(a) Erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms.

1. Erosion hazard areas may be identified by any one of the following characteristics:
 - i. Lack of beaches;
 - ii. Lack of beaches at high tide;
 - iii. Narrow beaches;
 - iv. High beach mobility;
 - v. Foreshore extended under boardwalk;

- vi. Low dunes or no dunes;
- vii. Escarped foredune;
- viii. Steep beach slopes;
- ix. Clifed bluffs as adjacent to beach;
- x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;
- xi. High long-term erosion rates; or
- xii. Pronounced downdrift effects of groins (jetties).

2. Erosion hazard areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years for one to four unit dwelling structures, and 60 years for all other structures, including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas, the most seaward established dune crest for unvegetated dune areas, the first vegetation line from the water for established vegetated dune areas, and the landward edge of a beach or the eight foot North American Datum (NAD), 1983, contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons, or has been constructed with the approval of the Department.

ii. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two growing seasons.

3. The extent of an erosion hazard area is calculated by multiplying the projected annual erosion rate at a site by 30 for the development of one to four unit dwelling structures and by 60 for all other developments.

(b) Development is prohibited in erosion hazard areas, except for:

1. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
2. Shore protection activities which meet the appropriate Coastal Engineering Use Rule (N.J.A.C. 7:7E-7.11);
3. Single story, beach/tourism oriented commercial developments located within an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City is conditionally acceptable provided that it meets the following conditions:

- i. The site is located within an area currently used and zoned for beach related commercial use, and is landward of and adjacent to the boardwalk;
- ii. 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;

iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded; and

iv. The facility meets all the flood proofing requirements of the Flood Hazard Areas rule;

4. Single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(f);

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A; and

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A.

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

(Agency note: N.J.A.C. 7:7E-3.20 and 3.21 belong to the Barrier and Bay Islands 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).
Old (b) deleted; (b)1.-2. recodified to (b)-(c); old (c) now (d).
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 alluvial flood margins 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).

7:7E-3.20 Barrier island corridor

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

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

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the criteria for High Development Potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and maximum acceptable intensities for development under the Land Area Policies are not exceeded.

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

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
(b): Old text deleted and new text added; (b)1 through (c) recodified to (c)-(e).
Repeal and New Rule, R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Text on beaches deleted.

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 islands. 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).

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. This rule will not apply to proposed development located in the following areas:

OCEAN COUNTY:

Bonnett Island, Stafford Township
Chadwick Beach 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 island sites which do not abut a paved public road and are not served by a sewerage system with adequate capacity, non-water dependent development is prohibited and water dependent development is discouraged. Water dependent development may be acceptable if there are no feasible alternatives and environmental impacts are minimized.

(c) On bay island sites which abut a paved public road and sewerage system with adequate capacity, water dependent development is conditionally acceptable, provided all other applicable Coastal Zone Management rules are complied with. New non-water dependent development is acceptable only at a Low Intensity Development as defined in N.J.A.C. 7:7E-5.6(d) except for Existing Lagoon Edges (N.J.A.C. 7:7E-3.24) where the acceptable intensity of development may be increased to Moderate.

(d) Redevelopment or modification of an existing above ground facility is conditionally acceptable subject to the following provisions:

1. The facility does not exceed the existing development density as to the following:
 - i. Number of units; or
 - ii. Square footage of interior floor space; and
2. The site development does not exceed either 80 percent impervious coverage of the site or the existing intensity of development, that is, existing, percent of impervious surface cover, whichever is less.

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).

Case Notes

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.

7:7E-3.22 Beaches

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, in-

cluding 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; and
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 beach 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.

(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).

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 must comply with the following conditions:

1. The waterfront portion of the site shall be developed with a water dependent use (see N.J.A.C. 7:7E-1.5(c) for definitions) or 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 intensity of a development shall not exceed the maximum allowed under N.J.A.C. 7:7E-9.3 acceptability of development in General Land Areas.

(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).

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 that:

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 Acceptability Conditions for Filling (N.J.A.C. 7:7E-4.11(i)), 7:7E-4.11(j)) and Structural Shore Protection (N.J.A.C. 7:7E-7.11(e)) policies; and

4. The intensity of a development does not exceed the maximum allowed under the Acceptability of Development in General Land Areas Policy (N.J.A.C. 7:7E-5.2).

(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).

Substantially amended.

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 island corridor deleted.

Law Review and Journal Commentaries

Administrative Procedure—CAFRA—Environmental Protection. P.R. Chenoweth, 134 N.J.L.J. No. 10, 64 (1993).

Administrative Procedure—Environmental Law. Steven P. Bann, 137 N.J.L.J. No. 1, 67 (1994).

7:7E-3.25 Flood hazard areas

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by DEP under the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.), or by the Federal Emergency Management Agency (FEMA); or the flood hazard area around other coastal water bodies as defined by FEMA. They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both DEP and FEMA, DEP delineations shall be used. Where flood hazard areas have not been delineated by DEP or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix, Figures 6 and 7, incorporated herein by reference).

1. A complete list of streams for which the Department has delineated the flood hazard area can be found in N.J.A.C. 7:13 (Rules Governing Flood Hazard Areas).

2. The Federal Emergency Management Agency has delineated the tidal floodplain for all Coastal Zone municipalities.

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, Alluvial Flood Margins, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge policies shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of undeveloped flood hazard areas for purposes of public open space is encouraged, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.). For the purpose of this rule, "undeveloped" means areas, in-

cluding, but not limited to, lawns and farm fields, which are not covered by impervious surfaces.

(c) In undeveloped flood hazard areas, development within 100 feet of a navigable water body is prohibited, unless the development is for water dependent use or low intensity use which does not reduce the flood dissipating value of the flood hazard area or preclude water dependent use of the area. ("Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.5(c).)

(d) Elsewhere in the undeveloped portions of the flood hazard areas development is conditionally acceptable provided that:

1. The acceptable intensity of development does not exceed the maximum allowed under acceptability of development in General Land Areas (N.J.A.C. 7:7E-5.2) for sites that receive a Low Intensity Rating and does not exceed Moderate Intensity level for all other sites. Low and Moderate Acceptable Development Intensities are defined in N.J.A.C. 7:7E-5.6(c) and (d) (that is, up to three to five percent of the site for low or 30 percent to 40 percent of the site for moderate can be developed into paving and structures); and

2. It would not preempt use of the waterfront portion of the floodplain for potential water-dependent use.

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater Runoff rule (N.J.A.C. 7:7E-8.7).

(f) Development in areas subject to fluvial flooding must conform with the Flood Hazard Area Control Act and rules adopted thereunder. Development in areas subject to tidal flooding must conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) In developed areas, the intensity of development shall not exceed the maximum allowed under the acceptability of development in the General Land Area Rule (N.J.A.C. 7:7E-5.2).

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

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 wetlands recodified to 3.27.

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-3.26 (Reserved)

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 wetlands buffers recodified to 3.28 and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

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 "Alluvial Flood Margins".

7:7E-3.27 Wetlands

(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands areas are identified and mapped on the following:

- i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 (generalized locations only);

- ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEP at a scale of 1:2,400; and

- iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii and iii above are available from the DEP Map and Publications sales office (609) 777-1038.

2. Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

3. The maps referenced under (a)1i, iii, and 2 above shall be useful as an indicator to assist in the preliminary determination of the presence or absence of wetlands only. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary on a specific site.

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(c) Development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5;

2. Has no prudent or feasible alternative on a non-wetland site;

3. Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and

4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

(d) In particular, dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(e) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

(f) Development that adversely affects white cedar stands such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

(g) For projects which require a Waterfront Development permit, the reuse of former dredged material disposal sites for continued dredged material disposal is conditionally acceptable provided the following criteria are met:

1. The site has been used for dredged material disposal within the past 10 years;

2. The site has existing dikes or berms in sound condition, and/or has sufficient area of previously disposed material within the previously disturbed disposal area to allow the construction of structurally sound dikes and berms;

3. There are no anticipated adverse effects on threatened or endangered species;

4. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);

5. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;

6. The former dredged material disposal area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

7. The required Waterfront Development permit and Water Quality Certification are obtained.

(h) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.

2. When a permit allows the disturbance or loss of wetlands by filling or other means, this disturbance or loss shall be compensated for as specified under (h)9 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.

3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats. Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in the amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.

i. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.

4. Where the Department permits a mitigation surface area of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing natural resources protected under the applicable Special Area Rules (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

5. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation easement and register this restriction on the deed for the subject parcel. This restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This restriction shall be memorialized in a deed restriction meeting the Department's requirements and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the deed restriction is registered with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the registered restriction is submitted to the Department will be considered in violation of these rules.

i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

- (1) Not involve a wetland site;
- (2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;
- (3) Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and
- (4) There is a compelling public need for the activity greater than the need to protect the mitigation site.

ii. To satisfy (h)6 above, the applicant shall provide a copy of the recorded document or a receipt showing that the restriction has been registered at the county clerk's office.

7. Except for publicly funded projects, as described at (h)7i below, any mitigation carried out off-site shall be on private property.

i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of a mitigation site, the owner shall be required to record a conservation easement governing that site.

9. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.

(1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)9ii(3) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)9iii below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

- (1) A non-wetlands site; or
- (2) A former wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains wetland characteristics such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to (h)9iii below. If the disturbance to a formerly wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation proposal, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed. Under no circumstances shall the mitigation area be smaller than the disturbed area.

(4) Creation shall not be permitted on a site that retains wetlands characteristics.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation. If money is donated, the Department will require an amount equivalent to the lesser of the following costs:

(1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or

(2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.

10. All mitigation projects shall be carried out on-site to the maximum extent practicable. Mitigation of wetlands, on-site or off-site, from other existing climax habitats is not practicable and is discouraged.

i. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

11. All mitigation proposals submitted to the Department shall be prepared in accordance with N.J.A.C. 7:7E-3B.

(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).

Substantially amended.

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

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

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

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

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

Case Notes

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

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

Permit to fill wetlands granted by Army Corps of Engineers was not subject to state regulation. *Matter of Waterfront Development Permit No. 87-1235-1* by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

Exclusive state regulation of isolated wetlands was provided by Freshwater Wetland Protection Act. *Matter of Waterfront Development Permit No. 87-1235-1* by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

State regulation of upland development which had no direct effect on navigable waterways was not authorized by Waterfront Development Act. *Matter of Waterfront Development Permit No. 87-1235-1* by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J.Super. 524, 608 A.2d 973 (A.D.1992).

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

7:7E-3.28 Wetlands buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem (see Appendix, Figure 7). Wider buffers than those noted below may be required to establish conformance with other Coastal Rules, including, but not limited to, 7:7E-3.38 and 3.39.

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

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

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

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

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

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

"Policy;" deleted from (b).

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

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

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

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

7:7E-3.29 (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) deleted; (b)1.-3. recodified as (b)-(d); (c) recodified as (e).
Amended by R.1990 d.413, effective August 20, 1990.

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

Text on coastal bluffs recodified to 3.31.

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 "Cranberry Bogs".

7:7E-3.30 (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).

Subsection (b) deleted; (b)1.-6. recodified to (b)-(g); (c) recodified to (h).

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

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

Text on intermittent stream corridors recodified to 3.32; text on wet borrow pit margins recodified and amended to conform to Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A; wet borrow pits are considered State open waters.

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 "Wet Borrow Pit Margins".

7:7E-3.31 Coastal bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff.

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland (see Appendix, Figures 7 and 8, incorporated herein by reference).

3. Steep slopes (N.J.A.C. 7:7E-3.34) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on Location of Linear Development (N.J.A.C. 7:7E-6.1) and shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11).

(c) The stabilization of coastal bluffs with vegetation is encouraged.

(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) and (b)2 deleted; section recodified to reflect deletions.

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

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

Text on farmland conservation areas recodified to 3.33 and amended to reflect and support the State and local Farmlands Preservation and Agricultural Development and Retention Programs; text on coastal bluffs recodified from 3.29.

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-3.32 Intermittent stream corridors

(a) Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater (see Appendix, Figures 7 and 9, incorporated herein by reference).

1. Where an intermittent stream corridor is also a wetland, the Wetlands rule (N.J.A.C. 7:7E-3.27) shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

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

(Agency note: N.J.A.C. 7:7E-3.33 through 3.35 are Special Land Areas)

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; 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).

Text on steep slopes recodified to 3.34; text on intermittent stream corridors recodified from 3.30; intermittent stream corridors are considered State open waters.

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-3.33 Farmland conservation areas

(a) Farmland conservation areas are defined as any contiguous area of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys, which are actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. Farming or farm-dependent purposes include nurseries, orchards, vegetable and fruit farming, raising grains and seed crops, silviculture (such as Christmas tree farming), floriculture (including greenhouses), dairying, grazing, livestock raising, and wholesale and retail marketing of crops, plants, animals and other related commodities.

(b) Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use rule (N.J.A.C. 7:7E-7.8).

(c) Continued, renewed, or new farming is encouraged in farmland conservation areas.

(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).

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

Text on dry borrow pits recodified to 3.35; text on farmland conservation areas recodified from 3.31, with amended definition of Area.
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-3.34 Steep slopes

(a) "Steep slopes" are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. 7:7E-3.30). Steep slopes include natural swales and ravines, as well as man-made areas, such as those created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes (see Resource Policy on Soil Erosion and Sedimentation, N.J.A.C. 7:7E-8.8).

(b) Development on steep slopes is discouraged unless its use is essential to a reasonable use of the site and it can be shown to the satisfaction of the Division that the development will:

1. Produce minimum feasible site disturbance;
2. Provide for maximum feasible vegetation of the steep slope, especially with native woody vegetation;
3. Be consistent with the natural contour of the site to the maximum extent feasible; and
4. Include limited stabilization measures, if necessary, such as terracing and paving, that are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable; and
5. Meet the Resource Policies for Runoff, and Soil Erosion and Sedimentation (N.J.A.C. 7:7E-8.7 and 8.8).

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

(Agency note: N.J.A.C. 7:7E-3.35 through 3.48 are Coastwide and Regional Special Areas)

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

Text on historic and archeological resources recodified to 3.36; text on steep slopes recodified from 3.32.

7:7E-3.35 Dry borrow pits

(a) "Dry borrow pits" are excavations for the purpose of extracting coastal minerals which have not extended below

the groundwater level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Surface mining is conditionally acceptable, provided the Mining Use Policies (N.J.A.C. 7:7E-7.8) are complied with.

(c) Channeling clean surface runoff into dry sand and gravel pits for the purposes of aquifer recharge is encouraged. Pavement runoff may be channeled into dry borrow pits provided that it is adequately filtered to remove pavement contaminants.

(d) Discharge of clean effluent from liquid waste treatment facilities for aquifer recharge is encouraged (e.g., tertiary sewage effluent), provided groundwater quality is monitored and maintained.

(e) Storing water in impermeable dry borrow pits is conditionally acceptable.

(f) Dredge spoil disposal is conditionally acceptable provided that:

1. The spoil will not degrade groundwater quality;
2. The spoil is of a particle size that will not disturb groundwater hydrology; and
3. Spoil disposal is compatible with neighboring uses.

(g) Solid waste disposal other than clean dredge spoil, and not including radioactive or carcinogenic waste, is conditionally acceptable on a case-by-case basis provided that:

1. Waste disposal is compatible with neighboring uses;
2. The borrow pit is lined with clay, plastic or other impermeable material; leachate is collected, treated and discharged to the ground through an injection well or other technique that will not degrade groundwater quality; and maintenance will be available for the life of the landfill;
3. The solid waste is stacked and interlayered with inert material;
4. A reclamation plan is submitted with the application showing naturalistic final grading, surface improvement with topsoil and organic additives and planting to initial native successions with guarantees of survival for the first five years;
5. Elevations of landfill do not exceed original surface elevations before mining;
6. The reclamation proposals are worked toward during dumping, and completed at conclusion; and
7. The applicant can demonstrate that even during accidental failure of a treatment plant, the leachate cannot degrade ground or surface water.

(h) Filling or grading for construction is conditionally acceptable provided that:

1. Other coastal policies are satisfied; and
2. The fill is clean and of a texture not to disturb local groundwater flow.

(i) All proposed uses must reduce all banks to a slope of less than one in three, stabilize them, and prepare them for planting, and initiate native successions.

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

(Agency note: N.J.A.C. 7:7E-3.35 through 3.48 are Coastwide and Regional Special Areas)

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 and (b)1 through (c) recodified as (b)-(j).

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

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

Text on specimen trees recodified to 3.40; text on dry borrow pits recodified from 3.33.

7:7E-3.36 Historic and archaeological resources

(a) Historic and archaeological resources include objects, structures, shipwrecks, buildings, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including historic and prehistoric archaeological sites, which either are on or are eligible for inclusion on the New Jersey or National Register of Historic Places.

(b) Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged.

(c) Development that incorporates historic and archaeological resources in sensitive adaptive reuse is encouraged.

(d) Scientific recording and/or removal of the historic and archaeological resources or other mitigation measures must take place if the proposed development would irreversibly and/or adversely affect historic and archaeological resources. Surveys and reports to identify and evaluate historic and archaeological resources potentially eligible for the New Jersey or National Registers shall be performed by professionals who meet the National Park Service's Professional Qualifications Standards in the applicable discipline. Professional procedures and reports shall meet the applicable Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation and the New Jersey Historic Preservation Office's professional reporting and surveying guidelines, once these guidelines are promulgated as rules, in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. A description of the qualifications and performance standards is available at the Historic Preservation Office.

(e) New development in undeveloped areas near historic and archaeological resources is conditionally acceptable, provided that the design of the proposed development is compatible with the appearance of the historic and archaeological resource. For archaeological resources within the area of the undertaking, avoidance and protection is appropriate. When this is not feasible and prudent, and these resources are of value solely for the information which they contain, archaeological data recovery to mitigate the project impact will be required.

(f) Recovery of shipwrecks consistent with the protection of historic values and environmental integrity of shipwrecks and their sites may be permitted subject to the following conditions:

1. The proposed project is in the public interest;
2. The archaeological knowledge gained will outweigh the loss to future archaeological research and to the public of the preserved shipwreck;
3. The applicant has expertise in underwater archaeology as outlined by the Federal Requirements 36 CFR 66, pursuant to the Archaeological and Historic Preservation Act of 1974 (P.L. 93-291), and through the National Environmental Policy Act, the National Historic Preservation Act of 1966, (as amended), the Abandoned Shipwreck Act of 1987, and their respective implementing regulations and guidelines;
4. Artifacts will be recovered in an archaeologically appropriate manner;
5. Recovered artifacts will be analyzed and inventoried, and as appropriate, preserved, restored, and/or made accessible to future researchers;
6. Two copies of a professional archaeological report will be prepared for the Department giving the following information about the shipwreck and its excavation: Historic background, description of environment, salvage methodology, artifact analysis, description of techniques used in preservation of artifacts, base map, narrative and grid map on artifacts recovered, bibliography, photographs, National Register documentation and conclusions; and
7. The entire exploration and salvage effort will be in accordance with the Secretary of the Interior's 1983 Standards and Guidelines for Archaeology and Historic Preservation, and the Department of the Interior's 1990 Abandoned Shipwreck Act Final Guidelines which are available from the Historic Preservation Office.

(g) The Department may require the submission of a cultural resource survey report if it is determined that there is a known historic or prehistoric resource in the project area, or a reasonable potential for the presence of such a resource, which may be affected by a proposed development. However, in general, such surveys will not be required for the developments and/or sites listed below:

1. Single family and duplex developments which are not part of a larger development;
2. Sites which can be documented as being previously disturbed to the extent that any archaeological resources present would have been completely destroyed;
3. Sites which are located on lands containing fill material, including Psammets soils (PN, PO, PW) or Urban Land Soils (UL, UP), as defined in the appropriate County Soil Survey; and
4. The replacement of structures and utilities, in-place and in-kind, provided that the area of previous disturbance does not increase.

(h) The ultimate decision on the requirement for a cultural resource survey will be made by the Department's Land Use Regulation Program, based on information received in response to public comments or information provided by the New Jersey Historic Preservation Office regarding the presence of known historic and prehistoric resources or the potential for their presence.

(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).

(b) deleted; (f) added; rest of section recodified to reflect changes. Amended by R.1990 d.413, effective August 20, 1990.

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

Text on endangered or threatened wildlife or vegetation species habitats recodified to 3.38; text on historic and archaeological resources recodified from 3.34, with survey requirements added 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-3.37 Specimen trees

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Bureau of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by DEP Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impacts, or 50 feet from the tree, whichever is greater.

(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).

Changed dates from March–April 1981 to September–October 1984. Amended by R.1990 d.413, effective August 20, 1990.

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

Text on critical wildlife habitats recodified to 3.39; text on specimen trees recodified from 3.35.

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-3.38 Endangered or threatened wildlife or vegetation species habitats

(a) Areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife (fauna) or vegetation (flora) identified as “endangered” or “threatened” species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing, are considered Special Areas. The definition also includes a sufficient buffer area to insure continued survival of the population of the species. DEP’s Division of Fish, Game and Wildlife and Division of Parks and Forestry intentionally restrict dissemination of data showing the geographic location of these species, in order to protect the species and their habitats.

1. The required threatened or endangered species habitat buffer area shall be dependent upon the range of the species and the development’s anticipated impacts to the species habitat.

(b) Development of this special area is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

(c) The following wildlife species were listed as endangered on the State list in January 1984, as amended on May 6, 1985, July 20, 1987 and June 3, 1991:

FISH

Shortnose Sturgeon¹ *Acipenser brevirostrum*

AMPHIBIANS

Tremblay’s Salamander *Ambystoma tremblayi*
Blue-spotted Salamander *Ambystoma laterale*
Eastern Tiger Salamander *Ambystoma tigrinum tigrinum*
Pine Barrens Treefrog *Hyla andersoni*
Southern Gray Treefrog *Hyla chrysocelis*

REPTILES

Atlantic Hawksbill Turtle¹ *Eretmochelys imbricata*
Atlantic Loggerhead Turtle¹ *Caretta caretta*
Atlantic Ridley Turtle¹ *Lepidochelys kemp*
Atlantic Leather-back Turtle *Dermochelys coriacea*
Bog Turtle *Clemmys muhlenbergi*
Timber Rattlesnake *Crotalus horridus horridus*
Corn Snake *Elaphe guttata guttata*

Bald Eagle¹
Peregrine Falcon¹
Cooper’s Hawk
Least Tern
Black Skimmer²
Northern Harrier²
Short-eared Owl²
Pied-billed Grebe
Upland Sandpiper
Sedge Wren²
Henslow’s Sparrow
Vesper Sparrow²
Piping Plover
Roseate Tern
Loggerhead Shrike
Red-shouldered Hawk²

Sperm Whale¹
Blue Whale¹
Fin Whale¹
Sei Whale¹
Humpback Whale¹
Bobcat
Eastern Woodrat
Right Black Whale

Mitchell’s Satyr (butterfly)¹ *Neonympha m. mitchellii*
Northeastern Beach Tiger Beetle *Cicindela d. dorsalis*
American Buring Beetle¹ *Nicrophorus americanus*
Dwarf Wedge Mussel¹ *Alasmidonta heterodon*

(d) The following Species were listed as Threatened Species on the State list in January 1984 as amended on May 6, 1985, July 20, 1987 and June 3, 1991.

AMPHIBIANS

Long-tailed Salamander *Eurycea longicauda*
Eastern Mud Salamander *Pseudotriton montanus*

REPTILES

Wood Turtle *Clemmys insculpta*
Northern Pine Snake *Pituophis m. melanoleucus*
Atlantic Green Turtle^{1&3} *Chelonia mydas*

BIRDS

Osprey *Paridon haliaetus*
Great Blue Heron *Ardea herodias*
Red-shouldered Hawk *Buteo lineatus*
Red-headed Woodpecker *Melanerpes erythrocephalus*
Bobolink² *Dolichonyx oryzivorus*
Savannah Sparrow² *Passerculus sandwichensis*
Ipswich Sparrow² *Passerculus sandwichensis princeps*
Grasshopper Sparrow² *Ammodramus savannarum*
Yellow-crowned Night Heron *Nyctanassa violacea*
American bittern *Botaurus legitimmosus*
Northern Goshawk *Accipiter gentilis*
Black Rail *Laccipiter jamaicensis*
Barred owl *Strix varia*
Little Blue Heron² *Egretta caerulea*
Long-eared Owl *Asio otus*
Cliff Swallow² *Hirundo pyrrhonota*

1. Also on the Federal List

2. Status designation applicable to breeding populations only

3. Does not nest regularly in New Jersey

(e) The Division of Parks and Forestry is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, currently contains 308 native plant species, and includes species determined by the DEP to be endangered in the State as well as plant species officially listed as Federally Endangered or Threatened or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered Plant Species List is periodically revised based on new information documented by the DEP, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the NJDEP, Division of Parks and Forestry, Office of Natural Land Management, CN 404, Trenton, NJ 08625.

(f) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in Section 6-204 of the Pinelands Comprehensive Management Plan shall also apply (N.J.A.C. 7:50-6.24).

(g) For projects which require a habitat assessment, the guidelines found at N.J.A.C. 7:7E-3C shall be used.

(h) 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.

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

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

Text on public open space recodified to 3.40; text on endangered or threatened wildlife or vegetation species habitats recodified from 3.36, with loggerhead shrike added at (c) and American bittern, northern goshawk, black rail and barred owl added at (d); reference to endangered plant species list added at (e); (f) 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).

7:7E-3.39 Critical wildlife habitats

(a) "Critical wildlife habitats" are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating.

1. Rookeries for colonial nesting birds, such as herons, egrets, ibis, terns, gulls, and skimmers; stopovers for migratory birds, such as the Cape May Point region; and natural corridors for wildlife movement merit a special management approach through designation as a Special Area.

2. Ecotones, or edges between two types of habitats, are a particularly valuable critical wildlife habitat. Many critical wildlife habitats, such as salt marsh water fowl wintering areas, and muskrat habitats, are singled out as water or water's edge areas.

3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for

New Jersey (NJDEP, Division of Fish, Game and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish, Game and Wildlife.

(b) Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

1. Minimal feasible interference with the habitat can be demonstrated;
2. There is no prudent or feasible alternative location for the development; and
3. The proposal includes appropriate mitigation measures.

(c) The Department will review proposals on a case-by-case basis.

(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 on special hazard areas recodified to 3.41; text on critical wildlife habitats recodified from 3.37.

7:7E-3.40 Public open space

(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner's associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.

(b) New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.

(c) Development that adversely affects existing public open space is discouraged.

(d) Development within existing public open space is conditionally acceptable, provided that the development complies with the Rules on Coastal Zone Management and is consistent with the character and purpose of public open

space, as described by the park master plan when such a plan exists.

(e) Provision of barrier free access to public open space is encouraged.

(f) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(g) 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 recodified; new (e).

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

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

Text on excluded Federal lands recodified to 3.42; text on public open space recodified from 3.38.

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-3.41 Special hazard areas

(a) "Special hazard areas" include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b-k are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) Approvals from the DEP's Division of Hazardous Waste Management shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

(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).

Added text in (b), "and areas where ... including adjacent areas." Amended by R.1990 d.413, effective August 20, 1990.

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

Text on special urban areas recodified to 3.43; text on special hazard areas recodified from 3.39, with reference to N.J.S.A. 58:10-23.11b-k added at (a) and (c) added.

7:7E-3.42 Excluded Federal lands

(a) "Excluded Federal lands" are those lands that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the United States of America, its officers or agents, and are excluded from New Jersey's Coastal Zone as required by the Federal Coastal Zone Management Act. They are listed in the New Jersey Coastal Management Program (August, 1980) at page 370.

(b) Federal actions on excluded Federal lands that significantly affect the coastal zone (spillover impacts) shall be consistent with the Coastal Resource and Development Policies, to the maximum extent practicable.

(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).

Added text in (b), "They are listed ... at page 370."

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

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

Text on Pinelands National Reserve and Pinelands Protection Area recodified to 3.44; text on excluded Federal lands recodified from 3.42.

7:7E-3.43 Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The following municipalities within the coastal zone qualify as special urban areas in 1993:

Asbury Park
Atlantic City
Bayonne
Bellville
Bridgeton
Camden
Carteret Borough
Commercial Twp.
Elizabeth
Glassboro
Gloucester City
Gloucester Twp.
Hoboken
Jersey City
Keansburg
Kearny
Lakewood
Long Branch
Millville
Mt. Holly Twp.
Neptune Twp.
New Brunswick
Newark
North Bergen
Old Bridge City
Passaic
Paulsboro
Pennsauken
Penns Grove
Perth Amboy

Pleasantville
 Rahway
 Salem
 Trenton
 West New York
 Weehawken
 Willingboro
 Woodbridge
 Woodbury

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative which is more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11) and the Hudson River Waterfront Area rule (N.J.A.C. 7:7E-3.48) where applicable, including those provisions relating to fishing access as appropriate are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;
2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or
3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and public access is provided for, as required by N.J.A.C. 7:7E-8.11.

(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).

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

Added text in (c) "and the Hudson River Waterfront Policy (7:7E-3.46) where applicable".
 Amended by R.1990 d.413, effective August 20, 1990.

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

Text on Hackensack Meadowlands District recodified to 3.45; text on special urban areas recodified from 3.41, with the addition of Commercial Twp., Gloucester City, Kearny, Paulsboro, Pennsauken, Penns Grove, Pleasantville, Salem and Woodbury.
 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-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a Pinelands environment . . ." (Section 8c).

1. Under the authority of the Department's Surface Water Quality Standards (N.J.A.C. 7:9B), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9B1-4, 1.5(d)6ii, 1.12(b), and 1.14(b)). The Department's present Groundwater Quality Standards (N.J.A.C. 7:9-6), which were adopted on March 3, 1981, and revised on February 1, 1993, identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County	
Brigantine City	Hamilton Township
Corbin City	Mullica Township
Egg Harbor City	Port Republic
Egg Harbor Township	Somers Point City
Estell Manor Township	Weymouth Township
Galloway Township	
Burlington County	
Bass River Township	Washington Township
Cape May County	
Dennis Township	Upper Township
Middle Township	Woodbine Borough
Cumberland County	
Maurice River Township	

Ocean County

Barnegat Township
Beachwood Borough
Berkeley Township
Dover Township
Eagleswood Township
Lacey Township

Lakehurst Borough
Little Egg Harbor Township
Manchester Township
Ocean Township
South Toms River Borough
Stafford Township
Tuckerton Borough

(b) Coastal development shall be 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.).

1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.

2. The Department's Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Environmental Regulations' Coastal/Land Planning Group at CN 423, 401 East State Street, Trenton, New Jersey 08625.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a freshwater wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials in freshwater wetlands and/or State open waters shall require a State permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of 33 USC 1344 and N.J.S.A. 13:9B-6(b).

(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).

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

Text on wild and scenic river corridors recodified to 3.46; text on Pinelands National Reserve and Pinelands Protection Area recodified from 3.42; exception to Freshwater Wetlands Protection Act 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).

7:7E-3.45 Hackensack Meadowlands District

(a) The "Hackensack Meadowlands District" is a 19,730 acre area of water, coastal wetlands and associated uplands designated for management by a State-level agency known as the Hackensack Meadowlands Development Commission (HMDC), by the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A. 13:17-1 et seq.). See Figure 20.

(b) The HMDC will act as the lead coastal planning and management agency within this Special Area. The HMDC Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see section on GAPS in Chapter 4). The Division will periodically review Commission actions and will consider incorporating any proposed changes in HMDC plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) Coastal activities under the jurisdiction of the HMDC shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

(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).

Added text in (b), "The Division will ... other environmental resources."

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

Text on geodetic control reference marks recodified to 3.47; text on Hackensack Meadowlands District recodified from 3.43.

7:7E-3.46 Wild and Scenic River Corridors

(a) "Wild and Scenic River Corridors" are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.

1. "Wild and Scenic River Corridors" shall also mean any river adopted into the National Wild and Scenic Rivers System or any rivers or segments thereof being studied for possible inclusion into that system pursuant to the Wild and Scenic River Act (16 U.S.C. §§ 1271-1278). River corridors established under the Federal Wild and Scenic River Act shall include the river and adjacent areas defined as the Wild and Scenic River Corridor by the River Management Plan. For rivers under study for possible inclusion into the National System, the river corridor shall include the river and adjacent area extending one-quarter mile on each side of the river from annual mean high water.

(b) Policy relevant to Wild and Scenic River Corridors is as follows:

1. Development may be permitted in designated river areas in accordance with N.J.A.C. 7:38-1, including special regulations for a particular river, or sections thereof, adopted upon designations to the New Jersey Wild and Scenic Rivers System.

2. Development which provides general public recreational use of and access to a designated river area, consistent with classification and flood plain regulations, is encouraged.

3. Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Areas Resource Policy (7:7E-8.23) and Other Special Areas policies.

4. Development which would have an adverse effect on the values for which a river is being considered as a potential addition to the National Wild and Scenic Rivers System, including but not limited to the scenic, recreational, and fish and wildlife attributes of the river corridor, is prohibited.

5. Development shall conform to the standards set forth by the the locally adopted River Management Plan.

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

(d) River Corridors will be administered according to N.J.A.C. 7:38-1, according to four classifications:

1. "Wild", meaning a river or section thereof, that is free of impoundment, and generally inaccessible by trail, with watershed or shoreline essentially primitive and undeveloped and water unpolluted. Wild river areas are also consistent with Natural Areas;

2. "Scenic", meaning a river, or section thereof, that is free of impoundment, with watershed or shoreline still largely primitive and undeveloped, but accessible in places by road;

3. "Recreational", meaning a river, or section thereof, that is readily accessible, that may have some shoreline development, and that may have undergone some impoundment or diversion; and

4. "Developed recreational", meaning a river, or section thereof, that is readily accessible, that may have substantial shoreline development, that may have undergone substantial impoundment or diversion, but which remains suitable for a variety of recreational uses.

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

Text on Hudson River Waterfront Area recodified to 3.48; text on wild and scenic river corridors recodified from 3.44, expanded to include those corridors protected under the Federal Wild and Scenic River Act (16 U.S.C. §§ 1271-1278); development restricted by new (b)4 and 5.

7:7E-3.47 Geodetic control reference marks

(a) "Geodetic control reference marks" are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, C.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb, ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

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

New Rule R.1985 d.715, effective February 3, 1986.

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

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

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

Text on geodetic control reference marks recodified from 3.45.

7:7E-3.48 Hudson River Waterfront Area

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level.

2. "The Hudson River Waterfront Area" extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee subject to the Waterfront Development Law.

3. "Landward end of pier" means the end of the pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.

5. "Pier deck level" means the lowest deck surface that is at or above base flood elevation (the water surface elevation of a 100-year flood as defined by the Federal Emergency Management Agency).

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.

(b) Non-industrial development within the Hudson River Waterfront Area shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing and public access. Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Resource and Development Policies with particular attention given to N.J.A.C. 7:7E-3.38 Public open space, N.J.A.C. 7:7E-3.39 Special hazards areas, N.J.A.C. 7:7E-3.41 Special urban area, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d) The following standards apply to all developments proposed on piers and will be used by the Division as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under policies that regulate upland development. Developers proposing platform development that does not adhere to this section's requirements are encouraged to contact the Division for guidance when conceptual plans have been prepared.

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of landward open space} = \frac{(ABH)^2}{40 \text{ feet}} - (2 \times ABH) + 60 \text{ feet}$$

Example: Average Height	Minimum Landward Open Space Length
80 feet	60 feet
70 feet	42.5 feet
60 feet	30 feet
50 feet	22.5 feet
40 feet	20 feet;

iii. The minimum length of distal public open space at the waterward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

iv. The minimum length of public open space at the waterward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of waterward open space} = \frac{(ABH)^2}{16 \text{ feet}} - (5 \times ABH) + 120 \text{ feet}$$

Example: Average Height	Minimum Waterward Open Space Length
80 feet	120 feet
70 feet	76 feet
60 feet	45 feet
50 feet	26 feet
40 feet	20 feet;

v. The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) Public open space at each pier end, that covers the full width of the pier, shall be at least 20 feet in length or 70 percent of the minimum length, as determined above at (d) i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 per cent of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 per cent of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;

vi. At least one public access walkway of at least 16 feet in width shall be provided along the entire length of a pier, from the waterward end to the landward end at the point at which it abuts the Hudson River Waterfront Walkway. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;

vii. Where piers are less than 400 feet apart, the heights, as allowed by this section, shall be further reduced by 20 percent for each pier. No reduction of open space will be allowed as a result of this height reduction; and

viii. Development that reuses existing structures on piers shall comply with the above criteria to the maximum practical extent; and

ix. All pier structures shall conform with applicable Federal flood hazard reduction standards as found in 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. With the exception of water dependent industrial uses, all Hudson River pier development shall provide unrestricted, landscaped public access as required by (d) above. Public access on piers shall be on a 24-hour basis, but the Division will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.

2. Water dependent industrial piers shall provide linear public access and/or public access observation nodes as feasible, consistent with public safety.

3. Within all public access corridors and public open space areas on piers, pedestrians shall have a declared right of way over vehicles. Public access corridors may be

used for emergency vehicular access, but shall not serve as service or general vehicular roadways. All instances of vehicular/pedestrian crossing shall be designated to assure motorists are aware they are crossing a pedestrian right of way. Stop signs, speed bumps and similar design techniques shall be used as necessary.

(f) Applications which vary in detail from the standards of this policy are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict policy compliance.

New Rule, 1988 d.338, effective August 15, 1988.

See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Amended by R.1989 d.271, effective May 15, 1989.

See: 20 N.J.R. 1982(a), 21 N.J.R. 1332(b).

Change at (d) from all walkways being 15 feet in width to providing at least one of at least 16 feet in width.

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

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

Text on Hudson River Waterfront Area recodified from 3.46; requirement for easement to DEP added at (e) design standards and guideline references updated.

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting; maintenance of access ways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accor-

dance with these standards. If these activities are proposed to be conducted on State owned properties, then the DEP, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

(b) Projects involving the mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

2. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

3. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with DEP and/or SCS standards. Fencing shall be in place within 30 days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

4. There shall be no disturbance to existing dune areas.

5. In areas of documented habitat for endangered nesting shorebirds (Piping Plovers and Least Terns), no sand transfers shall take place between April 1 and August 1. The Land Use Regulation Program, in coordination with the Division of Fish, Game and Wildlife, will determine affected areas.

6. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

7:7E-3A.2 Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceeding a five-year storm event.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile; the along-shore transfer of sand on a beach; the placement of concrete or rubble; and the placement of sand filled geotextile bags or tubes. The placement of sand filled geotextile bags or tubes is preferred to the placement of concrete, rubble or other material.

(c) The emergency post-storm beach restoration activities in (b) above should be designed and implemented as a means to restore the beaches to the pre-storm condition, or to restore the beaches to a level sufficient to provide protection from a storm event with a minimum recurrence interval of five years (five-year storm protection). For the purpose of this section, five-year storm protection equates to a minimum 30-foot wide berm at elevation +8 Mean Sea Level (NAD, 1983). Restoration beyond the pre-storm beach condition is encouraged by the Department, but will not be considered "emergency post-storm beach restoration," pursuant to this section.

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. Bulldozing is limited to the beach area landward of the low water line. Removal of material from below the low water line is considered dredging, and is not authorized pursuant to this section; and

2. The beach face cannot be graded to a slope steeper than 1:3.

(e) The longshore transfer of sand from one beach area to another, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. No disturbance to existing dune areas is permitted;

2. Sand borrow areas shall not be bulldozed to a depth which exceeds one foot;

3. The borrow areas may not be rescraped until full sand volume recovery has occurred; and

4. An adequate supply of sand is available at the borrow area site, so that the relocation of this material will not decrease the level of protection adjacent to the borrow area.

(f) The placement of sand filled geotextile bags or tubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. The bags or tubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself; and
2. The tubes or bags should be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the bags/tubes.

(g) The placement of sand, gravel, rubble, concrete, or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. All material shall be non-toxic sand, gravel, concrete, rubble, or other inert material;
2. The placement of concrete or rubble shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a DEP approved, engineered design for permanent shore protection;
3. All concrete and rubble placed on the beach shall be removed within 90 days, unless the placement is part of a DEPE approved, engineered design for permanent shore protection; and
4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

7:7E-3A.3 Standards applicable to dune creation and maintenance

(a) Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

(b) All dune creation and maintenance activities should be conducted in accordance with the specifications found in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985), and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (Soil Conservation Service, 1992). The Department will provide site specific technical assistance for dune creation and maintenance projects, upon request.

(c) All proposed dune vegetation should be limited to the following coastal species: American Beachgrass (*Ammophila breviligulata*), Coastal Panicgrass (*Panicum amarulum*), Japanese Sedge (*Carex kobomugi*), Bayberry (*Myrica pennsylvanica*), Rugosa Rose (*Rosa rugosa*), Beach Plum (*Prunus maritima*), Shore Juniper (*Juniperus conferta*), and Japanese Black Pine (*Pinus thunbergii*). Although they may

not be currently available from commercial nurseries at this time, the following plant species are also well suited to the dune environment: Seaside Goldenrod (*Solidago sempervirens*), Dusty Miller (*Artemisia stelleriana*), Beach Pea (*Lathyrus japonicus*), Sea Oats (*Uniola paniculata*), Bitter Panicgrass (*Panicum amarum*), and even Saltmeadow Cordgrass (*Spartina patens*).

1. American beachgrass is the preferred species for the stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

2. Dune vegetation should be diversified as much as possible, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.

(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at municipal street-ends and other heavily used beach access points, is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the DEP and Florida Sea Grant reports are available from the DEP, Land Use Regulation Program, CN 401, Trenton, NJ 08625. Copies of the Soil Conservation Service report are available directly from the Soil Conservation Service, Plant Materials Center, 1536 Route 9 North, Cape May Court House, NJ 08210.

(e) The construction of at-grade dune walkovers is acceptable only at single family and duplex residential dwellings, subject to the following conditions:

1. Only one walkover per residential building is allowed;
2. The width of the walkover must not exceed four feet;
3. The walkover shall be fenced on both sides through the use of sand fencing;
4. The use of unrolled sand fencing as a base for the walkover is preferred to the use of planks and boards. Sand fence based walkovers allow for easier seasonal removal and placement, and allow for greater growth of beachgrass, while still providing an adequate base for pedestrian traffic; and
5. Solid boardwalk type walkovers shall be elevated at least one foot above the dune, to allow for movement of sand and vegetative growth under the boardwalk structure.

(f) The controlled use of discarded natural Christmas trees for the purpose of dune stabilization is generally discouraged, but may be acceptable, in accordance with the standards set forth below. Discarded Christmas trees serve the same function as sand fencing, by trapping wind blown sand and facilitating sand deposition and dune formation. However, uncontrolled or inappropriate placement of trees will hinder the development of dunes and may present a fire hazard.

1. Only natural, coniferous trees are suitable for use in dune stabilization. The use of tree limbs, clippings, artificial trees, and other dead vegetation is prohibited;
2. Trees should be placed at least 100 feet landward of the high water line, in areas which are generally not subject to spring tidal inundation and wave swash action;
3. The placement of trees should be oriented against the prevailing winds, in either a straight line or zig-zag formation;
4. The trees should be installed by overlapping the stump end of one tree with the pointed end of another, and then anchoring the connection point with a sufficient amount of sand to hold the trees in place;
5. Newly placed trees should be monitored to ensure that the trees remain anchored and do not become dislodged. Additional quantities of sand or wooden anchor stakes may be used to hold the trees in place until they become stabilized; and
6. All newly deposited sand should be stabilized through the planting of beachgrass, during the appropriate planting season.

7:7E-3A.4 Standards applicable to the construction of boardwalks

(a) The construction of oceanfront or bayfront boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. All timber support piles shall be a minimum of eight inches in diameter;
2. Support piles should be driven to a depth of at least -10 feet (mean sea level), for all V-zone locations. In A-zones, the depth of penetration should be at least -five feet (mean sea level);
3. The method for insertion of piles should be a pile driver or drop hammer;
4. All support joists and timber connections should be anchored through the use of hurricane clips or metal plates; and

5. All metal fasteners, including but not limited to bolts, screws, plates, clips, anchors and connectors, shall be hot dipped galvanized.

SUBCHAPTER 3B. INFORMATION REQUIRED IN WETLAND MITIGATION PROPOSALS

7:7E-3B.1 Mitigation proposal requirements

(a) Mitigation proposals based on the disturbance of freshwater wetlands must also conform to the standards found at N.J.A.C. 7:7A-14.4. All mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland mitigation proposal. The introduction should include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;
2. A description (that is, size, type, vegetation, hydrology, etc.) of the wetlands that are being destroyed or disturbed;
3. Photographs of the proposed mitigation site;
4. The names and addresses of current and proposed owner(s) of the mitigation project site;
5. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, and hydrology, wildlife and adjacent land use;
6. A discussion relative to the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;
7. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;
8. The existing soils types with soil borings to document seasonal high water tables, with a discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, whether the pH is appropriate and any other pertinent factors;
9. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;
10. A copy of a deed restriction which provides that no regulated activities will occur in the mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Proof that the deed restriction has been registered with the County Clerk (or the Registrar of Deeds and Mortgages if applicable) is required within 60 days following approval of the mitigation proposal;

11. A metes and bounds description of the proposed mitigation site which forms the basis for the deed restriction. The metes and bounds description shall include the transition area;

12. The New Jersey Wetlands/Tidelands Map number(s) for the development site (and the mitigation site if it is at a different location) as well as block and lot numbers and ownership of the mitigation site;

13. The actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

14. Five folded copies of a site plan for the mitigation project which includes:

- i. The project location within the region;
- ii. The lot and block number of the mitigation project location;
- iii. Existing and proposed elevations and grades of the mitigation site in one foot intervals; and
- iv. Plan views and cross sectional views;

15. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plane Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

16. In accordance with N.J.A.C. 7:7A-14.1, obtain a secured bond or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, the financial surety to assure success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. Mitigation for the loss of freshwater wetlands within the coastal zone shall comply with the Coastal Permit Program Rules at N.J.A.C. 7:7, Rules on Coastal Zone Management at N.J.A.C. 7:7E, and Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. Mitigation for the loss of tidal wetlands must comply with the Coastal Permit Program Rules at N.J.A.C. 7:7 and the Rules on Coastal Zone Management at N.J.A.C. 7:7E.

SUBCHAPTER 3C. ASSESSING IMPACTS TO ENDANGERED AND THREATENED WILDLIFE SPECIES IN ENVIRONMENTAL IMPACT ASSESSMENTS

7:7E-3C.1 Performance standards

(a) Performance standards for habitat assessments are as follows:

1. Assessments of endangered or threatened wildlife should begin by contacting the New Jersey Natural Heritage Program to obtain information on the known occurrences of endangered and threatened species on and within the vicinity of the site. This is known as the "Master" species list.

2. An evaluation of habitat including examination of vegetation cover, soils, hydrology and existing land use shall be made for the site and surrounding areas. The site's vegetative analysis shall include an on-site investigation and evaluation. The surrounding areas investigation shall consist of air photos or appropriate cover maps.

3. Based on the assessment of habitat and general habitat associations of species on the "Master" list, a list of endangered, threatened, or other rare species that may be present on the site shall be developed. This is known as the potential species list. The applicant shall be able to justify excluding any species from the master list in developing the list of potential species.

4. A survey shall be performed for all species on the list of potential species unless detailed evaluation of habitat and comparison with individual species habitat requirements suggests that no suitable habitat exists on, or immediately adjacent to, the subject property. The "survey" list is therefore comprised of all species on the potential list except those for which the consultant presents convincing evidence that suitable habitat does not exist. Most of the species on the survey list will be species that could occur based on the presence of suitable habitat and/or known occurrences within the site's vicinity. No survey need be performed for species confirmed to occur on the site according to the Natural Heritage Database. In such a case, the National Heritage Database provides positive evidence to support a finding of potential negative impacts to endangered or threatened species habitats. Field studies should focus on documenting the location and extent of habitats for the confirmed species.

5. Surveys for all species on the survey list should be performed using scientific methodology appropriate for each species or species group. When surveys confirm the occurrence of any endangered or threatened species, additional habitat assessment should be performed to determine the location and extent of habitat for the confirmed species.

7:7E-3C.2 Reporting standards

(a) Reporting standards for habitat assessments are as follows:

1. The environmental impact assessment shall provide proof of correspondence with the Natural Heritage Program including copies of all correspondence with the Natural Heritage Program and, if applicable, the DEP's Endangered and Nongame Species Programs.
2. The environmental impact assessment shall provide a description of the habitat on site and a description of the surrounding habitat.
3. The environmental impact assessment shall provide the list of potential species as described in N.J.A.C. 7:7E-3C.1(a)3. It shall provide justification for excluding any species mentioned by the New Jersey Natural Heritage Program as occurring on site or in the vicinity of the subject property. For example, the Natural Heritage Program list of species occurring in the areas may include the Bog Turtle. If the subject property is comprised entirely of uplands, justification for excluding the Bog Turtle from the list of potential species would be based on the lack of a suitable habitat.
4. A description of the habitat requirements for each species on the potential list shall be provided, including appropriate literature citations.
5. The environmental impact assessment shall provide the survey list of species as described in N.J.A.C. 7:7E-3C.1(a)4. The environmental impact assessment shall also provide detailed justification for excluding any species from the survey list that appears on the potential list. This justification shall consist of detailed assessment of habitat conditions on and within the vicinity of the project site in comparison with known habitat requirements of the particular species. Habitat requirements of that particular species should be obtained from review of the appropriate scientific literature and/or from the Natural Heritage Program, Endangered and Nongame Species Program, or (for wetlands species) from the DEP Land Use Regulation Program. Literature citations shall be provided.
6. The environmental impact assessment shall provide a description of the methodology used to survey for each species on the survey list. The methodology followed should be based on established acceptable techniques for the particular species and should provide the following information: best time of year to survey, best time of day, minimal time required, minimal number of sampling points, plot transects, etc., and the minimum number of replications. The assessment should also provide literature citations for the techniques used. The assessment shall describe how the particular methodology was applied to this survey, giving the following information: surveyors names, dates and times surveys performed, number of samples, number of replications. This information shall be provided for each species surveyed or indicate when one survey covered more than one species.

7. The assessment shall provide the names and qualifications of all investigators performing habitat and/or species surveys.

8. The findings of all species surveys shall be provided whether negative or positive.

9. The assessment of potential impacts shall reflect reasonable ecological principles. That is, if any rare or endangered species or potential habitats are found to be present on or immediately adjacent to the site, the environmental impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species. This evaluation should be based on habitat requirements and life history of each species, and the way in which the proposed development may alter habitat, including: vegetation, soils, hydrology, affects on competitor, parasite, or predator species, human disturbance, etc. For example, a golf course will introduce pesticides and fertilizers into the groundwater, affecting the physical and biological characteristics of nearby streams and ponds that may serve as breeding sites for rare amphibians. The report should present detailed information, including maps, showing the location of all confirmed endangered and threatened species occurrences. The report should also include a description or maps illustrating the location and extent of suitable habitat for all species for which suitable habitat is confirmed to occur on the project site.

SUBCHAPTER 4. GENERAL WATER AREAS

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

Rules and Publications
Office of Administrative Law
Quakerbridge Plaza
Bldg. No. 9
CN 301
Trenton, New Jersey

7:7E-4.1 Definition

(a) General Water Areas are first divided into water and land by the same definitions used for Special Areas, N.J.A.C. 7:7E-3.1. Water and land are further subdivided into General Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types.

(b) This subchapter defines General Water types, assigns General Water Area rules to each and summarizes the rationale and intent of the rules.

1. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area rules will apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

2. General Water Areas are areas which lie below either the Spring high water line or the normal water level of non-tidal waters. Except at a time of drought or extreme low tide, these areas are permanently inundated.

3. General Water Areas are divided by volume and flushing rate into eight categories as defined below:

i. "Lakes, ponds and reservoirs" includes relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others serve as surface aquifer recharge areas. Lakes that are the result of former mining operations are not included in this definition, but are defined at N.J.A.C. 7:7E-3.14, Wet Borrow Pits.

ii. "Large rivers" means waterways with watersheds greater than 1,000 square miles. Large Rivers are limited to the Delaware, Hudson and Raritan Rivers.

(1) The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cove, Lower Alloways Creek Township and the Delaware River Basin Commission-River and Bay Memorial at Liston Point, Delaware.

(2) The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

(3) The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin Townships to its mouth at Raritan Bay and the Arthur Kill.

iii. "Man-made harbors" means semi-enclosed or protected water areas which have been developed for boat mooring or docking.

iv. "Medium rivers, creeks and streams" means rivers, streams and creeks with a watershed of less than 1,000 square miles. This definition includes waterways such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem, and Rancocas (see Appendix, Figures 13c-e, incorporated herein by reference).

v. "Ocean" includes the area of the Atlantic Ocean from the marine boundary with the State of New York in the Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Appendix, Figure 13c).

vi. "Open bay" means a large, semi-confined estuary with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into its upper portion. Open bays are limited to the Delaware Bay, Raritan Bay, Sandy Hook Bay and Upper New York Bay (see Appendix, Figure 13b, incorporated herein by reference).

vii. "Semi-enclosed and back bay" means a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from black bays in depth, degree of restriction of inlet and level of freshwater flow.

viii. "Tidal guts" means the waterway connection between two estuarine bodies of water. Also known as thorofares, tidal guts control the mix of salt and freshwater. Examples include the Arthur Kill and Kill Van Kull (see Appendix, Figures 13a-e, incorporated herein by reference).

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-4.2 Acceptability Conditions for Uses

(a) Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use rules.

(b) Standards relevant to aquaculture are as follows:

1. Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

2. Aquaculture is encouraged in all General Water Areas provided that:

- i. It does not unreasonably conflict with resort or recreation uses;
- ii. It does not cause significant adverse off-site environmental impacts; and
- iii. It does not present a hazard to navigation.

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

(c) Standards relevant to boat ramps are as follows:

1. Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently paved with asphalt or concrete, or covered with metal grates.

2. The acceptability conditions for boat ramps are as follows:

i. Boat ramps are conditionally acceptable provided they meet the following conditions:

(1) There is a demonstrated need that cannot be met by existing facilities;

(2) They cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;

(3) Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells;

(4) Garbage cans shall be provided near the boat ramp.

ii. Public use ramps shall have priority over restricted use and private ramps.

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

(d) Standards relevant to docks and piers (for cargo and commercial fisheries) are as follows:

1. "Docks and piers (for cargo and passenger movement and commercial fisheries)" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with a single industrial or manufacturing facility or to commercial fishing facilities. Rules for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (See (j) below).

2. Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable in most General Water Areas, provided that:

i. The width and length of the piers are limited to only what is necessary for the proposed use;

ii. They will not pose a hazard to navigation; and

iii. The associated use of the adjacent land meets all Coastal Resource and Development Policies.

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

(e) Standards relevant to docks and piers (recreational) are as follows:

1. Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreation or fishing or for the mooring of boats used for recreation or fishing, except for commercial fishing, and house boats.

2. Recreational docks and piers, including mooring piles, are conditionally acceptable in General Water Areas provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. The construction minimizes adverse environmental impact to the maximum extent feasible;

iii. The docks and piers and their associated mooring piles are located so as to not hinder navigation or conflict with overhead transmission lines;

iv. There is minimum feasible interruption of natural water flow patterns;

v. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of $\frac{3}{8}$ inch, $\frac{1}{2}$ inch, $\frac{3}{4}$ inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively.

vi. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide (measured from the bottom of the stringers), except for floating docks. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

(1) A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet.

(2) Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline.

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

viii. The proposed structure does not hinder navigation or access to adjacent water areas.

3. The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2).

4. The construction of recreational docks within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

5. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width.

6. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width. All structures proposed as part of an expansion must comply with all of the applicable Rules on Coastal Zone Management (N.J.A.C. 7:7E.).

7. All docks and pier construction must not hinder access to adjacent docks, piers, moorings or water areas.

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

(f) Standards relevant to maintenance dredging are as follows:

1. Maintenance dredging is the removal of accumulated sediment from previously authorized and legally dredged navigation and access channels, marinas, lagoons, canals or boat moorings for the purpose of maintaining an authorized water depth and width for safe navigation. In order to be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length and width of the previous dredging operation. Dredging beyond those authorized dimensions is "new dredging" (see (g) below).

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. An acceptable dredged material disposal site with sufficient capacity exists (see (g) below and N.J.A.C. 7:7E-7.12 for rules on dredged material disposal).

ii. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation testing, and bioassay of sediments, may also be required. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed disposal method.

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4. NJDEP may require the permittee to conduct biological, physical and chemical water quality monitoring before, during and after dredging and disposal operations to ensure that water quality standards will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under the specific circumstances identified below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. In sites at which the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets will be examined. NJDEP may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned.

vi. In the waterways characterized below, if the applicant for mechanical maintenance dredging cannot meet the acceptability conditions in (f)2i through v above, then the Department will authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning or nursery areas of endangered shortnose sturgeon (N.J.A.C. 7:7E-3.38);

(2) Known spawning sites of anadromous fishes such as: Atlantic sturgeon; alewife; blueback herring; and striped bass;

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-3.5, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4) Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches;

(5) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; or

(6) Known female blue crab winter hibernation areas. These typically are located in higher salinity water near bay mouths.

vii. For hydraulic dredges, if the applicant cannot meet the acceptability conditions in (f)2i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

- (1) Known female blue crab winter hibernation areas;
- (2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-3.38 and/or winter flounder; or
- (3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass and/or white perch.

3. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2) or Endangered and Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering area for finfish or blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

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

(g) Standards relevant to new dredging are as follows:

1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability conditions for new dredging are as follows:

- i. New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages (docks) provided that:

- (1) There is a demonstrated need that cannot be satisfied by existing facilities;

- (2) The facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas;

- (3) The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;

- (4) The dredge area causes no significant disturbance to Special Water or Water's Edge Areas;

- (5) The adverse environmental impacts are minimized to the maximum extent feasible;

- (6) Dredging will be accomplished consistent with all conditions described under the maintenance dredging provisions, (f)2(i) through vii above, as appropriate to the dredging method;

- (7) An acceptable dredge spoil disposal site exists;

- (8) The dredge area is reduced to the minimum practical;

- (9) The maximum depth of the newly dredged area will not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean; and

- (10) Dredging will have no adverse impacts on groundwater resources.

- ii. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal and/or dimensional limitations may be imposed on new dredging.

- iii. New dredging or excavation to create new lagoons for residential development is prohibited in Wetlands, Wetlands Buffer, Endangered or Threatened Wildlife or Vegetation Species Habitats as defined in N.J.A.C. 7:7E-3.25, 3.26 and 3.40 and discouraged elsewhere.

- iv. New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs, provided that an acceptable sedimentation control plan is developed to address re-sedimentation of these water bodies.

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

(h) Standards relevant to dredged material disposal are as follows:

1. Dredged material disposal is the discharge of sediments removed during dredging operations.

2. Acceptability conditions relevant to dredged material disposal are as follows:

- i. Dredged material disposal is prohibited in tidal guts, man-made harbors, and medium rivers, creeks and streams.

- ii. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet.

iii. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with the USEPA and US Army Corps of Engineers Guidelines parts 220–228 and 33 CFR, Parts 320–330 and 335–338) established under Section 404(b) of the Clean Water Act.

iv. EPA Guidelines require that consideration be given to the need for the proposed activity, the availability of alternate sites and methods of disposal that are less damaging to the environment, and applicable water quality standards. They also require that the choice of the site minimize harm to municipal water supply intakes, shellfish, fisheries, wildlife, recreation, threatened and endangered species, benthic life, wetlands and submerged vegetation, and that it be confined to the smallest practicable area.

v. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites is conditionally acceptable in existing anoxic dredge holes, provided that data on water quality, benthic productivity and seasonal finfish use evidence limited biological value and a submerged elbow or underwater diffuser is used. The hole shall not be filled higher than the depth of the surrounding waters.

vi. Overboard disposal of sediments less than 90 percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: Shellfish Habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and sediment characteristics of the dredged material and disposal site are similar. If unconfined aquatic disposal can not meet these conditions, then NJDEP shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

viii. Dredged material disposal in lakes, ponds and reservoirs is prohibited.

ix. Conditions for dredged material disposal on land are indicated in N.J.A.C. 7:7E-7.12.

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

(i) Standards relevant to dumping (solid waste or sludge) are as follows:

1. The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

2. Acceptability conditions: The dumping of solid or semi-solid waste of any description in any General Water Area is prohibited.

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

(j) Standards relevant to filling are as follows:

1. Filling is the deposition of material (sand, soil, earth, dredged material, etc.) into water areas for the purpose of raising water bottom elevations to create land areas.

2. Acceptability conditions relevant to filling are as follows:

i. Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at depths greater than 18 feet, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Regulations, N.J.A.C. 7:7A.

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

(1) The use that requires the fill is water dependent;

(2) There is a demonstrated need that cannot be satisfied by existing facilities;

(3) There is no feasible or practical alternative site on an existing Water's Edge;

(4) The minimum practicable area is filled;

(5) The adverse environmental impacts are minimized, e.g. by compensating for the loss of aquatic habitat by creation of an area of equivalent or greater environmental value elsewhere in the same estuary;

(6) Minimal feasible interference is caused to Special Areas; and

(7) Pilings and columnar support or floating structures are unsuitable for engineering or environmental reasons.

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under (j)2ii above or the following two conditions:

(1) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation rule shall not be required in such cases.

(2) Elsewhere, the proposed retaining structure shall not extend seaward of the spring high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area Rule (N.J.A.C. 7:7E-3.27).

4. Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Rules N.J.A.C. 7:7E-7.11).

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the Rules on Coastal Zone Management, N.J.A.C. 7:7E), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4 (CAFRA), removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or waterbody, and its removal will alleviate the adverse impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth in this subsection.

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

(k) Standards relevant to mooring are as follows:

1. A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

2. Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Adverse environmental impacts are minimized to the maximum extent practicable;

iii. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

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

(l) Standards relevant to sand and gravel extraction are as follows:

1. Sand and gravel extraction is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

2. Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts unless the waterbody was created by the extraction process, in which case the use is conditionally acceptable. This activity is discouraged in all other General Water Areas. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. Special areas are not directly or indirectly degraded;

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation consistent with the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4);

iii. There is an acceptable disposal site for the waste from washing operations;

iv. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet MLW;

v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

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

(m) Standards relevant to bridges are as follows:

1. A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

2. Bridges are conditionally acceptable over all water area types provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Applicable Location and Resource Rules are satisfied, with special attention to Location Rules on Secondary Impacts and Linear Development;

iii. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

iv. Fishing catwalks and platforms are provided to the maximum extent practicable. This shall be taken into consideration during the design phase of all proposed bridge projects.

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

(n) Standards relevant to submerged infrastructure are as follows:

1. Submerged infrastructure includes the following:

i. Cables are solid underwater lines such as telecommunication cables or electrical transmission lines.

ii. Pipelines are underwater pipes laid, buried, or trenched for the purpose of transmitting liquids or gas. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and backfilling, or jetting as an alternative to trenching.

2. Submerged infrastructure is conditionally acceptable provided that it is not sited within Special Areas, unless no prudent and feasible alternate route exists. The use of directional drilling for the installation of submerged infrastructure is encouraged over the use of trenching.

i. In the case of pipelines, the following conditions shall also be met:

(1) Trenching takes place to a sufficient depth and is back-filled, either through natural or mechanical means to minimize the possibility of puncturing by snagging anchors or sea clam dredges;

(2) The pipeline is sufficiently deep to avoid uncovering by erosion of water currents; and

(3) The conditions outlined for pipelines in the Energy Use rules (See N.J.A.C. 7:7E-7.4) are satisfied.

ii. Temporary trench spoil storage and backfilling as part of pipeline trenching is acceptable provided that bottom contours are reestablished following trench spoil removal, to the original bottom contours, to the maximum extent practicable.

iii. In the case of cable routes, the following conditions must be met:

(1) The route avoids areas where anchors may foul the cable; and

(2) The alignment of the cable route is marked at the landfall and by buoys at the surface.

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

(o) Standards relevant to overhead transmission lines are as follows:

1. "Overhead transmission lines" are electrically conducting wires hung between supporting pylons for the transmission of electrical power from generating plant to the site of consumption.

2. Overhead transmission lines are prohibited or discouraged, except over rivers, streams, creeks, and tidal guts, where transmission lines will be considered for acceptability provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. There is no feasible alternative route that avoids crossing water bodies;

iii. Further development likely to be induced by the transmission lines is acceptable;

iv. The transmission line provides adequate vertical clearance for masts; and

v. Visual impacts are minimized to the maximum extent practicable.

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

(p) Standards relevant to dams and impoundments are as follows:

1. Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

2. The construction of dams and impoundments is prohibited in all Water Areas except medium rivers, creeks, and streams, unless:

i. The structures are essential for water supply purposes or for the creation of special wildlife habitats;

ii. Adverse impacts are minimized; and

iii. The structures will not adversely affect navigation routes.

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

(q) Standards relevant to outfalls and intakes are as follows:

1. Outfalls and intakes are pipe openings that are located in Water Areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

2. Outfalls and intakes are conditionally acceptable in most water bodies provided that the use associated with the intake or outfall meets the Rules on Coastal Zone Management. In particular, stormwater discharge pipes shall comply with the Stormwater Management rule (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods.

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

(r) Standards relevant to realignment of water areas are as follows:

1. Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a

previously bulkheaded water area or the bulkheading at or above the spring high water line.

2. Realignment of naturally occurring water areas is discouraged.

3. Realignment of previously realigned water areas is conditionally acceptable, provided that it can be demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/allocation) will result, and no Resource rules will be contravened by the realignment; and that a net recreational/ecological benefit will demonstrably accrue.

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

(s) Standards relevant to miscellaneous uses are as follows:

1. Miscellaneous includes uses of Water Areas not specifically defined in this section or addressed in the Use rules.

2. Water dependent uses of Water Areas not identified in the Use rules will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all Water Areas.

(t) Breakwaters (including those constructed of concrete, rubble mound and timber) are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. Typically, timber breakwaters are designed and utilized to protect boat moorings, while concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

1. Timber breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks. The individual plank width shall not exceed six inches.

2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required.

3. The construction of concrete or rubble mound breakwater structures must be consistent with the acceptability conditions for Structural Shore Protection (N.J.A.C. 7:7E-7.11(e) and Filling (j) above).

4. Rationale: See 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.

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

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

Dock, pile and breakwater dimensions and dredging requirements added.

Recodified from 7:7E-4.11 and 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).

Prior text at 7:7E-4.2, Water Area Policy Summary Table, repealed.

Case Notes

Waterfront pier built without permit; no unusual circumstances warranting grant of application to legalize structure. *Rotelle v. Division of Coastal Resources*. 92 N.J.A.R.2d (EPE) 107.

7:7E-4.3 (Reserved)

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 "Ocean".

7:7E-4.4 (Reserved)

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 "Open bay".

7:7E-4.5 (Reserved)

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 "Semi-enclosed and back bay".

7:7E-4.6 (Reserved)

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 "Tidal guts".

7:7E-4.7 (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).

Added text in (a)3 "a point approximately . . . Landing Lane Bridge" and deleted "Interstate Route 287 Bridge".

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 "Large rivers".

7:7E-4.8 (Reserved)

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 "Medium rivers, streams and creeks".

7:7E-4.9 (Reserved)

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

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

Reference to Freshwater Wetlands Protection Rules added at (b).

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 "Lakes, Ponds and Reservoirs".

7:7E-4.10 (Reserved)

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 "Man-made harbor".

SUBCHAPTER 5. GENERAL LAND AREAS

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

Rules and Publications
Office of Administrative Law
Quakerbridge Plaza
Bldg. No. 9
CN 301
Trenton, New Jersey 08625

7:7E-5.1 Definition

(a) General Land Areas include all mainland land features located upland of special water's edge areas. These Land Area rules apply in all General Land Areas, including those land areas that are also Special Areas, where both the General Land Area and Special Area rules must be complied with.

(b) The Department shall not apply the development intensity requirements of this subchapter to the construction of individual single family or duplex dwellings which are not part of a larger development. In addition, the requirements of this subchapter shall not apply to linear developments, as defined in N.J.A.C. 7:7E-6.1.

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
Added text in (a) "These land area . . . be complied with."
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-5.2 Acceptability of development in General Land Areas

(a) The acceptability for development of Land Areas is defined in terms of three levels of acceptable development intensity. Three factors determine the acceptable development intensity for various locations in Land Areas. Assessment of these three factors indicates the appropriate pattern of development from a broad, regional perspective and provides a method for determining the acceptable intensity of development of specific sites, as well as entire regions:

1. Coastal Growth Rating;
2. Environmental Sensitivity; and
3. Development Potential.

(b) Determination of the specific rule for a Land Area site is a four step process:

1. The Coastal Growth Rating is determined.
2. The Environmental Sensitivity and Development Potential of the site are determined.
3. The Land Acceptability Table (N.J.A.C. 7:7E-5.7) for the appropriate region is consulted to determine the acceptable intensity of development of the site, given the three possible combinations of Development Potential and Environmental Sensitivity factors for the site or parts of the sites.
4. The proposed intensity of development of the site is compared with the acceptable intensity of development for the site.

(c) Coastal development which does not conform with the acceptable intensity of development of a site is discouraged.

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).

Law Review and Journal Commentaries

Administrative Procedure—CAFRA—Environmental Protection.
P.R. Chenoweth, 134 N.J.L.J. No. 3, 64 (1993).

7:7E-5.3 Coastal Growth Rating

(a) The coastal zone is classified into 15 different regions on the basis of the varied pattern of existing coastal development and natural and cultural resources (see Appendix, Figure 14, incorporated herein by reference). For these regions, DEP uses three broad regional growth strategies:

1. The Development Region is already largely developed. From a coastwide perspective, development in this region would be infill development. In accordance with the coastal policy on concentration of development, development in this region is preferred over development in other regions, other factors being equal. Infill, extension and some scattered development is acceptable here. Development in these regions, however, must be consistent with Recreation and Public Access Policies.
2. The Extension Region is the region where development should be channeled after full development of the Development Region. Generally, infill and some extension of development is acceptable here.
3. The Limited Growth Region contains large environmentally sensitive areas. Generally, only infill development is acceptable here.

(b) The Barrier Island Region is composed of oceanfront islands and spits and is designated an Extension Region.

(c) The Bay Island Region is comprised of islands or filled areas situated between the uplands of the mainland and barrier islands, and is designated a Limited Growth Region.

(d) The Urban Area region consists of all Special Urban Areas. (See N.J.A.C. 7:7E-3.43) and Atlantic City. This region is a Development Region.

1. Atlantic: Pleasantville City.
2. Camden: Camden, Gloucester City, Gloucester Township and Pennsauken Township.
3. Cumberland: Bridgeton, Millville.
4. Essex: Belleville and Newark.
5. Hudson: Bayonne, Hoboken, Jersey City, Kearny, North Bergen, West New York and Weehawken.
6. Mercer: Trenton.
7. Monmouth: Asbury Park, Keansburg, Long Branch, Neptune Township.
8. Ocean: Lakewood.
9. Passaic: Passaic.
10. Salem: Penns Grove Borough and Salem.
11. Union: Elizabeth, Rahway.
12. Middlesex: New Brunswick, Perth Amboy.

(e) The North Shore Region includes those portions of Monmouth and Middlesex Counties that are within the coastal zone and is designated a Development Region.

(f) The Central Shore Region includes those portions of Ocean County within the coastal zone that are north of State Highway 37 and west of the Garden State Parkway, and those parts of the county north of Cedar Creek and east of the Parkway, and is designated a Development Region.

(g) The Western Ocean County Region includes those portions of Ocean County west of the Garden State Parkway and south of State Highway 37, and is designated an Extension Region.

(h) The Barnegat Corridor Region includes those portions of Ocean County south of Cedar Creek and north of Cedar Run Creek to the west of U.S. Highway 9 and north of State Highway 72 to the east of U.S. Highway 9, and is designated an Extension Region.

(i) The Mullica-Southern Ocean Region includes those portions of Ocean County south of State Highway 72 to the east of U.S. Highway 9 and south of Cedar Run Creek to the west of U.S. Highway 9 except for the Tuckerton Region, all of Bass River Township, Burlington County, and those portions of Atlantic County north of County Road 561 (Jimmy Leeds Road), located within the coastal zone, and is designated a Limited Growth Region.

(j) The Tuckerton Region is bounded on the west by the Burlington-Ocean County border, on the north by U.S. Highway 9, Otis Bog Road, Nugentown Road and the Tuckerton Borough Line, and on the south and east by Little Egg Harbor, Big Thorofare, Big Creek, Great Bay and the Mullica River. The Tuckerton Region is designated an Extension Region.

(k) The Absecon-Somers Point Region includes those mainland portions of Atlantic County south of County Road 561 (Jimmy Leeds Road), and east of Garden State Parkway, and is designated a Development Region.

(l) The Great Egg Harbor River Region includes those portions of Atlantic County southwest of County Road Alternate 559 and those portions of Cape May County east of State Highway 50, north of County Road 585, and west of U.S. Highway 9, and is designated a Limited Growth Region.

(m) The Southern Region is composed of all of Cape May County, within the coastal zone, except for that portion in the Great Egg Harbor River Basin and Barrier Island Region, and is designated an Extension Region.

(n) The Delaware Bayshore Region is composed of all of Cumberland County and Salem County subject to CAFRA and is designated a Limited Growth Region, with the exception of the City of Bridgeton which is designated a Development Region.

(o) The Delaware River Region is composed of the area north of the CAFRA regulated area to the coastal zone boundary in Trenton and is designated a Development Region, except for land designated as a Low Growth Area by the State Development Guide Plan Concept Map. Such land is along Oldmans Creek eastward of Route I-295, and along Rancocas Creek and its tributaries in Medford and Southampton Townships, and is designated for Limited Growth.

(p) The Northern Waterfront Region is composed of the entire coastal zone from Cheesequake Creek in Middlesex County to the New York State boundary and is designated a Development Region.

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

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

Section 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).

Bay Island Region added at (c); towns added to Urban Area; Barnegat and Mullica-Southern Ocean areas amended.

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certification denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Change of high growth area designation to development region designation noted. In the Matter of Egg Harbor Associates (Bayshore Centre), 94 N.J. 358, 464 A.2d 1115 (1983).

Three basic growth categories in the coastal area under former N.J.A.C. 7:7E-6.3. In re Egg Harbor Associates, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

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-5.4 Environmental Sensitivity Rating

(a) Environmental Sensitivity is an indication of the general suitability of a land area for development based on soils and on-site vegetation.

(b) High Environmental Sensitivity Areas are land areas with wet or high permeability moist soils or forest vegetation.

1. Wet or high permeability moist soils are soils with a depth to seasonal high water table of three feet or less, unless the soils are loamy sand or coarser in which case they are soils with a depth to seasonal high water table of four feet or less.

2. Forest vegetation is defined as an area of trees and shrubs where a majority of the trees are four inches in diameter breast height or greater.

(c) Moderate Environmental Sensitivity Areas are neither High nor Low Environmental Sensitivity Areas.

(d) Low Environmental Sensitivity Areas are areas with depth to seasonal high water greater than five feet or on-site paving or structures.

(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).

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).

Vegetation deleted as measure of sensitivity; wet or high permeability moist soils further defined.

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).

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

7:7E-5.5 Development Potential

(a) Development potential has three levels—High, Medium and Low—depending upon the presence or absence of

certain development-oriented elements at or near the site of the proposed development, as defined in (b) through (e) below. The development potential rating applies to the entire land area portion of the site. Different sets of development potential criteria are defined in (b) through (e) below for different categories of development. Also, some of the criteria vary depending upon the regional type. If a specific set of development potential criteria is not defined for a particular category or type of development, then the Definition of Acceptable Intensity of Development rule (N.J.A.C. 7:7E-5.6) is not applicable to that type of development.

(b) The standards relating to Residential and Minor Commercial Development Potential are as follows:

1. Scope: The residential development category includes housing, including retirement communities, hotels, motels, minor commercial facilities of a neighborhood or community scale, and mixed use developments that are predominantly residential.

2. High Potential sites meet all of the following criteria:

i. Roads: Direct access from the site to an existing paved public road with sufficient capacity to absorb satisfactorily the traffic likely to be generated by the proposed development.

(1) In Development Regions, direct access to either paved public roads with sufficient capacity or adequate improvements in capacity, either to be completed as part of the proposed development or otherwise approved or under construction.

ii. Sewerage: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development and is consistent with the current Areawide Water Quality Management Plan (208), or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

iii. Infill: A majority of the perimeter of the site, excluding wetlands or surface water areas or land areas abutting limited access transportation corridors (for example, Garden State Parkway, Atlantic City Expressway), is adjacent to or across a public road or railroad from land that is developed, or a majority of the land within 1,000 feet of the site, is developed, and the site is located within one half mile of the nearest existing commercial or industrial development of more than 20,000 square feet (cumulative building area). Developed land, for infill purposes for determination of high, medium, or low potential, means:

(1) Residential development at densities of at least one dwelling unit per acre;

(2) Commercial development;

- (3) Industrial development, including warehouses;
- (4) Schools and other public institutions;
- (5) Ballfields;
- (6) Those areas of public parks developed for active recreational use; and
- (7) Transportation facilities including train stations and airfields.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites in Limited Growth or Extension Regions meet any one of the following criteria:

- i. Roads: Site located more than 1,000 feet from the nearest paved public road;
- ii. Sewerage: Sites located more than 1,000 feet from an adequate wastewater treatment system, and soils unsuitable for on-site sewage disposal systems; or
- iii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than 20,000 square feet of enclosed building area, within a single facility.

5. In Development Regions, Low Potential sites meet either of the following criteria:

- i. Roads: Site located more than 1,000 feet from the nearest existing paved or proposed public road;
- ii. Sewerage: Site located more than 1,000 feet from existing or approved adequate wastewater treatment system; or
- iii. Infill: No requirement.

(c) The standards relevant to Major Commercial and Industrial Development Potential are as follows:

1. Scope: The Major Commercial and Industrial Development category includes all industrial development, warehouses, offices, manufacturing plants, wholesale and major shopping centers of greater than 100,000 square feet of enclosed building area, and major parking facilities of greater than 700 parking spaces.

2. High Potential sites meet all of the following criteria:

- i. Roads: Direct access from the site to a paved public road with sufficient capacity to absorb satisfactorily the traffic generated by the proposed development, or in Development Regions direct access to roads which either in their existing state, or with improvements included in the proposed development, provided adequate capacity.

(1) Sites shall also be within two miles of an existing intersection with a limited access highway, parkway, or expressway, or for industrial development, be a site within one-half mile of a freight rail line with adequate capacity for the needs of the industrial development and with an agreement to build a spur to serve the industrial development.

ii. Sewerage: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

(1) In Development Regions, where the existing sewage collection or treatment capacity is inadequate and the soils are unsuitable for septic systems, an applicant may include an agreement with a sewage authority to increase service to provide the required capacity. This will qualify the proposal for a high potential rating, provided that secondary impact analysis demonstrates that any development likely to be induced by new sewage capacity above the requirements of the proposal is acceptable.

iii. Infill: A part of the site boundary shall be either immediately adjacent to, or immediately across a road from, existing major commercial or industrial development, or in Development Regions, the property proposed for development is adjacent to or across the road from existing commercial developments.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites meet any one of the following criteria:

- i. Roads: A site located more than 1,000 feet from the nearest paved public road and more than five miles from the nearest intersection with a limited access highway, parkway or expressway, except in Development Regions where the site may be located more than 1,000 feet from the nearest paved public road; or
- ii. Infill: A site located more than one-half mile from the nearest existing commercial or industrial development of more than 50,000 square feet of enclosed building area within a single facility.

(d) The standards relevant to Campground Development Potential are as follows:

1. A campground development provides facilities for visitors to enjoy the natural resources of the coast. Typically, this type of development seeks sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

2. High Potential sites must meet all of the following criteria:

i. Roads: Sites shall have direct access to a paved public or private road of adequate capacity to serve the needs of the development.

ii. Sewage: Direct access to a wastewater treatment system, including collector sewers and treatment plant, with adequate capacity to treat the sewage from the proposed development, or soils suitable for on-site sewage disposal systems that will meet applicable ground and surface water quality standards.

iii. Region: The region surrounding the site is natural, undeveloped and contains either beaches, streams, or forests, and is readily accessible by foot to campground users.

3. Medium Potential sites do not meet all of the criteria for High Potential sites and do not meet any of the criteria for Low Potential sites.

4. Low Potential sites meet any one of the following criteria:

i. Roads: More than one-half mile to the nearest public paved road; or

ii. Sewage: More than 1,000 feet to the nearest sewer with sufficient capacity for the needs of the development and soils unsuitable for subsurface sewage disposal systems; or

iii. Region: The region surrounding the site is at least partially developed or is not accessible by foot to campground users.

(e) Development Potential Rankings for energy facilities shall be determined by DEP Office of Energy and the Program on a case by case basis.

(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.

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)4ii on sewerage.

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

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

Administrative Correction to (c)iii.

See: 26 N.J.R. 3943(a).

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

7:7E-5.6 Definition of acceptable intensity of development

(a) Introduction: The Location Policy for General Land Areas is expressed in terms of three acceptable intensities of development as determined by consulting the Land Accepta-

bility Table (see N.J.A.C. 7:7E-5.7) for the appropriate region. The acceptable intensities of development are expressed in terms of maximum and minimum acceptable percentages of area that may be, or must be, used for structures, herbs and shrubs, or forests. Permeable paving provides a two to 10 percent bonus over the permitted maximum level for structures and impervious paving.

1. The acceptable maximum and minimum figures are percentages of each portion of the site with a given acceptable intensity of development. Thus, if a site contained 100 acres of land and the analysis showed acceptability for high intensity development on 60 acres and moderate intensity development on 40 acres, then 80 to 90 percent of the 60 acre portion and 30 to 40 percent of the 40 acre portion could be developed.

2. Special Area portions of a site landward of the Special Water's Edge are separately delineated. If the appropriate Special Area policy allows development, then the acceptable intensity of development is the maximum consistent with the Special Area policy or the maximum allowable using the Land Area Tables, whichever is less.

(b) High Intensity Development: This level of development permits extensive development of paving and structures. Typically, if analysis showed that most of a large area was acceptable for intensive development, the landscape that would be produced would be urban or heavily industrialized. The photomaps below show examples of typical High Intensity Development landscapes (see OAL Note at the beginning of this chapter).

1. For parts of a site classified for High Intensity Development, the acceptable range of development is as follows:

High Intensity Development	Structures and Impervious Paving	Permeable Paving	Herb and Shrub	Forest
Maximum	80%	90%	95%	—
Minimum	—	—	5%	5%

(Dash symbol (—) indicates no maximum or minimum)

2. This range allows most of each part of the site in this category to be developed with structures or paving, while preserving at least a small minimum of open space in herbs, shrubs and trees for microclimate control, aquifer recharge and visual screening. A developer planning to use pervious paving can, as a bonus, develop a larger percentage of the area.

3. The required percentage of forest shall either be preserved, or, if there is no forest on the site, shall be planted. Tree species shall be those of the native mature forest, and saplings shall be at least six feet high at a minimum density of one per 100 square feet. Forest areas shall be protected from trampling.

4. Shrubs and herbs shall be suitable to the substrate conditions. In the acid sandy soils common in the coastal

area, this requirement excludes many species common in more inland areas.

(c) Moderate Intensity Development: At this level of development, between 30 and 40 percent of a site can be developed in paving and structures. Typically, if analysis showed that most of a large area was acceptable for moderate intensity development, the landscape that would be produced would be suburban. The photomaps below show examples of Moderate Intensity Development landscapes (see OAL Note at the beginning of this chapter).

1. For sites classified for moderate intensity development, the acceptable range of development elements is as follows:

Moderate Intensity Development	Structures and Impervious Paving	Permeable Paving	Herb and Shrub	Forest
Maximum	30%	40%	80%	—
Minimum	—	—	—	20%

2. The range allows, for example, development of residential subdivisions of up to approximately four dwelling units per acre or, if the porous paving allowance is used and the dwellings are clustered, up to approximately eight dwelling units per acre.

3. A minimum 20 percent of forest is required to ensure that forest vegetation is preserved or planted for microclimate control, energy conservation, soil stabilization, aquifer recharge and wildlife habitat. Where the site has no existing forest, this percentage shall be met by planting native forest species of the mature forest. It is not intended that this should be costly planting. Whip saplings (less than three feet high) at a density of one per 200 square feet are acceptable. The forested area shall be protected from trampling.

4. The herbs and shrubs shall be adapted to the environmental conditions of the site to reduce the adverse impacts associated with intensive liming, fertilization and irrigation. The acid sandy soils common in coastal areas exclude many species common in inland areas, including most lawn grasses.

(d) Low Intensity Development: At this level of development intensity, the existing conditions of the site are not to be disturbed, except for very low density development compatible with agriculture, forestry and rural residential uses, which meets the following intensity requirements.

Low Intensity Development	Structures and Impervious Paving	Structures and Permeable Paving	Herb and Shrub	Forest
Maximum	3%	5%	95%	—
Minimum	—	—	—	5%

Amended by R.1983 d.27, effective February 7, 1983.

See 14 N.J.R. 1129(b), 15 N.J.R. 142(a).

(d): conditions for allowable development clarified.

7:7E-5.7 Land Acceptability Tables

(a) Introduction: The Land Acceptability Tables, one for each of the three regional growth types, indicate the acceptability intensity of development of a site or parts of a site for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors in each table. Since Development Potential applies to an entire site, each site can have a maximum of three different levels of acceptable intensity, if it has three areas with different levels of Environmental Sensitivity.

Land Acceptability Table: Development Region
(Urban Areas, Northern Waterfront, Northern, Central Absecon-Somers Point Regions, and Delaware River)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X			X		
5		X			X		X		
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Extension Region
(Southern, Western Ocean, and Barnegat Corridor Regions)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X				X	
5		X			X			X	
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Limited Growth Region
(Mullica-Southern Ocean, Great Egg Harbor River Basin, and Delaware Bayshore Regions)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X				X	
2	X				X			X	
3	X					X			X
4		X		X				X	
5		X			X				X
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

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

(c) Determination of location acceptability: The location acceptability of a coastal development proposed for a General Land Area is determined by comparing the site plan of the proposed development with the acceptable minimum and maximum percentages of the site for structures, paving, herb and shrub vegetation, and forest vegetation, as specified in the three levels of acceptable development intensity in the Land Acceptability Tables that apply to the site or parts of the site. The percentages of the proposed development's site plan shall conform with the percentages determined using the Land Acceptability Tables, to the maximum extent practicable.

Amended by R.1983 d.27, effective February 7, 1983.

See: 14 N.J.R. 1129(b), 15 N.J.R. 142(a).

(b)3, Areas 1 and 2: last sentence added.

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

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

Table modified to change intensity level for a site with medium development potential and low environmental sensitivity from low to moderate.

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Only one of three basic growth categories in coastal area included areas where high-density residential development is permitted (citing former N.J.A.C. 7:7E-6.7). In re *Egg Harbor Associates*, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Permit for large scale intense development in an area suitable only for infill development was improper (citing former N.J.A.C. 7:7E-6.7). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div.1982) affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

SUBCHAPTER 6. GENERAL LOCATION RULES

7:7E-6.1 Rule on location of linear development

(a) A linear development, such as but not limited to a road, sewer line, public walkway or offshore pipeline, that must connect two points to function shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules, that alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

1. There is no prudent or feasible alternative alignment which would have less impact on sensitive areas;
2. There will be no permanent or long-term loss of unique or irreplaceable areas;
3. Appropriate measures will be used to mitigate adverse environmental impacts to the maximum extent feasible,

such as restoration of disturbed vegetation, habitats, and land and water features; and

4. The alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

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-6.2 Basic location rule

(a) A location may be acceptable for development under the specific location regulations in N.J.A.C. 7:7E-6.1, but the DEP may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. Promote the public health, safety, and welfare;
2. Protect public and private property, wildlife and marine fisheries; and
3. Preserve, protect and enhance the natural environment.

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-6.3 Secondary impacts

(a) Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which effect the site and surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Rules on Coastal Zone Management. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Rules on Coastal Zone Management.

2. Models for secondary impact analysis may be found in New Jersey Department of Community Affairs, Division of State and Regional Planning, Secondary Impacts of Regional Sewerage Systems (1975), and in USEPA,

Manual for Evaluating Secondary Impacts of Wastewater Treatment Facilities (EPA-600/5-78-003, 1978).

(c) Rationale: This statement can be reviewed at the Office of Administrative Law, Rules and Publications, Quakerbridge Plaza, Bldg. 9, CN 301, Trenton, New Jersey 08625.

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) "Secondary impacts can ... and surrounding region."

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).

Case Notes

Permit condition requiring Department of Environmental Protection determination did not conflict with state and federal plans and was not beyond the department's authority. Matter of Cape May County Mun. Utilities Authority, 242 N.J.Super. 509, 577 A.2d 840 (A.D.1990).

SUBCHAPTER 7. USE RULES

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

Rules and Publications

Office of Administrative Law

Quakerbridge Plaza

Bldg. No. 9

CN 301

Trenton, New Jersey 08625

7:7E-7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Rules on Coastal Zone Management spells out a set of rules for particular uses of coastal resources. Use rules are rules and conditions addressed to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, they introduce conditions which must be satisfied in addition to the Location rules (N.J.A.C. 7:7E-2 through 6), and the Resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

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).

Case Notes

Construction permit application denied due to anticipated nitrate production; testing to challenge application denial found to not meet acceptable scientific standards. Andover Mobile Home Park v. Dept. of Environmental Protection, 4 N.J.A.R. 420 (1981).

7:7E-7.2 Housing Use rules

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in Water Areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

- i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

- ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

- iii. New housing acceptable under this rule shall be consistent with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.13). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area rule (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24) and the Filling rule (N.J.A.C. 7:7E-4.2(j)) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

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

(c) Standards relevant to floating homes are as follows:

1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

2. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

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

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

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

(e) A single family home or duplex that is located upland of the mean high water line and is not part of a larger development must meet only the following:

1. All structures and on-site improvements shall comply with the coastal Rules for Beaches, Dunes, Wetlands, Wetland Buffers, Endangered or Threatened Wildlife or Vegetation Species Habitats and Coastal Bluffs, and shall comply with other Coastal Rules by meeting the following minimum standards. Compliance with the applicable rules may require changes in a building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of a revetment.

ii. For sites adjacent to surface water bodies or wetlands, a silt fence shall be erected along the limit of disturbance parallel to the shoreline or wetlands limits. This fence shall have a 10-foot return on each end, be erected prior to construction and remain in place until all construction and landscaping is completed.

iii. For sites partially or completely within the erosion hazard area or coastal high hazard area, only infill developments meeting the following criteria are acceptable. A development qualifies as infill for purposes of this section if:

(1) It is shown as buildable lot on municipal records prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located on each lot abutting the lot line, perpendicular to the shoreline, and within 100 feet of said lot line.

iv. In non-tidal areas, the lowest structural member must be at least one foot above the base flood elevation.

v. In tidal areas the following standards apply:

(1) For residential developments located within designated zones A1-30 on the community's Flood Insurance Rate Maps (FIRM), the lowest floor (including basement) must be elevated to or above the base flood elevation.

(2) For residential developments located within designated Zones V1-30 on the community's FIRM, the building must be elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevated to or above the base flood level.

(3) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

vi. For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and the area deemed necessary for driveway, septic and utility line installations.

vii. Indigenous coastal plants (as defined in Vegetation, N.J.A.C. 7:7E-8.8) are encouraged to be used in landscaping wherever feasible. No plastic liners shall be used in landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material. The use of non-indigenous vegetation and/or lawns is discouraged.

viii. All driveways shall be covered with permeable materials or pitched to drain all runoff onto permeable areas of the site.

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

(f) The standards relevant to housing and transportation are as follows:

1. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

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

(h) Standards relevant to housing rehabilitation are as follows:

1. Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

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

(i) Standards relevant to large-scale multi-use development are as follows:

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is inconsistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E-5.5(b)). Large scale multi-use development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered peripheral development.

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

Correction: Subsection (e)—Inserted omission concerning affordable housing.

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.

Petition for Rulemaking: Petitioned for a departmental level "conceptual approval"; denied.

See: 21 N.J.R. 1912(a).

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

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

New housing policy replaced outmoded affordable housing use policy at (f).

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).

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Regulation noted as being responsive to both CAFRA directions and to the fair share housing constitutional mandate of the Mount Laurel I decision. *Southern Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.*, 92 N.J. 158, 456 A.2d 390, on remand 207 N.J.Super. 169, 504 A.2d 66 (1983).

Department of Environmental Protection to impose "fair share" housing conditions to provide for low and moderate income housing (citing former N.J.A.C. 7:7E-8.6 and 7:7E-8.11). In *re Egg Harbor Associates*, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 465 A.2d 1115 (1983).

Former rules for large scale residential development do not support conditional approval of construction permit for large scale development because of serious deficiencies in essential findings (citing former regulations and former N.J.A.C. 7:7E-8.11). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div. 1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

Activity fit within the "repair, replacement or renovation" exemption from requirement for Waterfront Development Permit. *N.J.S.A. 12:5-3. Ward v. Department of Environmental Protection*, 91 N.J.A.R.2d 1 (EPE).

7:7E-7.3 Resort/Recreational Use

(a) "Resort/recreation uses" include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging (see N.J.A.C. 7:7E-7.10 and N.J.A.C. 7:7E-5.5(d)).

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. 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 Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

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

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.

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

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. The marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions.

ii. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with

live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-4.2(t); or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11).

3. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

4. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

5. Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause minimum feasible interference with the commercial boating industry.

7. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A to the maximum extent practicable.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the

conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with on-board septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project. This restriction applies only to bulkhead sheathing and planking, and dock planking, and does not apply to pilings. In addition, this restriction does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calendar days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calendar days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

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

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;

iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;

iv. The pier expansion is constructed on pilings at the same elevation as the existing pier; and

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion.

2. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

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).

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).

Marina redefined; pump out requirements specified further.

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).

Case Notes

CAFRA definition of "facilities" includes cabanas. State, Dept. of Environmental Protection v. Stavola, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

Resort-recreation uses have priority over all other uses with highest priority reserved for those uses that serve a greater rather than a lesser number of people; rationale (citing former N.J.A.C. 7:7E-8.13). Lusardi v. Curtis Point Property Owners Assn., 86 N.J. 217, 430 A.2d 881 (1981).

7:7E-7.3A Marina Development

(a) The following pertains to marina project design:

1. The following should be followed to promote water quality in the marina basin:

i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.

ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.

iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).

iv. Sharp angles are to be avoided; corners should be gently rounded, never square.

v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.

vi. Entrance channels should not be located on corners.

vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promote wind-driven circulation.

viii. Enclosed basins should include openings at opposite ends to promote circulation.

ix. Slips should be oriented parallel to currents, never broadside; this promotes circulation and reduces the load on the pier structure.

x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.

xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.

xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.

2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.

3. To avoid standing waves, bulkheads should never be parallel to one another.

4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.

5. The distance from a parked car to a slip should never exceed 180 meters.

6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.

7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.

8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The marina shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marina (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large marina (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

(B) One toilet stall per 60 boats (men);

(C) One toilet stall per 30 boats (women);

(D) One washbasin per 30 boats (men and women);

(E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

(b) The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.

2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.

3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.

4. Erosion and sediment controls shall be in place prior to construction.

5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during dredging.

6. Clean dredge spoil with adequate grain size shall be used for beach nourishment.

(c) The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbant materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.

2. Operators shall immediately notify DEP and the Coast Guard of all significant hydrocarbon spills.

3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.

4. Waste receptacles shall be emptied daily.

5. Boat maintenance shall be undertaken as far from the water as possible.

6. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well-ventilated condition.

7. No-discharge signs shall be posted through-out the marina basin.

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-7.4 Energy Use rule

(a) General definition of energy uses: Energy uses includes facilities, plants or operations which produce, convert, distribute or store energy. Under the Department of Energy Act, the Energy Act, the term energy facility does not include an operation conducted by a retail dealer.

(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by the DEP Office of Energy (as part of the Reorganization Plan 002-1991, the Office of Energy was placed within the DEP, and responsibility for the State Energy Master Plan as well as commenting on energy policy was delegated to the Department and the Program).

2. DEP's Office of Energy will determine the need for future coastal energy facilities according to three basic standards. The Office of Energy will submit an Energy Report to the Program with its determination of the need for a coastal energy facility based on three required findings:

i. The existing sources of supply will not be adequate to meet future levels of demand, including careful consideration of the potential effects of conservation;

ii. No better technological alternative exists to meet future levels of demand; and

iii. No better locational alternative to the proposed site exists.

3. The Program will determine the acceptability of coastal energy facilities using the Rules on Coastal Zone Management supported by appropriate, technically sound analyses of alternatives.

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

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

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

(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is discouraged, as long as there are other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, which have not been fully explored. Should exploration occur and commercially recoverable amounts of oil or natural gas be found, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

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

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in built-up urban coastal areas and discouraged in less developed areas of the coastal zone.

i. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry.

ii. Small facilities for storing oil spill containment and cleanup equipment for offshore operations, and emergency crew transport facilities, including crew boat operations, will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location

would facilitate and expedite offshore emergency operations.

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

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in built-up coastal areas of the coastal zone, along the Hudson, Raritan and Delaware Rivers which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

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

(g) Standards relevant to repair and maintenance facilities are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Delaware River and Northern Waterfront Areas. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the Atlantic Ocean and Delaware Bay area, but not on a continual, long-term basis.

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

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged along the Atlantic Ocean and Delaware Bay and encouraged along the Delaware River and in the port area under the jurisdiction of the Port Authority of New York and New Jersey.

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

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore New Jersey's coast to existing refineries, and oil and gas transmission and distribution systems and other new oil and natural gas pipelines are conditionally acceptable, subject to the following conditions and restrictions:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by the DEP Office of Energy and Land Use Regulation Program, and interested

Federal, State and local agencies, affected industries, and the general public;

ii. The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rights-of-way, to the maximum extent practicable;

iii. Oil and gas pipelines are subject to the following restrictions, respectively, regarding the Central Pine Barrens and other particularly sensitive areas:

(1) Pipeline corridors for landing oil are prohibited in the Central Pine Barrens area of the Mullica River, Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as the 760 square mile region adopted by DEP as "critical area" for sewerage purposes and non-degradation surface and groundwater quality standards (see N.J.A.C. 7:9-4.6(i), (j), and N.J.A.C. 7:9-10.1(b) and Appendix, Figure 16 incorporated herein by reference), and discouraged in other undeveloped parts of the Pine Barrens; and

(2) Pipeline corridors for natural gas are discouraged in the Central Pine Barrens as defined above, unless the developer can demonstrate that the construction and operation of the proposed pipeline will meet the adopted non-degradation standards for water quality and cause no long-term adverse environmental impacts.

iv. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries will be evaluated by the Department's Office of Energy and Land Use Regulation Program in terms of the entire pipeline corridor through the State of New Jersey and the adjacent territorial sea;

v. To preserve the recreational and resort character of the coastal areas, the following conditions and prohibitions shall apply to oil and gas pipeline-related facilities:

(1) New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines shall be discouraged from locations in the Bay and Ocean Shore area;

(2) Gas separation and dehydration plants and compressor stations and other facilities associated with natural gas pipelines which are approved shall be protected by adequate visual, sound, and vegetative buffer areas; and

(3) Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

vi. Pipeline corridors through the State coastal waters shall, at a minimum and to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats.

vii. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.

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

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. Definitions:

i. "Separation" is defined as the removal of free liquids from a gas stream. They may be either hydrocarbon liquids, which may be processed into fuels such as ethane, butane and propane, or free water.

ii. "Dehydration" is the removal of water vapor from the gas stream after separation of the liquid from the gas.

2. Separation and dehydration facilities are discouraged in the Bay and Ocean Shore area. Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by adequate visual, sound, and vegetative buffers. Separation and dehydration facilities will be reviewed as part of the overall proposed gas transportation system by the Department.

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

(k) Standards relevant to gas compressor stations are as follows:

1. "Compressor stations" are facilities located along natural gas pipelines which raise the pressure of the gas in order to transport the resource more efficiently and economically.

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged from locations in the Bay and Ocean Shore area.

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

(l) Standards relevant to gas pigging facility are as follows:

1. A "pig" is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an offshore location called a "pigging facility."

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the Bay and Ocean Shore area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

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

(m) Standards relevant to gas processing plants are as follows:

1. A "gas processing plant" is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the Bay and Ocean Shore area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system by the Department's Office of Energy and the Program.

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

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the Bay and Ocean Shore area provided they are protected by adequate visual, sound, and vegetative buffer areas; are approved by the Office of Energy and Program; and are in compliance with United States Department of Transportation regulation.

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

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the Bay and Ocean Shore area provided that: they are consistent with all applicable Location and Resource rules; there is a need for the facility as determined by the Office of Energy;

and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.

i. New oil refineries and petrochemical facilities outside the Bay and Ocean Shore area are encouraged to locate in established industrial areas accessible to their potential labor force.

ii. New oil refineries and petrochemical facilities are prohibited in the Bay and Ocean Shore Segment.

iii. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the Bay and Ocean Shore Region, will be acceptable if such expansion does not violate applicable State air and water quality standards.

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

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the Delaware and Raritan Bay and Atlantic Ocean Shore region.

i. In the Northern Waterfront and Delaware River areas, such facilities are conditionally acceptable if they meet air and water Resource Policies and are compatible with or adequately buffered from surrounding uses.

ii. They are not acceptable along the water's edge unless they are supplied by ship, in which case they are acceptable on the filled water's edge subject to the above conditions.

iii. They are not acceptable where they would limit or conflict with a potential recreational use.

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

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities will be acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multi-company use of existing and new tanker terminals will be encouraged in the Port of New York and New Jersey and in the area bounded by the Delaware River Port Authority, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

ii. New tanker terminals will be discouraged in other parts of the coast.

iii. Offshore tanker terminals and deepwater ports are discouraged from the Bay and Ocean Shore Region,

pending a thorough evaluation of the implications of such a facility.

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

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.

i. The construction and operation of the proposed facility shall comply with the Rules on Coastal Zone Management, with special reference to air and water quality standards and policies on marine resources and wildlife.

ii. The Office of Energy and the Program shall find the proposed location and design of the electric generating facility is the most reasonable alternative for the production of electrical power that the Office of Energy has determined is needed. The finding shall be based on a comparative evaluation by the applicant of alternative sites within the coastal zone and inland, and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.

iii. Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes.

iv. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, NJDEP shall find that the nuclear generating facility is proposed for a location where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

v. The construction and operation of a nuclear generating station shall not be approved unless DEP finds that the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App.Div.1977)) and Federal law.

vi. The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is encouraged in the coastal zone provided that the facilities do not significantly detract from scenic or recreational values. The cogeneration of electricity and process steam for industrial, community and commercial use is also encouraged.

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

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline to a base-load electric generating station are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such facilities comply with the Coastal Resource and Development Policies.

i. LNG facilities shall be sited in accordance with the standards set forth in P.L. 96-129, Title I Subtitle B; Pipeline Safety Act of 1979, Section 6(a)(3), which states that no new LNG facility may be operated unless an accident contingency plan is found to be adequate by the Department of Transportation under the Natural Gas Act.

ii. In determining the acceptability of proposed LNG facilities, DEP will consider siting criteria such as: the risks inherent in tankering LNG along New Jersey's waterways; the risks inherent in transferring LNG on-shore; and the compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. 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).

NJDOE changed to BPU.
Amended by R.1993 d.549, effective November 15, 1993.
See: 25 N.J.R. 5(a), 25 N.J.R. 5146(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).

7:7E-7.5 Transportation Use rule

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the Rule on Location of Linear Development and shall be limited to situations where:

i. A clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need;

ii. Provision is made to include construction of bicycle and foot paths, except where these would not be feasible;

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby waterbodies.

iv. Provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible;

v. Visual and physical access to the coastal waters is maintained, to the maximum extent practicable; and

vi. Induced development in conflict with coastal rules would not be expected to result.

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

(b) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.

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

(c) Standards relevant to bicycle and foot paths are as follows:

1. The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb Special Areas or subject the user to danger.

3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.

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

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.);

ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.

3. Each hotel casino facility located in Atlantic City shall provide one of every five non-Absecon and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor, and Longport. Brigantine Island residents are residents of the City of Brigantine. Non-Absecon and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

i. Alternatives that would reduce vehicle miles travelled and peak hour employee travel demand may be substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternative in consultation with the Department of Transportation. The Department will approve alternatives which it determines will reduce vehicle miles travelled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not necessarily limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

ii. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island residents employees. This information shall be provided to the DEPE along with the

necessary data used to establish the vehicle miles travelled and peak hour employee travel demand with and without the proposed peak hour traffic reduction program. All proposals shall include a monitoring program to be submitted to the DEPE to verify the success of the proposed traffic reduction program, update the employee travel characteristic pattern, and serve as a basis for future adjustments if necessary.

iii. All casino-hotel facilities which are required by their CAFRA permits to contribute toward an equitable regional transportation solution in reducing traffic congestion in and out of Absecon Island shall comply with this requirement by January 5, 1994. Casino-hotel facilities which do not currently comply with this requirement shall submit a peak hour travel demand reduction plan to the DEPE for approval by July 5, 1993.

4. Rationale: See OAL Note at the beginning of the 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).

Intercept parking facilities encouraged/required at (d)3.

Amended by R.1993 d.140, effective April 5, 1993.
See: 24 N.J.R. 1986(a), 25 N.J.R. 1549(a).

Amended to allow alternative traffic reduction programs to be used in place of the employee intercept lot requirement for casinos located in Atlantic City.

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-7.6 Public Facility Use rule

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Standards relevant to general public facilities are as follows:

1. Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development (except wastewater treatment facilities) is conditionally acceptable provided that:

i. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

ii. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

iii. The public facility would not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

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

(c) Standards relevant to solid waste facilities are as follows:

1. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction must be explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable.

2. Sanitary landfills that are located in the upland shall demonstrate that the leachate will not adversely impact the ground or surface waters by using an impervious liner and/or leachate collection, treatment and disposal system. Acceptable plans for restoring the site must be submitted with the original proposal.

3. Sanitary landfills are prohibited in Wetlands.

(d) Standards relevant to wastewater treatment facilities are as follows:

1. Wastewater treatment facilities (including sewer lines) are conditionally acceptable provided they are consistent with a Water Quality Management (208) Plan approved by the Office of Land and Water Planning, and comply with the following:

i. Wastewater treatment facilities shall not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

ii. Wastewater treatment facilities shall, to the maximum extent feasible, provide for multiple use of the site, including open space and recreation use.

(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).

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).

Stylistic changes.

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

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

7:7E-7.7 Industry Use rule

(a) Industry uses include a wide variety of industrial processing, manufacturing, storage and distribution activities. Industry is defined by Standard Industrial Classification (SIC) categories 2011 to 3999, except for 2991 (petroleum refining), which is covered by Use rule N.J.A.C. 7:7E-7.4(i).

(b) Industry is encouraged in special water areas and conditionally acceptable elsewhere provided it is compatible with all applicable Location and Resource rules. Particular attention should be given to Location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32; to Resource rule N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and Resource rule N.J.A.C. 7:7E-8.11 which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(e) Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(f) The cogeneration of electricity with process steam is encouraged.

(g) 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)8 added.

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

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

Stylistic changes.

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

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

7:7E-7.8 Mining Use rule

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;

2. The location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas;

3. Buffer areas are provided in accordance with N.J.A.C. 7:7E-8.13, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development;

4. The mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted;

5. The mineral extraction areas shall be reclaimed, contoured and replanted to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site within two years of the termination of mining operations;

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;

7. The mineral extraction operation will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not including the long-term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal rules.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.).

(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).
(a)8 added.

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

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

Disruption of agricultural activities permitted under certain circumstances.

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-7.9 Port Use rule

(a) "Port uses" are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Port-related development and marine commerce is encouraged in and adjacent to established port areas. Water-dependent development shall not be preempted by non-water dependent development in these areas.

(c) New port uses outside of existing ports (see definition, N.J.A.C. 7:7E-3.11) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or expanded ports must also not interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.

(e) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access, with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(f) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill cleanup storage, is acceptable at the small commercial harbors in the coastal zone.

(g) 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).

Old (b) deleted; (b)1.-5. now (c)-(f); (c) now (g).

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

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

Stylistic changes.

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

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

Law Review and Journal Commentaries

Environmental Law—Waterfront Development. P.R. Chenoweth, 137 N.J.L.J. No. 10, 66 (1994).

Case Notes

Compatibility test is consistent with Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Developer failed to demonstrate need for new port facility. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Evidence supported denial of port development application. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy, Div. of Coastal Resources*, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

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.

Waterfront development permit sought for containerized freight facility; failure to satisfy requirements for "new port". *Distributec Inc. v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 198.

7:7E-7.10 Commercial Facility Use rule

(a) Standards relevant to hotels and motels are as follows:

- Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

- New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

- Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

- In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

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

(b) Standards relevant to casino hotels are as follows:

1. "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

2. Hotel-casino development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable.

i. Hotel-casino development is discouraged in existing residential areas and in areas where access by public transportation between the proposed hotel-casino and the Boardwalk is limited.

ii. Hotel-casino development is discouraged along the access highways to Atlantic City.

iii. Hotel-casino development shall comply with the High-Rise Structures (N.J.A.C. 7:7E-7.14) and Transportation Use (N.J.A.C. 7:7E-7.5) and Traffic (N.J.A.C. 7:7E-8.14) Policies.

iv. Hotel-casino development and new residential development are encouraged in Atlantic City to ensure that the objectives of the 1976 constitutional referendum on casino gambling, including the stimulation of new construction and the revitalization of Atlantic City and its region, are achieved. The policies of the program shall be interpreted consistent with these objectives.

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

(c) Standards relevant to retail trade and services are as follows:

1. Retail and trade service is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rule on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

i. Complies with all applicable Location and Resource rules;

ii. Is compatible in scale, site design, and architecture with surrounding development; and

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.

(d) 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).

7:7E-7.11 Coastal Engineering

(a) Coastal engineering includes a variety of structural and non-structural 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, revetments and seawalls are all examples of coastal engineering.

1. Coastal engineering standards are subject to the Location rules on General Water Areas and to the Special Area rules. These coastal engineering use rules 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 non-structural shore protection measures, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects must be carried out in accordance 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, 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 Rules on Coastal Zone Management;

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-4.2(j)) and all other relevant coastal rules.

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable, provided it does not result in the extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing bulkhead which results in extension of the structure or upland by more than 18 inches shall be considered new construction, unless it can be demonstrated that the existing bulkhead can not physically accommodate an 18 inch replacement. In such cases, the Department may allow for bulkhead replacement at a location which is as close as physically possible to the existing bulkhead sheathing. All measurements shall be made from the waterward face of the existing bulkhead sheathing to the waterward face of the new bulkhead sheathing.

3. Stone rip-rap and sloped concrete revetments which allow for the 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).

Case Notes

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection and Energy*, 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 Disposal on Land

(a) Dredged material disposal is the discharge of sediments, removed during dredging operations. The following rules govern Land and Water's Edge disposal only. The rule regulating dredged material disposal in Water Areas are found in N.J.A.C. 7:7E-4.2.

(b) Dredged material disposal is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to surrounding soils, and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.

1. Dredged material disposal is prohibited on wetlands unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27.

2. The use of uncontaminated dredged material of appropriate quality and particle size for beach nourishment is encouraged. Creation of useful materials such as bricks and lightweight aggregate from the dredged material is encouraged.

3. The use of uncontaminated dredged material for purposes such as restoring landscape, enhancing farming areas, creating recreation-oriented landfill sites, including beach protection and general land reclamation, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

4. Effects associated with the transfer of the dredged materials from the dredging site to the disposal site shall be minimized to the maximum extent feasible.

5. Dredged material disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.14, and 3.35).

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

7. Dewatering releases from confined (diked) disposal sites and rehandling basins shall meet existing State Water Quality Standards (N.J.A.C. 7:9-4 through 6).

(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).

(a) 6 and 7 added.

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

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

Stylistic changes.

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

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

7:7E-7.13 National Defense Facilities Use rule

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

(b) National Defense facilities are conditionally acceptable, and will be approved if one of two findings can be made:

1. The proposed facility is consistent with all relevant Coastal Resource and Development Policies; or

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

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

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

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

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

Stylistic changes.

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

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

7:7E-7.14 High Rise Structures

(a) All high rise structures more than six stories or more than 60 feet from existing pre-construction ground level are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. Utility structures that have a demonstrated need are exempted from this policy, but must comply with all other applicable Coastal Rules. High-rise housing and structures are acceptable subject to the following conditions:

1. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. 7:7E-3.46;

2. The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters;

3. The proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads or pathways, to the maximum extent practicable;

4. High-rise structures outside of the Hudson River Waterfront Special area as defined by N.J.A.C. 7:7E-3.46 shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

5. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable Coastal Resource and Development Policies;

6. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure;

7. The proposed structure must be architecturally designed so as to not cause deflation of the beach and dune system or other coastal environmental waterward of the structure.

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

New Rule R.1985 d.715, effective February 3, 1986.

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

Amended by R.1988 d.338, effective August 15, 1988.

See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Added text to (a)4 "High-rise structures ... N.J.A.C. 7:7E-3.46 shall"; substituted "shall" for "must".

Administrative Correction to (a)1.

See: 21 N.J.R. 1857(a).

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

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

Added text in (a).

SUBCHAPTER 8. RESOURCE RULES

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

Rules and Publications

Office of Administrative Law

Quakerbridge Plaza

Bldg. No. 9

CN 301

Trenton, New Jersey 08625

7:7E-8.1 Purpose

(a) The third step in the screening process of the Rules on Coastal Zone Management involves a review of a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region. These rules serve as standards to which proposed development must adhere.

(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include, but are not limited to, standards adopted by local Soil Conservation Districts or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.); Barrier Free Design Requirements promulgated by the New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:32.1 et seq. and N.J.S.A. 52:27D-123 and N.J.A.C. 5:23-3.2 and 5:23-3.14, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and its implementing regulations set forth at N.J.A.C. 7:7A.

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) 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).

Case Notes

CAFRA empowers the Department of Environmental Protection to consider health and safety effects of proposed facility upon prospective residents or occupants; CAFRA is not comparable to the Natural Environmental Policy Act (Commissioner's Final Decision). *A.C. Powell Health Center v. Dept. of Environmental Protection*, 1 N.J.A.R. 454 (1980).

7:7E-8.2 Marine Fish and Fisheries

(a) Coastal actions are conditionally acceptable to the extent that minimal feasible interference is caused to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine-dependent species of finfish and shellfish.

(b) 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 (a).

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.

7:7E-8.3 (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) deleted; recodified (b)1.-3. as (b)-(d); old (c) now (e).

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 "Shellfisheries".

7:7E-8.4 Water Quality

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act (P.L. 92-583), Federal, State and local water quality requirements established under the Clean Water Act (33 U.S.C. § 1251) shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Sanitation Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Sanitation Commission's Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9-4), the rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5), the Ground-Water Quality Standards (N.J.A.C. 7:9-6), and the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

(b) Coastal development which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7:15 concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water

Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

(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).

(a): Deleted text "In the Delaware . . . (see N.J.A.C. 7:9-4.5 and 6)." and added "These requirements include . . . (system N.J.A.C. 7:14A)."; Old (b) deleted and new (b) substituted.

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.

7:7E-8.5 Surface Water Use

(a) Surface water is water in lakes, ponds, streams, rivers, bogs, wetlands, bays, and ocean that is visible on land.

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity, and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1. Coastal development shall conform with all applicable DEP and, in the Delaware River Area, Delaware River Basin Commission requirements for surface water diversions.

(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).

"Policy:" deleted from (b).

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

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

Stylistic changes.

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

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

7:7E-8.6 Groundwater Use

(a) Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs.

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. Coastal development shall conform with all applicable DEP and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(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).

Added text in (b) "alone and in ... in the region,".

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

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

Stylistic changes.

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

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

7:7E-8.7 Stormwater Management

(a) Stormwater runoff is the flow of water on the surface of the ground, resulting from precipitation.

(b) Coastal development shall employ a site design which, to the extent feasible, minimizes the amount of impervious coverage on a project site. In addition, the development shall use the best available technology to minimize the amount of stormwater generated, minimize the rate and volume of off-site stormwater runoff, maintain existing on-site infiltration, simulate natural drainage systems and minimize the discharge of pollutants to ground or surface waters. Consistent with the provisions of the Stormwater Management rule, the overall goal of the post-construction stormwater management system design shall be the reduction from the predevelopment level of total suspended solids (TSS) and soluble contaminants in the stormwater.

1. Non-structural management practices, including, but not limited to, cluster land use development, minimum site disturbance, open space acquisition, use of sheet flow from streets and parking areas, and the protection of wetlands, steep slopes and vegetation shall be incorporated into project designs. These non-structural management practices shall be utilized, unless it is demonstrated that these practices are not feasible, from an engineering perspective, on a particular site.

2. In determining the appropriate stormwater management system design for a particular project, the existing physical site conditions must be carefully considered. Slopes, depth to seasonal high water table, soil type and texture, watershed area, and property areas are all critical to the selection of a suitable stormwater management technique or combination of techniques.

(c) Standards relevant to stormwater management system design are as follows:

1. All stormwater management systems shall be designed in accordance with this section, and shall be consistent with the Standards for Soil Erosion and Sediment Control in New Jersey (N.J.A.C. 2:90).^{*} The use of control techniques not specifically listed in this section will be evaluated on a case-by-case basis, and may be permitted in conjunction with the techniques discussed in this section. Alternative techniques may be acceptable, provided that it can be demonstrated that they satisfy the design standards of this section. Complete justification for selection of a particular stormwater management technique, including the engineering basis for exclusion of Department's preferred techniques, shall be provided as part of a complete permit application submission.

2. The following apply to development proposed in tidal areas:

i. The construction of stormwater outfalls into tidal waters may require the incorporation of a tide check or similar valve depending on the physical conditions of the site, including, but not limited to, land elevation, drainage area, bulkhead elevation, tidal elevation and 100-year flood elevation.

ii. Because tidal flooding is the result of higher than normal tides, the 100-year tidal flood elevation is not affected by development. Therefore, development activities that are located along or adjacent to tidal water bodies and segments of tidal water bodies, as specified below, are not required to comply with the flood control requirements of (c)3 below. These affected tidal waters include:

(1) Atlantic Ocean;

(2) All water bodies named on the U.S. Geological Survey 7.5' topographic maps as "bays," "canals," "coves," "gulfs," "harbors," "inlets," "sounds," "thorofares," and "channels," except for the portion of the Delaware River near Camden called "Back Channel";

(3) All man-made lagoons and canals discharging into the water bodies listed in (c)2ii(2) above;

(4) All sections of the "Intracoastal Waterway";

(5) Arthur Kill (entire reach); Hackensack River (Newark Bay to the Pulaski Skyway); Hudson River; Manasquan River (Atlantic Ocean to Route 70); Metedeconk River (Barnegat Bay to Route 70); Navesink River (Shrewsbury River to Coopers Bridge); Passaic River (Newark Bay to the Pulaski Skyway); Raritan River (Raritan Bay to the New Jersey Turnpike); Shark River (Atlantic Ocean to confluence with Laurel Gully Brook); Shrewsbury River (Sandy Hook Bay to Seven Bridge Road); Waretown Creek (Atlantic Ocean to Route 9); Whale Brook (Raritan Bay to Route 35); Wreck Pond (Atlantic Ocean to Route 71); and

(6) Along watercourses not specifically identified in (c)2ii(1) through (5) above, that flow into tidal water bodies listed above, the reach between the mouth and either the first bridge or culvert upstream or the point upstream where the regulatory flood (as per N.J.A.C. 7:13) exceeds the 100-year tidal elevation, whichever is closest to the mouth.

3. The following apply to flood control design:

i. If a regional stormwater management plan has been developed for the watershed, the applicant shall meet the flood control requirement of the Stormwater Management rule by conforming to the regional management plan. If no regional stormwater management plan has been developed then the applicant shall design the stormwater system so that the post-development peak runoff rate for the two year storm event is 50 percent of the pre-development peak runoff rate and the post-development peak runoff rates for the 10- and 100-year storm events are 75 percent of the pre-development peak runoff rate.

ii. The design storms used to achieve the required level of site runoff control described in (c)3i above shall be defined as either the 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture Soil Conservation Service, or as the total rainfall uniformly distributed throughout the critical storm duration as determined by the Modified Rational Method (T.J. Mulvaney, 1851, *On the Use of Self-registering Rain and Flood Gages in Making Observations of the Relations of Rainfall and Flood Discharges in a Given Catchment*, Proc. Inst. Civil Engineering, Ireland, vol. 4, pp. 18-31). A 20 acre drainage area limit shall be used for the Modified Rational Method unless otherwise approved by the Department.

iii. For the purposes of computing runoff, all lands in the site shall be assumed, prior to development, to be in good hydrologic condition if the lands are pastures, lawns or parks, with good cover if the lands are woods, or with conservation treatment if the land is cultivated, regardless of conditions existing at the time of computation. For lands to be considered cultivated, they must have been used for such purposes without interruption for a period of at least 5 years prior to the time of computation. If such use has not occurred or cannot be satisfactorily documented, woods shall be assumed to be the predeveloped land condition. In computing pre-development runoff, all significant land features, such as ponds, depressions or hedgerows which increase the ponding factors shall be accounted for.

iv. Plans and calculations shall be provided to show that the discharge will not cause erosion along the flow path between the outfall and the receiving waterbody. All stormwater discharge paths shall be stabilized in accordance with the criteria in N.J.A.C. 2.90, Standards for Soil Erosion and Sediment Control in New Jersey.

4. The following apply to water quality control design:

i. The water quality control standard shall be the maximum feasible reduction of the total suspended solids (TSS) loading after construction has been completed, up to and including the water quality design storm. At a minimum, post-construction loadings of TSS shall match the predevelopment loadings of TSS for the water quality design storm.

(d) Stormwater management is vital to protecting and improving New Jersey's water quality, and control techniques, and information about their effectiveness in different situations are evolving. The Department has prepared the following hierarchy of stormwater management techniques based on its experience to date. The goal of the hierarchy is to avoid the use of techniques that have not been successful in previous similar situations and to guide permit applicants toward techniques that are likely to be successful. At the same time, the Department is open to innovative proposals or additional information that may help better manage stormwater on a particular site or in a particular region. For each of the techniques identified in this rule, the Department has included conditions that shall be considered, but the Department recognizes that this is an evolving technology and will evaluate individual proposals on a case by case basis. The Land Use Regulation Program has assigned to the following stormwater management techniques a hierarchy of preferences for use in project design categorized as either "Conditionally Acceptable" or "Discouraged." If an applicant cannot make maximum use of "Conditionally Acceptable" stormwater management techniques, based on physical or engineering constraints, the Department encourages the use of a combination of techniques. If use of a particular technique on a property can be designed to meet a majority of that technique's normal requirements, then an applicant may still be required to use that stormwater management technique, if use of that technique on that property remains environmentally preferable to alternative techniques. In addition, none of the techniques listed in this section may be constructed "on-stream" unless the stormwater management system is part of a Department-approved regional stormwater plan.

1. Conditionally Acceptable: The following list represents the stormwater management techniques which may be incorporated subject to the specified conditions. The six "Conditionally Acceptable" techniques in this section are not listed in any order of Department preference, and shall be equally evaluated on a case-by-case basis.

i. The use of newly constructed wetlands is conditionally acceptable, provided that the following conditions are satisfied:

(1) The water depth in the wetlands is less than one foot (six inches is optimal), with the exception of the 25 percent area discussed at (d)1i(6) below;

(2) The perimeter of the water area shall be graded to form a 10 to 20 foot wide shallow bench for

aquatic emergents, for at least half of the water area perimeter;

(3) The surface area of the wetland shall constitute about two to three percent of the total area of the contributing watershed;

(4) Wetland vegetation shall be commercial wetland plant stock (either live plants or dormant rhizomes), as opposed to transplants or seeding;

(5) At least two primary native or non-aggressive exotic wetlands species, which are hardy and rapid colonizers, shall be planted over about 30 percent of the total shallow water area. Each primary species shall be planted in three or four monospecific stands, with individual plants about two to three feet apart. Up to three secondary wetland species, that are not as aggressive in colonizing a pond, shall be randomly distributed in clumps around the perimeter of the wetlands;

(6) If a basin is exclusively designed to act as a shallow wetland, at least 25 percent of the total surface area of the inundated area shall be reserved for open water areas that are two or more feet deep, to provide habitat for waterfowl and marsh birds;

(7) The use of native fish stocks in constructed wetlands is encouraged, as a means to control mosquitos;

(8) The use of a clay liner in the system design may be required, depending on site conditions, in order to ensure adequate hydrology in the system; and

(9) The surface and drainage shall be sufficient so that the inflow of dry weather flow into the wetlands will be large enough to sustain sufficient water during dry periods and prevent stagnation.

ii. The use of wet ponds/retention basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) The ratio of permanent pool or basin volume to the runoff volume for the water quality storm runoff shall be greater than three to one;

(2) The pool must be shallow enough to avoid thermal stratification, and deep enough to minimize algal blooms and resuspension of decomposing organics and other previously deposited materials;

(3) The pond shall be designed so that the inflow of dry weather flow either from the contributing drainage area or ground water base flow, into the wet pond will be large enough to sustain sufficient water during dry periods and prevent stagnation;

(4) Wet ponds shall be configured so as to promote maximum sedimentation;

(5) The use of native fish stocks in wet ponds is strongly encouraged, as a means to control mosquitos; and

(6) The use of a clay liner in the system design may be required, depending on site conditions, to ensure adequate hydrology in the system.

iii. The use of detention basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) The water quality design for detention will require prolonged detention of the water quality design storm which is a one-year frequency 24-hour storm using the rainfall distribution recommended for New Jersey by the U.S. Department of Agriculture, Soil Conservation Service, or a storm of 1.25 inches of rainfall in two hours. Provisions shall be made for the water quality design storm to be retained and released so as to evacuate 90 percent or less in 18 hours in the case of residential developments, and 36 hours in the case of other developments. This is usually accomplished by a small outlet orifice at the lowest level of detention storage, with a large outlet or outlets above the level sufficient to control the water quality design storm. The minimum allowable orifice diameter shall be three inches. If the above detention time requirement would result in a pipe smaller than three inches in diameter, then additional methods shall be employed to remove the TSS prior to discharge into the basin. The retention time shall be considered brim-drawdown time, and therefore begin at the time of peak storage;

(2) The bottom of the basin shall be at an elevation above the seasonal high water table. Where possible, at least three feet of vertical separation between the bottom of the basin and the seasonal high water table shall be provided to promote infiltration. If the seasonal high water table is one foot or less below the bottom of the basin, then the use of constructed wetlands or a wet pond shall be considered;

(3) Native and non-aggressive exotic vegetation for use in detention basins shall be the approved species as determined by the appropriate Soil Conservation District; and

(4) All low-flow channels shall be constructed of rip-rap, grass paver blocks or similar material that will allow for the growth of vegetation. The use of underdrains below the low flow channel will be allowed if necessary to dry out the soil to allow vehicular access for maintenance, such as tractors to cut the vegetation.

iv. The use of vegetated swales is conditionally acceptable, provided that the following conditions are satisfied:

(1) The bottom of the swale shall be above the elevation of the seasonal high water table;

(2) Swales shall be used in conjunction with other stormwater management techniques (detention basins, wet ponds, constructed wetlands, underground infiltration) as internal conveyances within a stormwater collection system, receiving only overland flow (that is, as replacements for curb and gutter flow or on highway medians);

(3) The use of vegetative swales shall be limited to low intensity developments, as defined in N.J.A.C. 7:7E-5, unless combined with other stormwater management techniques;

(4) Swales accepting concentrated discharges from pipes at the end of the stormwater system will not be accepted for water quality treatment unless there are no other viable methods available to remove the TSS prior to discharge and the length of the swale is the maximum achievable in relation to the site conditions;

(5) The swales shall be designed to provide the maximum feasible vegetation contact time ranging from five to 20 minutes where feasible, for the water quality storm;

(6) The slope of the swale shall not be less than 0.5 percent nor greater than 5 percent;

(7) Vegetated swales shall only be used where the expected velocity of flow does not exceed 1.5 feet per second;

(8) The use of rip-rap, or other stabilization material that will allow vegetative growth, in conjunction with appropriate vegetation, may be incorporated into the design of the swale, if a stable condition using vegetation alone cannot be achieved;

(9) Vegetation for use in the swales shall include native species, of sufficient height to extend above the expected elevation of the water quality design storm in the swale and shall be coordinated with the local Soil Conservation District to determine the suitability for use on the site; and

(10) In addition to the standards in (d)2i(1) through (9) above, all swales must be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

v. The use of infiltration basins is conditionally acceptable, provided that the following conditions are satisfied:

(1) There shall be at least three feet of vertical separation between the bottom of the proposed infiltration basin and the seasonal high water table;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) No topsoil may be placed in the basin bottoms;

(4) The basin bottom shall be scarified after the basin is formed, after which no other construction within the basin may occur;

(5) All of the water quality storm shall be stored and recharged within 72 hours of the storm; and

(6) There is an adequate back-up drainage system provided, in the event that the infiltration capacity of the infiltration basin fails.

vi. The use of perforated pipe for the purpose of underground recharge of stormwater is conditionally acceptable, provided the following conditions are satisfied:

(1) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(2) Runoff shall be filtered through a basin and/or vegetated swale, to enhance water quality, prior to discharge into a perforated pipe system;

(3) There shall be at least three feet of vertical separation between the bottom of the perforated pipe trench and the seasonal high water table;

(4) All underground recharge pipes shall be 360 degree perforated;

(5) The required pipe size shall be determined based on the peak discharge for the required post-development design storm; and

(6) In addition to the standards set forth above, all underground infiltration systems shall be designed in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey," N.J.A.C. 2:90.

2. Discouraged: The following list represents techniques which are not likely to be approved, unless it can be clearly documented that the use of other "Conditionally Acceptable" techniques has been maximized or is infeasible for engineering reasons.

i. Underground storage is not effective and cannot be utilized as a means to provide water quality treatment of stormwater. Underground storage for the purpose of controlling stormwater volume is discouraged, but may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" stormwater management techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Conditionally Acceptable" techniques

must be provided as part of the permit application submission; and

(2) Water quality treatment shall be provided prior to stormwater discharge to the underground storage system.

ii. The use of sediment traps and oil/grease separators is generally discouraged because they have proven ineffective, but they may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The use of sediment traps and oil/grease separators shall be limited to drainage areas less than 0.1 acre in size; and

(3) For drainage areas greater than 0.1 acre in size, the use of sediment traps and oil/grease separators shall be combined with other stormwater management techniques as described in this subsection.

iii. The use of porous asphalt pavement is discouraged, due to the problems associated with continued maintenance and functioning of these types of infiltration systems. As set forth in this subparagraph, the surface of porous asphalt pavement shall be cleaned regularly to avoid becoming clogged by fine grained material. Porous pavement does not include gravel, crushed shell or paver blocks (non-grout). The use of porous pavement may be acceptable in limited cases, provided that the following conditions are satisfied:

(1) The use of other "Conditionally Acceptable" techniques, as described in (d)1 above, has been maximized, or can be documented as infeasible. Complete justification for the exclusion of "Conditionally Acceptable" techniques must be provided as part of the permit application submission;

(2) The soil texture shall be sand, loamy sand or sandy loam, as defined by the U.S. Department of Agriculture;

(3) The use of porous asphalt pavement shall be limited to light traffic areas only, such as parking areas;

(4) The areas of porous asphalt pavement shall be adequately buffered, through vegetative screening, to avoid adjacent sources of aeolian sand and silt;

(5) The application shall include a strict maintenance schedule, which may be required to include, but not be limited to, vacuum sweeping on a weekly basis and high pressure water washing of the pavement on a monthly basis;

(6) The paving uses no asphalt sealers; and

(7) The use of sand during periods of snow is prohibited on porous asphalt areas.

(e) The species and quantity of native or non-invasive exotic vegetation used as part of a stormwater management system design shall be consistent with the standards and specifications of the local Soil Conservation District. In general, the use of vegetation shall be limited to low maintenance native species, shall be pest resistant, and shall be drought or water tolerant, depending on the specific application. The use of native species is encouraged for all vegetated swales.

(f) Standards relevant to stormwater management system maintenance are as follows:

1. The long-term maintenance of stormwater management systems is a critical factor in the ongoing functioning of these systems. In cases where these existing systems have failed, the most common cause is inadequate maintenance of the system. Therefore, the following maintenance requirements shall be included as part of all stormwater management plans; shall be specifically identified on the site plans and in a stormwater system maintenance report for any proposed project; and, if required by the Program, shall be recorded with the deed for the property in question:

i. All information regarding the long-term maintenance of proposed stormwater management systems shall be provided as part of the initial permit application submission;

ii. The party or parties responsible for long-term maintenance of the system shall be clearly designated, and documentation of the assumption of this responsibility shall be provided as part of the permit application submission;

iii. All maintenance records shall be written, maintained and provided to the Department upon request;

iv. Maintenance of detention basins shall include, but not be limited to, the following activities:

(1) Visual inspection of all components of the stormwater management system at least twice each year;

(2) Removal of silt, soil, litter and other debris from all catch basins, inlets and drainage pipes, on a twice-yearly basis;

(3) Maintenance, including grass cutting, and replacement (if necessary) of all landscape vegetation within the basins, at least once each year;

(4) Removal of silt from within the basins at least once each year, or more frequently if noticeable buildup occurs, for disposal in an acceptable location; and

(5) The basin bottoms shall be aerated at least once each year, and shall be scraped and replanted at least once every five years, to prevent the sealing of the basin bottom by silt deposits.

v. Maintenance of constructed wetlands shall include, but not be limited to, the following:

(1) Visual inspection of all components of the system at least once every six months;

(2) Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months, or as required;

(3) Vegetation harvesting at least once each year; and

(4) The approval of a stormwater management system which involves newly constructed wetlands on an upland site will automatically include the issuance of a Freshwater Wetlands General Permit 1 for maintenance of the wetlands, which shall be renewed by the permittee every five years.

vi. Maintenance of wet ponds/retention basins shall include, but not be limited to, annual monitoring of water quality, dissolved oxygen, vegetative growth and fish population.

vii. Maintenance of infiltration facilities shall include, but not be limited to:

(1) Annual tilling operation to maintain infiltration capacity, with revegetation as necessary; and

(2) Sediment removal shall be followed by retiling, at a time when the facility is thoroughly dry.

viii. Maintenance of swales, including, but not limited to, removal of grass clippings and leaves, shall be performed so that the facilities remain in working order.

ix. Maintenance of underground perforated pipe infiltration systems shall include, but not be limited to:

(1) Visual inspection of all system components at least twice each year;

(2) Vacuuming of all storm sewer inlets once every six months (frequency of vacuuming may be adjusted if first year maintenance records indicate that sediment and debris accumulation is insignificant; and

(3) Reverse flushing and vacuuming shall be required if system inspections indicate significant accumulation of sediment in the pipes.

(g) 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).

(c)-(h) added; old (c) now (i).

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 (c)li.

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-8.8 Vegetation

(a) "Vegetation" is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

(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).

Section 8.8 was "Soil erosion and sedimentation". The section was repealed.

7:7E-8.9 (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).

Deleted text in (a) "Definitions and maps ... Cape May County" and inserted "which identify these areas".

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.

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 "Important Wildlife Habitat".

7:7E-8.10 Air Quality

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New

Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.

(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, as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b)).

(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.

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.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures 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 are prohibited.

7. Development within the Hudson River Waterfront Special Area shall conform with the additional requirements of 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 elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.

10. 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 conservation easements.

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

12. 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.

13. 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).

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)

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-3.1 through 3.48) 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 rule regarding wetland buffers is 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).

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 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.

(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).

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).

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