

**CHAPTER 7E**

**COASTAL ZONE MANAGEMENT**

**Authority**

N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq.,  
13:9A-1 et seq., and 13:19-1 et seq.

**Source and Effective Date**

Effective: May 29, 2013.  
See: 45 N.J.R. 1651(a).

**Chapter Expiration Date**

Chapter 7E, Coastal Zone Management, expires on May 29, 2020.

**Chapter Historical Note**

Chapter 7E, Coastal Zone Management, was adopted as R.1978 d.292, effective September 28, 1978. See: 10 N.J.R. 184(a), 10 N.J.R. 384(a).

Public Notice: Federal ruling on N.J.A.C. 7:7E. See: 14 N.J.R. 1467(b).

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, 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, Coastal Zone Management, was readopted as R.1990 d.413, effective July 24, 1990. See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

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

Subchapter 3A, Standards for Beach and Dune Activities, Subchapter 3B, Information Required in Wetland Mitigation Proposals, and Subchapter 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).

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, PO Box 301, Trenton, NJ 08625-0301, or the Department of Environmental Protection.

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1995 d.405, effective June 23, 1995. See: 27 N.J.R. 417(a), 27 N.J.R. 2738(a).

Notice of Routine Program Change. See: 30 N.J.R. 2087(a), 30 N.J.R. 2780(b), 30 N.J.R. 4284(a).

Subchapter 5A, Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area; Subchapter 5B, Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area, were adopted as R.2000 d.45, effective February 7, 2000. See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from June 23, 2000 to March 31, 2001. See: 32 N.J.R. 2591(c).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from March 31, 2001 to March 31, 2002. See: 33 N.J.R. 1370(a).

The expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from September 27, 2002 to January 7, 2003. See: 34 N.J.R. 3641(a).

Chapter 7E, Coastal Zone Management, was readopted as R.2003 d.60, effective January 7, 2003. As part of R.2003 d.60, Subchapter 2, Location, Use and Resource Rules, was repealed. See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Public Notice: Routine Program Change for Coastal Management Program. See: 35 N.J.R. 4917(a).

Public Notice: Routine Program Change for Coastal Management Program. See: 36 N.J.R. 3304(b).

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program. See: 38 N.J.R. 1587(a).

Subchapter 8A, Information Required to Demonstrate Compliance with the Public Trust Rights Rule, N.J.A.C. 7:7E-8.11; Conservation Restrictions and Public Access Instruments, was adopted as new rules by R.2007 d.374, effective December 17, 2007. See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Public Notice: Coastal Management Office: notice of routine program change to the Coastal Management Program. See: 41 N.J.R. 1272(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from January 7, 2008 to July 7, 2009. See: 40 N.J.R. 781(b).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from July 7, 2009 to July 7, 2010. See: 41 N.J.R. 2894(a).

In accordance with N.J.S.A. 52:14B-5.1d, the expiration date of Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from July 7, 2010 to July 7, 2011. See: 42 N.J.R. 468(a).

Public Notice: Plan Endorsement. See: 42 N.J.R. 523(a).

Petition for Rulemaking. See: 42 N.J.R. 2277(a), 2332(a), 2992(a), 2992(b).

Public Notice: Routine Program Changes for Coastal Management Program. See: 42 N.J.R. 2638(a).

Petition for Rulemaking. See: 43 N.J.R. 451(a).

Public Notice: Determination on Routine Program Changes for Coastal Management Program. See: 43 N.J.R. 681(a).

Subchapter 8A, Information Required to Demonstrate Compliance with the Public Trust Rights Rule, N.J.A.C. 7:7E-8.11; Conservation Restrictions and Public Access Instruments, was repealed by R.2012 d.182, effective November 5, 2012. See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 7E, Coastal Zone Management, was scheduled to expire on July 7, 2013. See: 43 N.J.R. 1203(a).

Chapter 7E, Coastal Zone Management, was readopted, effective May 29, 2013. See: Source and Effective Date.

Public Notice: Routine Program Change for Coastal Management Program. See: 45 N.J.R. 2613(b).

Public Notice: Determination on Routine Program Change for Coastal Management Program. See: 46 N.J.R. 558(b).

**Case Notes**

Department of Environmental Protection (DEP) must make findings under the standards in the statute governing the issuance of permits for development in coastal zones, even if DEP finds that a Coastal Area Facility Review Act (CAFRA) permit application complies with its specific regulations. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) was required to amend its implementing rules with respect to Coastal Area Facility Review Act (CAFRA) to set forth requirement that it make findings under standards set forth in CAFRA prior to issuing permit for development thereunder. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) did not invalidate Coastal Zone management (CZM) rules by giving regulatory effect to state development and redevelopment plan by presuming that boundaries established by state planning commission would function as boundaries

pursuant to Coastal Area Facility Review Act (CAFRA), and then by using those boundaries to establish impervious cover limits in CZM rules. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Coastal zone management rules preempted township ordinance governing placement and length of docks. Tumino v. Long Beach Township, 319 N.J.Super. 514, 725 A.2d 1173 (N.J.Super.A.D. 1999).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTRODUCTION

- 7:7E-1.1 Purpose and scope
- 7:7E-1.2 Jurisdiction
- 7:7E-1.3 Severability
- 7:7E-1.4 Review, revision, and expiration
- 7:7E-1.5 CAFRA findings
- 7:7E-1.6 Mitigation
- 7:7E-1.7 Correspondence with the Department
- 7:7E-1.8 Definitions

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

- 7:7E-3.1 Purpose and scope
- 7:7E-3.2 Shellfish habitat
- 7:7E-3.3 Surf clam areas
- 7:7E-3.4 Prime fishing areas
- 7:7E-3.5 Finfish migratory pathways
- 7:7E-3.6 Submerged vegetation habitat
- 7:7E-3.7 Navigation channels
- 7:7E-3.8 Canals
- 7:7E-3.9 Inlets
- 7:7E-3.10 Marina moorings
- 7:7E-3.11 Ports
- 7:7E-3.12 Submerged infrastructure routes
- 7:7E-3.13 Shipwreck and artificial reef habitats
- 7:7E-3.14 Wet borrow pits
- 7:7E-3.15 Intertidal and subtidal shallows
- 7:7E-3.16 Dunes
- 7:7E-3.17 Overwash areas
- 7:7E-3.18 Coastal high hazard areas
- 7:7E-3.19 Erosion hazard areas
- 7:7E-3.20 Barrier island corridor
- 7:7E-3.21 Bay islands
- 7:7E-3.22 Beaches
- 7:7E-3.23 Filled water's edge
- 7:7E-3.24 Existing lagoon edges
- 7:7E-3.25 Flood hazard areas
- 7:7E-3.26 Riparian zones
- 7:7E-3.27 Wetlands
- 7:7E-3.28 Wetlands buffers
- 7:7E-3.29 through 7:7E-3.30 (Reserved)
- 7:7E-3.31 Coastal bluffs
- 7:7E-3.32 Intermittent stream corridors
- 7:7E-3.33 Farmland conservation areas
- 7:7E-3.34 Steep slopes
- 7:7E-3.35 Dry borrow pits
- 7:7E-3.36 Historic and archaeological resources
- 7:7E-3.37 Specimen trees
- 7:7E-3.38 Endangered or threatened wildlife or plant species habitats
- 7:7E-3.39 Critical wildlife habitats
- 7:7E-3.40 Public open space
- 7:7E-3.41 Special hazard areas
- 7:7E-3.42 Excluded Federal lands
- 7:7E-3.43 Special urban areas
- 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area
- 7:7E-3.45 Hackensack Meadowlands District
- 7:7E-3.46 Wild and scenic river corridors
- 7:7E-3.47 Geodetic control reference marks
- 7:7E-3.48 Hudson River Waterfront Area
- 7:7E-3.49 Atlantic City
- 7:7E-3.50 Lands and waters subject to public trust rights

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

- 7:7E-3A.1 Purpose and scope
- 7:7E-3A.2 Standards applicable to routine beach maintenance
- 7:7E-3A.3 Standards applicable to emergency post-storm beach restoration
- 7:7E-3A.4 Standards applicable to dune creation and maintenance
- 7:7E-3A.5 Standards applicable to the construction of boardwalks

SUBCHAPTER 3B. INFORMATION REQUIRED IN TIDAL WETLAND AND INTERTIDAL AND SUBTIDAL SHALLOWS MITIGATION PROPOSALS

- 7:7E-3B.1 Purpose and scope
- 7:7E-3B.2 Tidal wetland and intertidal and subtidal shallows mitigation proposal requirements
- 7:7E-3B.3 Financial assurance requirements
- 7:7E-3B.4 Department review of mitigation proposal
- 7:7E-3B.5 Post-construction monitoring of the mitigation site

SUBCHAPTER 3C. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION

- 7:7E-3C.1 Purpose and scope
- 7:7E-3C.2 Standards for conducting Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments
- 7:7E-3C.3 Standards for conducting Endangered or Threatened Wildlife Species Habitat Evaluations
- 7:7E-3C.4 Standards for reporting the results of impact assessments and habitat evaluations

SUBCHAPTER 4. GENERAL WATER AREAS

- 7:7E-4.1 Purpose and scope
- 7:7E-4.2 Shellfish aquaculture
- 7:7E-4.3 Boat ramps
- 7:7E-4.4 Docks and piers for cargo and commercial fisheries
- 7:7E-4.5 Recreational docks and piers
- 7:7E-4.6 Maintenance dredging
- 7:7E-4.7 New dredging
- 7:7E-4.8 Dredged material disposal
- 7:7E-4.9 Solid waste or sludge dumping
- 7:7E-4.10 Filling
- 7:7E-4.11 Mooring
- 7:7E-4.12 Sand and gravel mining
- 7:7E-4.13 Bridges
- 7:7E-4.14 Submerged pipelines
- 7:7E-4.15 Overhead transmission lines
- 7:7E-4.16 Dams and impoundments
- 7:7E-4.17 Outfalls and intakes
- 7:7E-4.18 Realignment of water areas
- 7:7E-4.19 Vertical wake or wave attenuation structures
- 7:7E-4.20 Submerged cables
- 7:7E-4.21 Artificial reefs
- 7:7E-4.22 Miscellaneous uses
- 7:7E-4.23 Living shorelines

SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

- 7:7E-5.1 Purpose and scope
- 7:7E-5.2 Definitions
- 7:7E-5.3 Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas
- 7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas
- 7:7E-5.5 Determining if a site is forested or unforested

**SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA**

- 7:7E-5A.1 Purpose and scope
- 7:7E-5A.2 Upland waterfront development area regions and growth ratings
- 7:7E-5A.3 Environmental sensitivity
- 7:7E-5A.4 Development potential
- 7:7E-5A.5 Development potential for a residential or minor commercial development site
- 7:7E-5A.6 Development potential for a major commercial or industrial development site
- 7:7E-5A.7 Development potential for a campground development site
- 7:7E-5A.8 Development intensity
- 7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area
- 7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area

**SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA**

- 7:7E-5B.1 Purpose and scope
- 7:7E-5B.2 Coastal Planning Areas
- 7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers
- 7:7E-5B.4 Impervious cover limits for a site in the CAFRA area
- 7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area
- 7:7E-5B.6 Mainland coastal centers

**SUBCHAPTER 6. GENERAL LOCATION RULES**

- 7:7E-6.1 Rule on location of linear development
- 7:7E-6.2 Basic location rule
- 7:7E-6.3 Secondary impacts

**SUBCHAPTER 7. USE RULES**

- 7:7E-7.1 Purpose and scope
- 7:7E-7.2 Housing use rules
- 7:7E-7.3 Resort/recreational use
- 7:7E-7.3A Marina development
- 7:7E-7.4 Energy facility use rule
- 7:7E-7.5 Transportation use rule
- 7:7E-7.6 Public facility use rule
- 7:7E-7.7 Industry use rule
- 7:7E-7.8 Mining use rule
- 7:7E-7.9 Port use rule
- 7:7E-7.10 Commercial facility use rule
- 7:7E-7.11 Coastal engineering
- 7:7E-7.12 Dredged material placement on land
- 7:7E-7.13 National defense facilities use rule
- 7:7E-7.14 High-rise structures

**SUBCHAPTER 8. RESOURCE RULES**

- 7:7E-8.1 Purpose and scope
- 7:7E-8.2 Marine fish and fisheries
- 7:7E-8.3 (Reserved)
- 7:7E-8.4 Water Quality
- 7:7E-8.5 Surface water use
- 7:7E-8.6 Groundwater Use
- 7:7E-8.7 Stormwater management
- 7:7E-8.8 Vegetation
- 7:7E-8.9 (Reserved)
- 7:7E-8.10 Air quality
- 7:7E-8.11 Public access
- 7:7E-8.12 Scenic resources and design
- 7:7E-8.13 Buffers and compatibility of uses
- 7:7E-8.14 Traffic
- 7:7E-8.15 through 7:7E-8.20 (Reserved)

- 7:7E-8.21 Subsurface sewage disposal systems
- 7:7E-8.22 Solid and hazardous waste

**SUBCHAPTER 8A. (RESERVED)**

**APPENDIX 1. DESIGN STANDARDS AND SPECIFICATIONS**

**APPENDIX 2. (RESERVED)**

**APPENDIX 3. BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA**

**APPENDIX 4. (RESERVED)**

**APPENDIX 5. CAFRA CENTERS**

**APPENDIX 6. (RESERVED)**

**SUBCHAPTER 1. INTRODUCTION**

**7:7E-1.1 Purpose and scope**

(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 and published the "New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement" in May 1978. The proposed program covered the CAFRA area only. In August 1978, the Governor submitted the revised "New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement" for Federal approval. The approval 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." These revisions incorporated the northern waterfront area, Delaware River area and New Jersey Meadowlands into the Program. In August 1980, the Department submitted the "New Jersey Coastal Management Program and Final

Environmental Impact Statement” for Federal approval. The approval was received in September 1980. 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. 13:9A-4d) as providing for full consideration of the national interest in the wise use of coastal resources as required under the Federal Coastal Zone Management Act (16 U.S.C. §1450).

(c) Both the Coastal Management Program and the Coastal Zone Management rules are founded on the eight broad coastal goals described at (c)1 through 8 below. The coastal goals express results that the Coastal Management Program strives to attain. Each goal is supplemented by related policies that set forth the means to realize that goal. The Coastal Zone Management rules, including the coastal goals and policies set forth below, are enforceable policies of New Jersey’s Coastal Management Program as approved under the Federal Coastal Zone Management Act (16 U.S.C. §1450). The New Jersey Coastal Management Program goals and supplemental policies are:

1. Healthy coastal ecosystems.
  - i. Protect, enhance and restore coastal habitats and their living resources to promote biodiversity, water quality, aesthetics, recreation and healthy coastal ecosystems; and
  - ii. Manage coastal activities to protect natural resources and the environment;
2. Effective management of ocean and estuarine resources.
  - i. Develop and implement management measures to attain sustainable recreational and commercial fisheries;
  - ii. Manage commercial uses to reduce conflict between users and encourage water-dependent uses; and
  - iii. Administer the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities;
3. Meaningful public access to and use of tidal waterways and their shores.
  - i. Preserve public trust rights to tidal waterways and their shores;
  - ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;
  - iii. Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;
  - iv. Enhance public access by promoting adequate affordable public facilities and services;
4. Sustained and revitalized water-dependent uses.
  - i. Encourage, sustain and enhance active port and other water-dependent facilities, and maritime uses;
  - ii. Encourage the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses;
  - iii. Conserve waterfront sites for water-dependent activities; and
  - iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredge material management practices and preserve historic dredged material placement sites;
5. Coastal open space.
  - i. Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that:
    - (1) Provide opportunities for passive and active recreation;
    - (2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values;
    - (3) Minimize natural hazards; and
    - (4) Abate impacts from nonpoint sources of pollution;
  - ii. Promote and enhance public access to and use of open space where appropriate; and
  - iii. Promote strategies for the creation of open space;
6. Safe, healthy and well-planned coastal communities and regions.
  - i. Manage coastal activities and foster well-planned communities and regions that:
    - (1) Encourage mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites;
    - (2) Promote concentrated patterns of development;
    - (3) Ensure the availability of suitable waterfront areas for water dependent activities;
    - (4) Sustain coastal economies;
    - (5) Create vibrant coastal communities and waterfronts;
    - (6) Conserve water supply;
    - (7) Protect the natural environment;
    - (8) Minimize the threat of natural hazards to life and property;
- v. Balance diverse uses of tidal waterways and their shores; and
- vi. Protect, enhance and promote waterfront parks;

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

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

ii. Maintain, enhance and encourage maritime uses;

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

iv. Promote public health, safety and welfare;

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

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

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

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

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

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

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

v. Encourage the preparation of comprehensive plans, including:

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

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

8. Coordinated public education and outreach.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added (d).

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

#### Case Notes

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

Principle that the purpose of Department of Environmental Protection regulations is to assure predictability of its actions applied to the Department of Transportation in holding that a municipality was not entitled to any type of hearing concerning the Department's decision to place traffic control signals on a State highway. Cedar Grove Twp. v. Sheridan, 209

N.J.Super. 267, 507 A.2d 304 (App.Div.1986), certification denied 104 N.J. 464, 517 A.2d 448 (1986).

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

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

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

### 7:7E-1.2 Jurisdiction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Old section 2 Authority was repealed.

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

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

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

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

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

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

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

Rewrote the section.

#### Case Notes

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

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

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

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

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

#### 7:7E-1.3 Severability

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

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

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

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

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

#### 7:7E-1.5 CAFRA findings

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

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;
2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;
3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;
4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;
5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;
6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and
7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region.

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

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

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

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

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

Use of waterfront for water-dependent activities encouraged.

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

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

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

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

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

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

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

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

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

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

Added (b).

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.  
See: 41 N.J.R. 2343(c).

#### Case Notes

Definition of "impervious cover" established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity was not arbitrary or otherwise impermissible, despite its inclusion in "impervious cover" of types of cover described in earlier rules as "permeable cover," where intervening rules removed distinction between impervious and permeable cover, establishing single permissible development intensity regardless of which form of cover was utilized, and where change in definition was supported by DEP's experience with permeable paving. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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

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

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

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

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

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

#### 7:7E-1.6 Mitigation

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

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

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

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

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

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

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

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

In (a), substituted "Department" for "Program" in the second sentence and substituted "3.9" for "3.48" in the third sentence.

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

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

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

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

#### 7:7E-1.7 Correspondence with the Department

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

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

New Rule, R.2000 d.45, effective February 7, 2000.

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

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

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

Updated the address.

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

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

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

#### 7:7E-1.8 Definitions

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

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

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

"Amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a

bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" also means bar and restaurant establishments and entertainment venues such as stage and band shells and associated seating areas. "Amusements" do not include games for cash payoffs.

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

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

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

"Coastal Permit" or "permit" means a permit or an authorization, including a Federal Consistency determination and Water Quality Certificate, issued by the Department under this chapter pursuant to any of the following statutes: the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the Waterfront Development Law, N.J.S.A. 12:5-3; Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

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

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

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

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;

4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;

5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;

6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and

7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

"Critical infrastructure" means the same as "homeland security facility."

"Development" means any activity for which a Wetlands Act of 1970 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.

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

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

"11-digit hydrologic unit code area" means an area within which water drains to a particular receiving surface water body, which area is identified by an 11-digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investiga-

tions Report 95-4134, 1995, entitled "Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey." The HUC codes of New Jersey can be downloaded from [www.njgeodata.state.nj.us](http://www.njgeodata.state.nj.us). The HUC 11 data is entitled "subwatersheds." Software designed for use with Geographic Information Systems (GIS) will be required to view that downloaded data.

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

"Engineered beach" means a beach built in accordance with either;

1. A Federally authorized beach berm design template for shore protection and/or storm damage reduction purposes for which the Department has issued a Federal consistency determination under this chapter; or
2. A beach berm design template for shore protection and/or storm damage reduction purposes that has been funded through the New Jersey Shore Protection Program and for which the Department has issued a permit under this chapter.

For purposes of this definition, the beach berm design template is the height, width, slope, and length of the engineered beach.

"Engineered dune" means a dune built in accordance with either;

1. A Federally authorized dune design template for shore protection and/or storm damage reduction purposes for which the Department has issued a Federal consistency determination under this chapter; or
2. A dune design template for shore protection and/or storm damage reduction purposes that has been funded through the New Jersey Shore Protection Program and for which the Department has issued a permit under this chapter.

For purposes of this definition, the dune design template is the height, width, slope, and length of the engineered dune.

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

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

"Habitable structure" means a structure that is able to receive a certificate of occupancy from the municipal construc-

tion code official, or can be demonstrated to have been legally occupied as a dwelling unit for the most recent five years.

"Homeland security facility" means any facility deemed by the Department in consultation with the New Jersey Office of Homeland Security and Preparedness or the United States Department of Homeland Security to be either critical in nature or a key resource. These facilities may include, but are not limited to, airports and military facilities, certain transportation infrastructure, and certain chemical or energy facilities and utilities, marine terminal or transfer facilities, and freight or passenger rail lines.

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

"Industrial development" means a development that involves a manufacturing or industrial process, and shall include, but is not limited to, electric power production, food and food by-product processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products.

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

"Living shoreline" means a shoreline management practice that addresses the loss of vegetated shorelines, beaches, and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of plants, stone, sand, or other structural and organic materials. There are three types of living shorelines: natural, hybrid, and structural. Natural living shorelines include natural vegetation, submerged aquatic vegetation, fill, and biodegradable organic materials. Hybrid living shorelines incorporate natural vegetation, submerged aquatic vegetation, fill, biodegradable organic materials, and low-profile rock structures such as segmented sills, stone containment, and living breakwaters seeded with native shellfish. Structural living shorelines include, but are not limited to, revetments, breakwaters, and groins.

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

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

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

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

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

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

“Natural area” means an area that has retained its natural character, as evidenced by the presence of woody vegetation (trees, saplings, scrub-shrub vegetation) or rare or endangered plants. A disturbed area may be considered a natural area if such vegetation is present. A natural area does not include maintained lawns or areas landscaped with non-native herbaceous plants.

“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.

“Non-polluting material” means a material such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete, steel, or other inert products. Creosote and pressure-treated lumber (that is, treated with preservatives such as CCA-C, ACZA, CC, and ACQ) which is susceptible to leaching is not considered “non-polluting material.”

“Parcel” means the totality of all contiguous lots under common ownership on April 4, 2011.

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

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

“Public development” means a solid waste facility, including incinerators and landfills, wastewater treatment plant, public highway, airport including single or multi-air

strips, an above or underground pipeline designed to transport petroleum, natural gas, or sanitary sewage, and a public facility, and shall not mean a seasonal or temporary structure related to the tourism industry, an educational facility or power lines. “Public development” does not have to be publicly funded or operated.

“Pumpout facility” means a facility intended to receive the discharge of wastewater from a marine sanitation device. Pumpout facilities include, but are not limited to, fixed pumpout stations, dockside pumpouts, portable pumpouts, pumpout boats, and dump stations.

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

“Redevelopment” means the development of a previously developed site that has been inactive, underutilized, or abandoned for five years or less.

“Residential development” means a development that provides one or more dwelling units.

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

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

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

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

“State Aid Agreement” means a binding agreement between the Department and a municipality or county for the construction of a shore protection project funded through the State Shore Protection Fund. The State Aid Agreement for Federally-funded projects contains the project agreement between the Department and the United States Army Corps of Engineers which defines the project design template.

“Water dependent” means development that cannot physically function without direct access to the body of water

along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

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

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

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

“Watershed management area” means an aggregation of the 11-digit hydrologic unit codes designated by the Department as a watershed management area and shown on the map entitled “New Jersey’s Watersheds, Watershed Management Areas, and Water Regions,” dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department’s Division of Water-

shed Management at (609) 984-0058, or may be viewed on the internet at [www.state.nj.us/dep/gis](http://www.state.nj.us/dep/gis).

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

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

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

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

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

Petition for Rulemaking.

See: 42 N.J.R. 2332(a), 2992(a).

Petition for Rulemaking.

See: 43 N.J.R. 680(b).

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

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

Deleted designation (a); added definitions “Amusement pier”, “Critical infrastructure”, “Homeland security facility”, “Industrial development”, “Natural area”, “Parcel”, “Public development”, “Redevelopment” and “Residential development”; and in definition “Dwelling unit”, inserted a comma following “floating home” and inserted “other” preceding “habitable”.

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

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

Added definitions “Engineered beach”, “Engineered dune”, “Living shoreline”, “Non-polluting material”, “Pumpout facility” and “State Aid Agreement”.

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

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

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

---

## SUBCHAPTER 2. (RESERVED)

---

## SUBCHAPTER 3. SPECIAL AREAS

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

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

### 7:7E-3.1 Purpose and scope

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

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

2. Special Water's Edge Areas, N.J.A.C. 7:7E-3.16 through 3.32, are divided into three subcategories depending on their location. Special Water's Edge Areas in (a)2i and ii below are found only next to tidal waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters;

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 Land Areas, N.J.A.C. 7:7E-3.33 through 3.35, generally are landward of the Special Water's Edge Areas; and

4. Coastwide Special Areas, N.J.A.C. 7:7E-3.36 through 3.49, may include Special Water Areas, Special Water's Edge Areas or Special Land Areas.

(b) All land or water areas, except certain Special Water's Edge Areas, are subject to either the General Land Area rules at N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B or the General Water Area rules at N.J.A.C. 7:7E-4. In addition, certain land or water areas are subject to one or more Special Area rules. All Special Water's Edge Areas are subject to one or more Special Area rules. In some cases, a portion of a site is subject to both General Area rules and Special Area rules. Where the applicable General Area rules and Special Area rules conflict, the Special Area rules shall govern.

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).

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

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

Rewrote (b).

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

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

Rewrote (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. § 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, unless the proposed development is a dock, pier, or boat mooring, dredging, living shoreline, or a development required for national security constructed in accordance with (d)1 and 3, (e), (f), (g), (h), and (k) below. In addition, the construction of a dock or pier or the one-time replacement or reconstruction of the existing bulkhead when located in waters that have been classified as prohibited for the purpose of harvesting shellfish is acceptable in accordance with (d)2 and (i) below.

1. The term "destruction" includes actions of filling to create fast land, overboard dumping, or disposal of solids or dredged materials 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, pier, 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;

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

3. A single noncommercial dock, pier, or boat mooring associated with a single-family dwelling provided the proposed dock, pier, or boat mooring meets the requirements at (d)3i through v below. If a lot has frontage on both a natural waterway and a man-made lagoon, as defined at N.J.A.C. 7:7-1.3, the dock, pier, or boat mooring shall be located within the lagoon, unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with the recreational docks and piers rule at N.J.A.C. 7:7E-4.5 or any other provisions of this chapter.

i. The proposed dock, pier, or boat mooring is:

(1) Constructed of non-polluting materials; and

(2) Designed and constructed in a manner that reduces the size of the structure to limit the area of shellfish habitat condemned and reduces adverse impacts to the marine ecosystem to the extent practicable. Reduction of the area of shellfish habitat condemned and adverse impacts to the marine ecosystem may include, for example, adjustment of the dimensions and location of the proposed dock, pier, or boat mooring to reduce the total area covered by the structure while ensuring that the requirements of this chapter are met.

ii. Unless the Department determines that a different length dock or pier is appropriate in order to ensure that the requirements of this chapter are met, the dock or pier shall not extend beyond, and a boat mooring shall not be located beyond, a straight line drawn between the outermost end of decking of the nearest adjacent existing legal dock or pier to each side of the dock, pier or boat mooring, except:

(1) If the dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway and the dock, pier, or boat mooring is to be located on the natural waterway as required under (d)3 above, the dock or pier shall not extend beyond, or the boat mooring shall not be located beyond, the outermost end of decking of the nearest adjacent dock or pier on the natural waterway; or

(2) To meet the requirements of the submerged vegetation habitat rule at N.J.A.C. 7:7E-3.6, a dock or pier shall be extended to the minimum length necessary, or the boat mooring shall be located where

necessary to ensure that at mean low water a minimum water depth of four feet is present in the designated slips of the dock, pier, or boat mooring;

iii. The dock, pier, or boat mooring shall have no more than two designated slips. Boats shall not be moored at any area other than the two boat slips designated in the Department permit and/or the plan approved under that permit;

iv. Only one dock, pier or boat mooring shall be constructed per buildable lot pursuant to this subsection. Where two or more lots have been assembled for the purpose of building a single family dwelling, only one dock, pier or boat mooring shall be constructed pursuant to this subsection;

v. No dredging shall be performed in conjunction with the construction or use of the dock, pier, or boat mooring; and

vi. Mitigation shall be performed in accordance with the following:

(1) A conservation restriction shall be placed on the subject property governing the construction or reconstruction of a shoreline protection structure, as follows:

(A) If the dock, pier or boat mooring is associated with an unbulkheaded shoreline, the conservation restriction shall prohibit the construction of a shoreline protection structure other than stone rip-rap or other similar sloped revetment; or

(B) If the dock, pier or boat mooring is associated with a previously bulkheaded shoreline, the conservation restriction shall prohibit replacement, reconstruction or rehabilitation of the bulkhead with anything other than non-polluting or other inert material; and

(2) A monetary contribution shall be provided to the Department's dedicated account for Shellfish Habitat Mitigation. The amount of each monetary contribution provided under this section shall be based upon the area of shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish resource.

(e) New dredging (defined at N.J.A.C. 7:7E-4.7) 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. 7:7E4.6) 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-4.7 so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

(h) The establishment of a living shoreline in shellfish habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7E-4.23.

(i) The one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead is conditionally acceptable in waters that are classified as prohibited for the purpose of harvesting shellfish, provided:

1. The replacement or reconstructed bulkhead is made of a non-polluting material;

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

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

3. A conservation restriction is placed on the bulkheaded property requiring that any future replacement bulkhead be located in the same location as the bulkhead replaced or reconstructed under this subsection.

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

(k) 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.

(l) 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.

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

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

Substantially amended.

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

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

Petition for Rulemaking.

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

Public Notice: Petition for Rulemaking.

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

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

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

Petition for Rulemaking.

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

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

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

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

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

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

Rewrote (d).

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

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

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

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

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

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

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

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

Rewrote the introductory paragraph of (c), in (c)1, inserted a comma following "dumping" and substituted "dredged materials" for "spoils"; in the introductory paragraph of (d) and the introductory paragraph of (d)3, inserted a comma following "pier"; in the introductory paragraph of (d)3, substituted "single-family" for "single family"; in (d)3i(1), substituted "materials" for "or other inert materials such as natural lumber or other untreated wood, concrete, plastic or vinyl"; added new (h) and (i); and recodified former (h) through (k) as (j) through (m); and in (m), amended the Rationale statement.

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

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

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

#### Law Review and Journal Commentaries

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

## Case Notes

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

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

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

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

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

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

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

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

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

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

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

**7:7E-3.3 Surf clam areas**

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

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

1. Development that is of national interest provided:

- i. There are no prudent and feasible alternative sites; and

- ii. Impacts to the surf clam area are minimized.

2. Sand and gravel mining to obtain material for beach nourishment provided:

- i. The beach nourishment project is in the public interest;

- ii. There are no prudent and feasible alternative offshore borrow site that would result in less impact to marine fish and fisheries;

- iii. The impacts to surf clam areas are minimized through the following:

- (1) The beach nourishment project is designed to minimize the volume of sand borrowed from the surf clam area;

- (2) The borrow cut is designed to minimize the area disturbed, for example, by designing a deeper cut;

- (3) The borrow site is located to avoid those more productive surf clam areas; and

- (4) When appropriate, notice shall be provided to clambers in advance of the mining operation to allow for surf clam harvest; and

- iv. The sand mining is not located within a surf clam conservation area as defined at N.J.A.C. 7:25-12.

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

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

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

Rewrote the section.

**7:7E-3.4 Prime fishing areas**

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

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

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

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

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

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

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

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

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

Added source material for Raritan Bay.

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

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

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

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

### 7:7E-3.5 Finfish migratory pathways

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

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

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

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

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 Department's Division of Fish and Wildlife approves the design of the access structure. As of January, 1994, the Department's Division of Fish and Wildlife is 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).

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

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

In (d), substituted "the Department's Division of Fish and Wildlife" for "the NJDEP Division of Fish, Game and Wildlife" throughout and deleted "currently" preceding "evaluating".

### 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 chinensis*, *Naja flexilis*, *Nuphar variegatum*, *Potamogeton crispus*, *Potamogeton epihydrus*, *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 Department 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 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) Development in submerged vegetation habitat is 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 navigation channels maintained by the State or Federal government 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-4.6, of previously authorized, existing navigation channels maintained by the State or Federal government 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-4.6 and 4.7, 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-4.6, 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;

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; and

8. The establishment of a living shoreline in submerged vegetation habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7E-4.23.

(c) Development in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which results in erosion or turbidity increases in the waters supporting submerged vegetation or prop or hull scour through use of the development is 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 replanting

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).

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

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

In (a), substituted "Department" for "DEP"; in (b), substituted "Development" for "Regulated activities" in the introductory paragraph, substituted "navigation channels maintained by the State or Federal government" for "State and Federal navigation channels" and amended the N.J.A.C. references throughout; in (c), substituted "Development" for "Regulated activities" and "or prop or hull scour through use of the development is" for "are" following "submerged vegetation".

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

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

In (b)6vii, deleted "and" from the end; in (b)7, substituted "; and" for a period at the end; added (b)8; and in (e), amended the Rationale statement.

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

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

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

#### Case Notes

Petitioner's application for a Waterfront Development Permit to construct a 4' by 100' dock was properly denied as prohibited by the submerged vegetation habitat rule because the petitioner failed to meet his burden of proving by clear and convincing evidence that the property should have been excluded from the habitat definition; the evidence demonstrated that, whatever the current situation was regarding the actual presence of eelgrass, it was undisputed that eelgrass was historically mapped to exist at the site (adopting 2008 N.J. AGEN LEXIS 1271). *Shedaker v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ELU 10281-07S, 2008 N.J. AGEN LEXIS 1416, Final Decision (December 8, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 126) adopted, which concluded that petitioners' application for a Waterfront Development Permit to construct a 4' by 170' dock with a boatlift and three mooring pilings at their residential site fronting on Barnegat Bay was properly denied as prohibited by the submerged vegetation habitat rule, N.J.A.C. 7:7E-3.6, because the project area was documented on 1979 Point Pleasant Submerged Vegetation maps as containing the submerged vascular plants *Ruppia maritima*, *Zannichellia palustris*, and *Zostera marina*. *Cocuzzo v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 2414-04, 2007 N.J. AGEN LEXIS 534, Final Decision (April 18, 2007).

#### 7:7E-3.7 Navigation channels

(a) Navigation channels are tidal water areas including the Atlantic Ocean, inlets, bays, rivers and tidal guts with sufficient depth to provide safe navigation. Navigation channels include all areas between the top of the channel slopes on either side. These navigation channels are often marked with buoys or stakes. Major navigation channels are shown on NOAA/National Ocean Service Charts.

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

1. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.
2. Development which would result in loss of navigability is prohibited.
3. Any construction which would extend into a navigation channel is prohibited.
4. 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).

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

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

Rewrote (a); in (b), deleted former 1 and recodified former 2 through 5 as 1 through 4.

#### 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, Point Pleasant, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

(b) In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.

(c) 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).

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

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

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

In (a), substituted "Point Pleasant" for "Bay Head-Manasquan"; rewrote (b), recodified former (b)2 as (c) and amended the N.J.A.C. reference; recodified former (c) as (d).

### 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 Department staff will determine the boundary on a case-by-case basis.

(b) Development in inlets shall comply with the following:

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

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

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

In (a)2, substituted "Department" for "DEP"; in (b), rewrote the introductory paragraph.

### 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) 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).

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

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

Deleted former (d); recodified former (e) as (d).

### 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 are found at N.J.A.C. 7:7E-4.4, Docks and piers for cargo and commercial fisheries.

(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).

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

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

Rewrote (a)2.

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

### 7:7E-3.13 Shipwreck and artificial reef habitats

(a) The shipwreck and artificial reef habitats special area includes all permanently submerged or abandoned remains of vessels, and other structures including, but not limited to, artificial reefs, anchors, quarry rocks or lost cargo, which serve as a special marine habitat or are fragile historic and cultural resources. An artificial reef is a man-made imitation of a natural reef created by placing hard structures on the sea floor for the purpose of enhancing fish habitat and fish stock. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines and other structures not constructed for the sole purpose of fish habitat.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) Charts listed at N.J.A.C. 7:7E-3.7(a), the navigation channel rule, or listed in the following publications: W. Krotee and R. Krotee, *Shipwrecks Off the New Jersey Coast* (1966), B.L. Freeman and L.A. Walford, *Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities* (1974); and B. Preim, J. Carlson, B. Figley, *A Guide to Fishing and Diving New Jersey Reefs*, (2000). In addition to known sites, unidentified remains of vessels may exist within tidal waters. Shipwrecks may also be considered historic or archaeological resources pursuant to N.J.A.C. 7:7E-3.36.

2. Shipwreck and artificial reef habitats may be subject to the marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.

(b) Acceptable uses of shipwreck and artificial reef habitats include finfishing, shellfishing, and scuba diving.

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fish habitat is prohibited. Persons conducting ar-

cheological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef of 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.  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

### 7:7E-3.14 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, the wetlands rule, N.J.A.C. 7:7E-3.27, and/or wetlands buffer rule, N.J.A.C. 7:7E-3.28, shall apply.

(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 and the mining rule, N.J.A.C. 7:7E-7.8, are met.

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

#### 7:7E-3.15 Intertidal and subtidal shallows

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

(b) Development, filling, new dredging, or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e), (f), (g), and (h) below and with N.J.A.C. 7:7E-4.2 through 4.23.

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

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

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

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

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

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

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;

2. Where directional drilling is not feasible, there is no feasible alternative route that would not disturb intertidal and subtidal shallows;

3. The infrastructure is located deeply enough to avoid exposure or hazard; and

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

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

(g) The establishment of a living shoreline in intertidal and subtidal shallows to address the loss of vegetated shorelines

and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7E-4.23.

(h) The construction and/or replacement of a bulkhead within intertidal and subtidal shallows is conditionally acceptable provided the bulkhead meets the requirements of the filling rule at N.J.A.C. 7:7E-4.10(f) and the coastal engineering rule at N.J.A.C. 7:7E-7.11(d).

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

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (f)1, 2 and 3;
2. Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;
3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(f);
4. New dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water;
5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(d)2i or ii; and
6. The establishment of a living shoreline to address the loss of vegetated shorelines and habitat in the littoral zone.

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

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or
2. At a property other than a single family home or duplex property, mitigation shall be performed in accordance with the following hierarchy:
  - i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;

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

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

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

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

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

- (1) Creation of intertidal and subtidal shallows at a creation to lost ratio of 1:1 within the same watershed management area; or
- (2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.

(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).

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

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

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

In (b), inserted a comma following "dredging" and substituted "(e), (f), (g), and (h)" for "(e) and (f)" and "4.23" for "4.22"; added new (g) and (h); recodified former (g) through (i) as (i) through (k); in the introductory paragraph of (i), substituted "(j) for "(h)"; in (i)1, substituted "(f)1" for "(e)1"; in (i)3, substituted "(f)" for "(d)"; in (e)4, deleted "and" from the end; in (i)5, substituted "(d)2i" for "(e)2i" and "; and" for a period at the end; added (i)6; and in (k), amended the Rationale statement.

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

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

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

#### Case Notes

Property owners who sought permission to construct a bulkhead on property adjacent to bay failed to establish that water dependent use existed which would justify the inevitable destruction of the intertidal shallows. *Muir v. NJ Dept. of Env Protection*, 1999 N.J. AGEN LEXIS 557.

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

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

#### 7:7E-3.16 Dunes

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

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

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

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant ad-

verse longterm impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a 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 coastal engineering rule at N.J.A.C. 7:7E7.11(e); and

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

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

(d) The maintenance of an engineered dune to the dune design template through alteration of the dune is conditionally acceptable provided:

1. It is demonstrated through pre- and post-construction surveys overlaid on the dune design template, that:

i. The existing dune is not consistent with the design template; and

ii. The proposed alteration of the dune will not result in the reduction of any portion of the dune below the design template;

2. A New Jersey licensed professional engineer certifies that alteration of the dune will not compromise the beach and dune system;

3. The activity:

i. Is conducted in accordance with the State Aid Agreement between the Department and municipality or county; and

ii. Complies with the management plan for the protection of State and Federally listed threatened and endangered species, as approved by the Department's Division of Fish and Wildlife and the U.S. Fish and Wildlife Service;

4. All existing public accessways are maintained;

5. Any existing vegetation disturbed during the maintenance activities shall, at a minimum, be restored in accordance with the dune construction planting specifications in the Federal consistency determination or Department permit for the engineered dune, as applicable; and

6. Any sand transferred as part of the maintenance of the dune design template shall be moved only within the shore protection project and shall be placed within the existing dune system, or within the engineered beach berm in accordance with the beach rule, N.J.A.C. 7:7E-3.22(b).

(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).

(b) deleted; new (b)-(f) added; (c) recodified to (h).  
Repeal and New Rule, R.1990 d.413, effective August 20, 1990.  
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on filled water's edge deleted.  
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).  
Amended by R.2000 d.428, effective October 16, 2000.  
See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

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

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

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

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).  
See: 45 N.J.R. 1141(a).

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

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.  
See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

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

#### Case Notes

In interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii, the waterward and landward slopes of a primary frontal dune must abruptly incline and decline respectively compared with the rest of the subject property or with the other properties in the area immediately adjacent to the subject property. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395

N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an oceanfront home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

Initial Decision (2007 N.J. AGEN LEXIS 782) adopted, which concluded that notwithstanding that a proposed development site was not oceanfront or Raritan or Delaware bayfront, the dune rule at N.J.A.C. 7:7E-3.16 applied to the site; the site was located within the coastal area boundary as designated by N.J.S.A. 13:19-4, and the Coastal Area Facilities Review Act General Permit for development of a single-family home, duplex, and accessory development requires such development to comply with the dune rule. *North Bayview, LLC v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 2072-06, 2008 N.J. AGEN LEXIS 144, Final Decision (January 17, 2008).*

Notwithstanding the argument that a proposed development site did not contain a primary dune because the dune was isolated and was not a "continuous or nearly continuous mound or ridge of sand," nor was it "subject to erosion and overtopping from high tides and waves during major coastal storms," a dune existed on the site and it was subject to the dune rule; the definition in N.J.A.C. 7:7E-7.8(d)1ii is limited to that subparagraph, and the definition in N.J.A.C. 7:7E-3.16(a) applied. *North Bayview, LLC v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 2072-06, 2008 N.J. AGEN LEXIS 144, Final Decision (January 17, 2008).*

Where a municipality applied for a permit to reduce the height of certain dunes within its municipal jurisdiction to 15 feet so that it could comply with easements it entered into with several beach front property owners in connection with a 1989 beach replenishment and dunes restoration program, whereby it agreed to maintain the dunes at an elevation not to exceed three feet above bulkhead height, the municipality's application to reduce the dune height was not permitted under N.J.A.C. 7:7E-3.16, which prohibits "the excavation, bulldozing or alteration of dunes," nor did the application fall within the limited exception permitting the alteration of dunes for an approved beach and dune management plan, which could only include activities such as the demolition and removal of paved structures or the installation of limited access ways or other types of certain linear development (adopting Initial Decision as modified). *Ocean City v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program, OAL Dkt. No. ESA 10103-05, 2007 N.J. AGEN LEXIS 498, Final Decision (April 27, 2007).*

Initial Decision (2006 N.J. AGEN 177) adopted, which concluded that contract purchaser's construction of a single-family dwelling on lot was prohibited pursuant to N.J.A.C. 7:7E-3.16 because: (1) the purchaser had not presented facts to establish that the proposed development had no practicable or feasible alternative in an area other than a dune and that it would not cause significant adverse long-term impacts on the natural functioning of the beach and dune system; (2) the proposed development would necessitate removal of dune vegetation and would require dune excavation, and such activities were not a component of an approved beach and dune management plan; and (3) the subject lot was located entirely on the landward slope of a primary rather than secondary dune and thus did not meet the exception in N.J.A.C. 7:7-7.8(d)1. *Grauso v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program, OAL Dkt. No. ESA 11080-04, 2006 N.J. AGEN LEXIS 672, Final Decision (April 17, 2006).*

#### 7:7E-3.17 Overwash areas

(a) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the

beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune (see Appendix, Figure 1).

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

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

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;
4. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7E-7.11(e);
5. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
6. Removal of newly deposited overwash fans from public roads and or developed lots; and
7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are

limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

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

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

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

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

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

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

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

Text on existing lagoon edges deleted.  
 Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).  
 Amended by R.2000 d.45, effective February 7, 2000.  
 See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (d), rewrote the introductory paragraph; inserted a new (e); and recodified former (e) as (f).  
 Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
 In (b)4, substituted "coastal engineering rule at" for "use conditions of" preceding the N.J.A.C. reference.  
 Amended by R.2007 d.340, effective November 5, 2007.

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

In (d)4, deleted "flood proofing" preceding "requirements".

### 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 that meet the standards of N.J.A.C. 7:7E-7.2(e) or (f) or development in Atlantic City in accordance with (g) below.

(c) In general, commercial development is discouraged in coastal high hazard areas.

(d) 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 requirements at N.J.A.C. 7:7E-3.25, Flood hazard areas.

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

(f) 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. This condition does not apply to development in accordance with (g) below.

(g) The following development in Atlantic City is acceptable in Coastal High Hazard Areas provided it meets the standards of N.J.A.C. 7:7E-3.49:

1. Development on or over existing ocean piers;
2. Pilings necessary to support development proposed on or over existing ocean piers; and
3. Development on or over the Boardwalk.

(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).

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).  
 Amended by R.1998 d.571, effective December 7, 1998.  
 See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

In (b), changed N.J.A.C. reference; and added (e).  
 Amended by R.2000 d.45, effective February 7, 2000.  
 See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Rewrote the section.  
 Amended by R.2000 d.428, effective October 16, 2000.  
 See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b), inserted "or (f)" following "N.J.A.C. 7:7E-7.2(e)".  
 Amended by R.2007 d.340, effective November 5, 2007.  
 See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (d)4, deleted "flood proofing" preceding "requirements".

### Case Notes

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)lii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an oceanfront home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

**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. Cluffed 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 development located within a commercial boardwalk area existing on July 19, 1993 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;

iv. The facility meets all the requirements of the Flood Hazard Areas rule (N.J.A.C. 7:7E-3.25); and

v. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B;

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

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

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

i. Development on or over existing ocean piers;

ii. Pilings necessary to support development proposed on or over existing ocean piers; and

iii. Development on or over the Boardwalk.

(c) 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.-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).

Amended by R.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

In (b)4, changed N.J.A.C. reference.

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

#### 7:7E-3.20 Barrier island corridor

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

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

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

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

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

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

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

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

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

Text on beaches deleted.

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

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

Rewrote (b).

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

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

#### Case Notes

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

#### 7:7E-3.21 Bay islands

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

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

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

#### OCEAN COUNTY

Bonnett Island, Stafford Township  
Chadwick Island, Dover Township  
Channel Island, Mantoloking Borough  
Osborne Island, Little Egg Harbor Township  
Pelican Island, Dover/Berkeley Townships  
West Point Island, Lavallette Borough

#### ATLANTIC COUNTY

Bader Field, Atlantic City  
Chelsea Heights, Atlantic City  
Venice Heights, Atlantic City  
Ventnor Heights, Ventnor City

#### CAPE MAY COUNTY

Princeton Harbor, Avalon Borough  
Shawcrest/Hildreth Island, Lower and Middle Townships. The areas mapped as Shawcrest/Hildreth Island are identified in the Department's Geographic Information System (GIS) coverage, titled "Shawcrest/Hildreth Island." This coverage is available as a download at the CAFRA layers webpage: [www.state.nj.us/dep/gis/cafralayers.htm](http://www.state.nj.us/dep/gis/cafralayers.htm)  
West Wildwood, Wildwood City  
West 17th Street, Ocean City

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

such a conveyance, non-water dependent development is prohibited unless it meets the standards of (d) below and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Number of units; or

ii. Square footage of interior floor space; and

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

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

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

Added text to (a): "or man-made"; "as well as man-made dikes,". Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on dunes deleted.

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

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

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

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

Rewrote the section.

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

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

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

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

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

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

Public Notice: Coastal Management Office: determination on routine program change to the Coastal Management Program.

See: 41 N.J.R. 2343(c).

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

In (a)2, under the heading "ATLANTIC COUNTY", inserted "Bader Field, Atlantic City".

#### Case Notes

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

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

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

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

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

Where petitioner sought to demolish the buildings at an existing marina on a bay island, redevelop the marina on a smaller scale, and use the remaining land to construct 10 new single-family homes, the proposed project did not meet the clear provisions of the bay island rule, and any additional exemptions to the rule had to be sought by rulemaking rather than by a contested case; the Department does not have authority to waive its own regulations, and its application of the rule was reasonable and not arbitrary or capricious, notwithstanding that there were no wetlands, forested areas, or threatened or endangered species or habitat on site and that the redevelopment would have yielded some environmental benefits. Landview Property Group v. N.J. Dep't of Env'tl. Prot., Land Use Regulation, OAL Dkt. No. ESA 4063-04, 2006 N.J. AGEN LEXIS 581, Final Decision (July 12, 2006).

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

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

#### 7:7E-3.22 Beaches

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

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

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

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

1. Demolition and removal of paving and structures;

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;

3. The reconstruction of existing amusement and fishing piers and boardwalks;

4. Temporary recreation structures for public safety such as first aid and lifeguard stations;

5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(g);

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

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

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

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

i. Development on or over existing ocean piers;

ii. Pilings necessary to support development proposed on or over existing ocean piers; and

iii. Development on or over the Boardwalk; and

10. The maintenance of an engineered beach to the beach berm design template through the transfer of sand from the upper beach berm to the lower beach berm, from the lower beach berm to the upper beach berm, and/or alongshore provided:

i. It is demonstrated through pre- and post-construction surveys overlaid on the beach berm design template, that:

(1) The existing beach berm is not consistent with the beach berm design template; and

(2) The proposed transfer of sand will not result in the grading of any portion of the beach below the beach berm design template;

ii. A New Jersey licensed professional engineer certifies that sand transfer will not compromise the beach system;

iii. The sand transfer:

(1) Is conducted in accordance with the State Aid Agreement between the Department and a municipality or county; and

(2) Complies with the management plan for the protection of State and Federally listed threatened and endangered species, as approved by the Department's Division of Fish and Wildlife and the U.S. Fish and Wildlife Service;

iv. The sand transfer does not impact any existing dunes, unless the transfer complies with the dune rule, N.J.A.C. 7:7E-3.16; and

v. Any sand transferred as part of the maintenance of the beach berm design template shall be moved only within the shore protection project and shall be placed within the existing engineered dune in accordance with N.J.A.C. 7:7E-3.16(d).

(c) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

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

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

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

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

Text on overwash fans deleted.  
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).  
Amended by R.2000 d.45, effective February 7, 2000.

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

Inserted (b)9.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (c).

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

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

In (c), substituted "access" for the second occurrence of "trust rights".  
Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

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

In (b)5, substituted "(g)" for "(e)"; in (b)8, deleted "and" from the end; in (a)9iii, substituted "; and" for a period at the end; added (b)10; and in (d), amended the Rationale statement.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.  
See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

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

#### Case Notes

Sand areas adjacent to bay were "beaches," albeit only minimal ones, that were subject to coastal permit program rules governing beaches, for purposes of property owners' application for permit to construct bulkhead. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

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

#### 7:7E-3.23 Filled water's edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

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

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

1. The waterfront portion of the site shall be:

i. Developed with a water dependent use, as defined at N.J.A.C. 7:7E-1.8;

ii. Developed with an at-grade deck provided:

(1) The deck is open to the general public;

(2) The use of the deck is water oriented;

(3) The deck is not enclosed; and

(4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or

iii. Left undeveloped for future water dependent uses;

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

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

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

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

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

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

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

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

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

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

(g) In the area known as Bader Field, a filled water's edge area located in the City of Atlantic City and described on the

2008 Atlantic City tax duplicate as Block 794, Lot 1, the water dependent use shall be provided in accordance with (c) above or an upland public walkway along the water's edge, no less than 20 feet wide, with a 40-foot-wide right-of-way shall be provided.

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

(i) 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.

(j) On all filled water's edge sites, development must comply with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(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).

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

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

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

Text on erosion hazard areas deleted.

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

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

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

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

Rewrote (g).

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

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

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

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (i).

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

Added new (g); and recodified former (g) through (j) as (h) through (k).

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

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

In (j), substituted "access" for the second occurrence of "trust rights".

#### 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 manmade land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

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

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

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

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

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

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

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

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

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

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.

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

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

Rewrote (b)4.

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

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

In (b), deleted "that" following "provided" in the introductory paragraph and rewrote 3.

#### 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 areas subject to flooding from the flood hazard area design flood, as defined by the Department under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. Flood hazard areas include those areas mapped as such by the Department, areas defined or delineated as an A or a V zone by the Federal Emergency Management Agency (FEMA), and any unmapped areas subject to flooding by the flood hazard area design flood. Flood hazard areas are subject to either tidal or fluvial flooding and the extent of flood hazard areas shall be determined or calculated in accordance with the procedures at N.J.A.C. 7:13-3.

(b) In a tidal flood hazard area below the mean high water line, this section shall apply only to the following activities:

1. Development of habitable buildings; and

2. Construction of railroads, roadways, bridges and/or culverts.

(c) Dedication of flood hazard areas for purposes of public open space is encouraged.

(d) In an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body, development is prohibited unless the development is for water dependent use. "Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.8. For the purposes of this subsection and (d) below, an "undeveloped" area is an area that has no impervious cover.

(e) In a portion of an undeveloped flood hazard area that is 100 feet or farther from a navigable waterway, development is conditionally acceptable provided the development would not prevent potential water-dependent use in any portion of the flood hazard area within 100 feet of a navigable water body.

(f) Development in flood hazard areas shall conform with the applicable design and construction standards of the following:

1. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and implementing rules at N.J.A.C. 7:13, except in lands regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., pursuant to N.J.S.A. 58:16A-60;

2. The Uniform Construction Code, N.J.A.C. 5:23; and

3. The Federal flood reduction standards, 44 C.F.R. Part 60.

(g) Development in a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, as applicable.

(h) If endangered and/or threatened wildlife or species habitat is present in the flood hazard area such that the area is

also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7E-3.38, then the requirements of N.J.A.C. 7:7E-3.38, Endangered or threatened wildlife or plant species habitats, shall apply.

(i) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.

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

In (a), rewrote the first sentence of the introductory paragraph; in (b), substituted a reference to flood hazard areas for a reference to undeveloped flood hazard areas, and deleted a former second sentence; and rewrote (c), (d) and (g).

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

In (a), substituted "the Department" for "DEP" throughout the introductory paragraph and deleted "Alluvial Flood Margins," and substituted "rules" for "policies" in 3; rewrote (b); in (c), amended the N.J.A.C. reference; in (e), substituted "stormwater management" for "Stormwater Runoff".

Amended by R.2007 d.340, effective November 5, 2007.  
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Rewrote the section.

### 7:7E-3.26 Riparian zones

(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula. Regulated waters are defined in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2.

(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;

2. Along a non-linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;

3. Along a non-linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and

4. Along an amorphously-shaped feature, such as a wetland complex, through which a regulated water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;

2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:

i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;

iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

iv. Any segment of a water flowing through an area that contains acid producing soils; and

3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or (c)2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 establish 300-foot Special Water Resource Protection Areas along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

(e) Development in riparian zones shall conform with the requirements for a flood hazard area individual permit under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-9, 10 and 11 or, in the alternative as applicable, a flood hazard area permit-by-rule at N.J.A.C. 7:13-7 or a flood hazard area general permit at N.J.A.C. 7:13-8.

(f) If endangered and/or threatened wildlife or species habitat is present in the riparian zone such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7E-3.38, then the requirements of N.J.A.C. 7:7E-3.38, Endangered or threatened wildlife or plant species habitats, shall apply.

(g) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.

(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 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".

New Rule, R.2007 d.340, effective November 5, 2007.

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

Section was "Reserved".

### 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 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, coastal activities under the jurisdiction of the New Jersey Meadowlands 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 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. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located below the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in N.J.A.C. 7:7A-4, 5 and 7. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands above the mean high water line that does not require a zoning certificate, resolution or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7E-3.45(c) in the Hackensack Meadowlands District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in N.J.A.C. 7:7A-4, 5 and 7.

i. The mitigation requirements at (h) below shall apply to any coastal activity or development reviewed under this subsection, unless, where the coastal activity or development is reviewed under the conditions, limits, and requirements at N.J.A.C. 7:7A-4 and 5, those conditions, limits, and requirements do not require mitigation.

(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-1.8;
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) The establishment of a living shoreline in wetlands to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7E-4.23. Where the Department finds the establishment of a living shoreline acceptable, mitigation shall not be required.

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

(f) 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.

(g) 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.

(h) 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.

(i) 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. A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or entity that is exempt from this requirement under Federal law. The financial assurance requirements are found at N.J.A.C. 7:7E-3B.3.

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 restriction and register this restriction on the deed for the subject parcel. This conservation restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This conservation restriction shall be approved by the Department 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 conservation restriction is recorded with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the recorded conservation 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 conservation restriction has been recorded 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 the mitigation site, the owner shall be required to record a conservation restriction 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.

(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).

Substantially amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

Rewrote (b).

Public Notice: Routine Program Change for Coastal Management Program.

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

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

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

**7:7E-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.

(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).

"Policy:" deleted from (b).

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

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

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

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

Administrative correction.

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

**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 the Location of Linear Development (N.J.A.C. 7:7E-6.1), shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11), and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay and comply with N.J.A.C. 7:7E-7.2(e) or (f).

(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).

Public Notice: Petition for Rulemaking; Coastal Permit Program Rules.

See: 28 N.J.R. 3674(a).

Public Notice: Action on petition for rulemaking.

See: 28 N.J.R. 3833(a).

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

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

Rewrote (b).

### 7:7E-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-3.31). Steep slopes include natural swales and ravines, as well as manmade 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.

(b) Development on steep slopes is discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats, riparian zones or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. 7:7E-5.5(c).

(c) Development on steep slopes other than those listed in (b) above is conditionally acceptable provided:

1. The steep slope is vegetated with native woody vegetation to the maximum extent practicable; and
2. Stabilization measures are used, 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.

(d) 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 Coast-wide 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.

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

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

Rewrote the section.

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

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

In (b), inserted “, riparian zones”.

### 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 rule at N.J.A.C. 7:7E-7.8 is satisfied.

(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) Dredged material disposal is conditionally acceptable provided that:

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

(g) Solid waste disposal is conditionally acceptable on a case-by-case basis provided that:

1. Waste disposal is compatible with neighboring uses;
2. Elevations of the landfill do not exceed original surface elevations before mining; and
3. The waste disposal complies with the solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

(h) Filling or grading for construction is conditionally acceptable provided the fill is clean and of a texture that will not 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 Coast-wide 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.

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

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

Rewrote (b); in (f), substituted references to dredged material for references to spoil throughout; rewrote (g) and (h).

### 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 conditions listed at (f)1 through 7 below. The recovery of shipwrecks must also be consistent with the shipwrecks and artificial reefs rule at N.J.A.C. 7:7E-3.13.

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

In (f), rewrote the introductory paragraph.

### 7:7E-3.37 Specimen trees

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Division of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees," published by the Department's 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).  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a), substituted "Division" for "Bureau" and "the Department's" for "DEP".

### 7:7E-3.38 Endangered or threatened wildlife or plant species habitats

(a) Endangered or threatened wildlife or plant species habitats are terrestrial and aquatic (marine, estuarine or freshwater) 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 or plant 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. The definition of endangered or threatened wildlife or plant species habitats includes a sufficient buffer area to ensure continued survival of the population of the species as well as areas that serve an essential role as corridors for movement of endangered or threatened wildlife. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.

1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (known hereafter as Landscape Maps) are subject to the requirements of this section unless excluded in accordance with (c)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, [www.state.nj.us/dep/fgw/ensphome](http://www.state.nj.us/dep/fgw/ensphome).

2. Information on the areas mapped as endangered or threatened plant species habitat on the Department's Landscape Maps and the occurrence of endangered or threatened plant species habitat is available from the Department's Office of Natural Lands Management, Natural Heritage Database at PO Box 404, Trenton, New Jersey 08625-0404.

3. The required endangered or threatened wildlife or plant species habitat buffer area shall be based upon the home range and habitat requirements of the species and the development's anticipated impacts on the species habitat.

(b) Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an Endangered or Threatened Wildlife or Plant Species Impact Assessment as described at N.J.A.C. 7:7E-3C.2, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

(c) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:

1. Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.2; or

2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an Endangered or Threatened Wildlife Species Habitat Evaluation in accordance with N.J.A.C. 7:7E-3C.3.

(d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this rule in accordance with (c) above.

(e) If the Department becomes aware of an occurrence of an endangered or threatened plant species on a site that is not in the Natural Heritage Database, the Department will notify the applicant and the applicant shall demonstrate compliance with this rule in accordance with (b) above.

(f) The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and Non Game Species Conservation Act, N.J.S.A. 23:2A et seq. These lists include wildlife species that are endangered and threatened in New Jersey as well as wildlife species officially listed as endangered or threatened pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq. Because the lists are periodically revised by the Department in accordance with N.J.S.A. 23:2A-1 et seq., the lists are not published as part of this rule. The lists are found at N.J.A.C. 7:25-4.13 and 7:25-4.17, the rules adopted pursuant to the Endangered and Non Game Species Conservation Act. To obtain a copy of the most current Endangered and Threatened Wildlife lists, please contact the Department, Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, [www.state.nj.us/dep/fgw/ensphome](http://www.state.nj.us/dep/fgw/ensphome), or by writing to the Division at PO Box 400, Trenton, New Jersey 08625-0400.

(g) The Department is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, includes plant species determined by the Department to be endangered in the State as well as plant species officially listed as 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 Department, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the Department, Division of Parks and Forestry, Office of Natural Land Management, PO Box 404, Trenton, NJ 08625-0404.

(h) For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in the Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-6.24) are also considered endangered or threatened plant species.

(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).

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).

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

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

Rewrote the section.

Public Notice: Notice of Revision and Updating of Freshwater Wetlands Technical Manual to Incorporate Version 2.0 of the Landscape Maps.

See: 36 N.J.R. 1129(a).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In the introductory paragraph of (a), inserted "terrestrial and aquatic (marine, estuarine or freshwater)" and "as well as areas that serve an essential role as corridors for movement of endangered or threatened wildlife".

#### Case Notes

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

#### 7:7E-3.39 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 and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish 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.

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

In (a)3, deleted "Game" following "Fish" throughout.

#### Case Notes

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

#### 7:7E-3.40 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 is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7E-3.49(e) through (j).

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

(g) 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.

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

Inserted a new (e); and recodified former (e) through (g) as (f) through (h).

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

In (d), deleted "complies with the Rules on Coastal Zone Management and" preceding "is consistent with".

Petition for Rulemaking.  
See: 42 N.J.R. 2277(a), 2992(b).  
Petition for Rulemaking.  
See: 43 N.J.R. 451(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. 58:10-23.11bk 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 Department's Division of Solid and Hazardous Waste shall be obtained prior to the commencement of any hazardous substance investigations or cleanup 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.

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

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

In (c), substituted "Department's Division of Solid and Hazardous Waste shall" for "DEP's Division of Hazardous Waste management shall".

#### 7:7E-3.42 Excluded Federal lands

(a) Excluded Federal lands are those lands, the use of which is, by law, subject solely to the discretion of or held in trust by the Federal Government, its officers or agents. These lands are excluded from the coastal zone as required by Section 304 of the Federal Coastal Zone Management Act.

1. The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.

(b) Federal actions on excluded Federal lands that affect any land or water use, or natural resource of the coastal zone shall be consistent with the Coastal Zone Management rules to the maximum extent practicable. The effects on the land or water use or natural resource maybe direct, indirect, cumulative, secondary or reasonably foreseeable effects.

(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.

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

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

Rewrote the section.

#### 7:7E-3.43 Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(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 lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, the public access 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, 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 at N.J.A.C. 7:7E-3.23 and public access is provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, 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).

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

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

Rewrote (a); in (d), inserted "the public access to the waterfront rule at" preceding "N.J.A.C. 7:7E-8.11".

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote the introductory paragraph of (c); and rewrote (d).

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

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

In the introductory paragraph of (c) and in (d), substituted "access" for "trust rights".

#### **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. 7:9C), 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	Lakehurst Borough
Beachwood Borough	Little Egg Harbor Township
Berkeley Township	Manchester Township
Dover Township	Ocean Township
Eagleswood Township	South Toms River Borough
Lacey Township	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. 13:18A1 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 Department’s Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(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).

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

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

Administrative correction.

See: 37 N.J.R. 4245(a).

**7:7E-3.45 Hackensack Meadowlands District**

(a) The Hackensack Meadowlands District is a 19,485-acre area of water, coastal wetlands and associated uplands within the boundaries described in the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.).

(b) A coastal activity or development for which the New Jersey Meadowlands Commission requires a zoning certificate shall be consistent with the New Jersey Meadowlands Master Plan, as evidenced by receipt of a zoning certificate from the New Jersey Meadowlands Commission.

(c) In addition to (b) above, a coastal activity or development identified at (c)1 through 3 below shall be consistent with the New Jersey Meadowlands Master Plan as evidenced by receipt of a resolution or statement of consistency from the New Jersey Meadowlands Commission.

1. Municipal or county projects necessitating the expenditure of any public funds and requiring review and approval through a resolution from the New Jersey Meadowlands Commission in accordance with the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-12(b);

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;

2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;

3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;

4. A single crossing is used where feasible;

5. There is no reduction of the total width and volume of the water body passing under the bridge;

6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and

7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;

2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and

3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(i) 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).

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

Rewrote the section.

#### 7:7E-3.47 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.  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

#### 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 the flood hazard area design flood elevation as defined at and determined in accordance with N.J.A.C. 7:13.

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 Zone Management rules with particular attention given to N.J.A.C. 7:7E-3.40, Public open space, N.J.A.C. 7:7E-3.41, Special hazards areas, N.J.A.C. 7:7E-3.43, Special urban areas, N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights, N.J.A.C. 7:7E-7.14, High rise structures, N.J.A.C. 7:7E-8.11, Public access, 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 Department 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 rules that regulate upland development.

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)1i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 percent 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 percent 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 meet the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(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 restriction in favor of the Department. The conservation restriction 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. Public access to and along the main route of the Hudson Waterfront Walkway and on the adjacent piers shall be on a 24-hour basis unless it can be demonstrated to the Department that strict compliance with this provision is not practicable based on the risk of injury from substantial permanent obstructions or proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property that would make 24-hour access not feasible.

2. 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 rule 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 compliance with this rule, and the development, as proposed, would remain in compliance with N.J.A.C. 7:7E-3.50. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the

Department for guidance when conceptual plans have been prepared.

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.

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

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

In (e), substituted "restriction" for "easement" throughout introductory paragraph.

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

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

In (c), substituted "Zone Management rules" for "Resource and Development Policies"; in (d), substituted "Department" for "Division" and "rules" for "policies" and deleted the last sentence in the introductory paragraph; in (e)1, substituted "Department" for "Division"; rewrote (f). Amended by R.2004 d.43, effective January 20, 2004.

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

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

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

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

Rewrote (a)5 and (d)1ix.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (c), inserted "N.J.A.C. 7:7E-3.50, Lands and waters subject to public trust rights," and substituted "Public trust rights" for "Public access to the waterfront"; in the introductory paragraph of (e); substituted "restriction" for "easement" twice; rewrote (e)1; deleted former (e)2; recodified former (e)3 as (e)2; and in (f), inserted "and the development, as proposed, would remain in compliance with the public trust rights rule, N.J.A.C. 7:7E-8.11".

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

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

In (c), substituted "access" for the second occurrence of "trust rights"; rewrote (e)1; and in (f), inserted a comma following "with this rule"; and substituted "N.J.A.C. 7:7E-3.50" for "the public trust rights rule, N.J.A.C. 7:7E-8.11".

#### Law Review and Journal Commentaries

Environmental Law. On the Waterfront. Lewis Goldshore and Marsha Wolf, 157 N.J.L.J. 1180.

#### 7:7E-3.49 Atlantic City

(a) Atlantic City is those lands within the municipal boundary of the City of Atlantic City.

(b) "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

1. Casino hotel 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. For the purpose of this section, the State Marina area is the area bounded by Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to Magellan Avenue, across Delta Basin.

i. Casino hotel 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. Casino hotel development is discouraged along the access highways to Atlantic City that is, along the entire Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal.

iii. Casino development is 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.

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

i. Garden Pier;

ii. Steel Pier;

iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by the Federal Emergency Management Agency for a hotel to be located over the water.

3. The development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management.

4. A minimum of 50 percent of the total floor area of any building constructed on the pier shall be devoted to publicly accessible, non-casino entertainment and recreation.

5. The height of structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements, amusement rides, and wind turbines, which shall not exceed 200 feet. The height of the wind turbine shall be measured from the decking of the pier to the tip of the blade at its highest position. There shall be no occupancy above the 100-foot elevation.

6. The height of the structures on the pier shall not exceed 50 feet above the deck surface of the Boardwalk within 100 feet of the property line in common with the Boardwalk.

7. A building setback of 50 feet shall be maintained from the seaward end of the pier. If a building is 50 feet or more in height, an additional 20 feet setback from the seaward end of the pier is required.

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude such passage;

ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach on the southwesterly side of the pier, where the pier intersects the Boardwalk and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk;

iii. Publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas, shall be provided at the seaward end of the pier at the level of the deck surface of the Boardwalk. The publicly accessible open space shall occupy the entire width of the pier (parallel to the ocean shoreline in a northeast-southwest direction) for a distance of 50 feet landward from the end of the pier. The area between 30 and 50 feet inland from the end of the pier may be occupied by outdoor dining and food concessions and be partially enclosed, through the use of awnings, canopies, and windbreaks. No other structures shall be placed in this area;

iv. The public open space shall have unrestricted access, at no cost, and shall not be limited to patrons of the commercial or hotel facilities;

v. An open-air public access walkway of at least 18 feet in width shall be provided perpendicular to the Boardwalk, along the entire southwestern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vi. An open-air public access walkway of at least 12 feet in width shall be provided perpendicular to the Boardwalk, along the entire northeastern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vii. Public restrooms, showers and changing areas shall be provided on the pier, immediately adjacent to the Boardwalk and the stairs from the beach on either side of the pier. Alternatively, the public restrooms, showers and changing areas may be located immediately adjacent to the Boardwalk provided these facilities are:

- (1) Owned and maintained by the pier owner; and
- (2) Located no further than 200 linear feet from the pier; and

viii. Signage shall be provided along the Boardwalk at the entrance to the piers indicating the location and availability of the public access features listed in (c)8i through vii above.

9. Service corridors to the piers shall be located beneath the Boardwalk, or if service to the piers is to be provided over the Boardwalk, it shall be restricted to the period between 12 o'clock midnight and 8:00 A.M.

10. The size and spacing of the pilings necessary to support the proposed development on the piers shall comply with the following conditions:

- i. The pilings shall not cause significant adverse long-term impact to natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities;
- ii. The pilings shall not cause significant adverse impacts to the local sediment supply;
- iii. The pilings shall not create net adverse shoreline sand movement downdrift, including erosion or shoaling; and
- iv. Pilings shall be spaced so as to provide linear access along the dry beach as required by (c)8i above.

11. Parking is prohibited on the piers.

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless the pier is associated with a marina which meets the Resort Recreational Use rule, N.J.A.C. 7:7E-7.3, and the Marina Development Standards at N.J.A.C. 7:7E-7.3A or meets the standards at N.J.A.C. 7:7E-3.49(c).

(e) The following standards apply to all development proposed in the Boardwalk right-of-way as defined at (e)1 below:

1. For the purposes of this subsection, Boardwalk right-of-way means the shore-parallel promenade located immediately adjacent to the ocean and inlet beach occupying a 20 foot right-of-way from Jackson Avenue to Roosevelt Place, a 40 foot right-of-way from Roosevelt Place to Bellevue Avenue, a 60 foot right-of-way from Bellevue Avenue to Rhode Island Avenue, a 40 foot right-of-way from Rhode Island Avenue to Atlantic Avenue, and a 20 foot right-of-way from Atlantic Avenue to Caspian Avenue as shown on the 1999 Atlantic City tax duplicate.

2. Elevated pedestrian bridges are acceptable provided they meet the criteria of (e)2i through vi below:

i. The elevated pedestrian bridge shall be designed and used only for pedestrian movement and shall not provide for or be used for vehicular traffic, commercial space, storage or advertisement, either attached to or positioned within the elevated pedestrian bridge;

ii. The lowest portion of the elevated pedestrian bridge shall be elevated a minimum of 14 feet six inches above the deck surface of the Boardwalk;

iii. The elevated pedestrian bridge shall be a maximum of 20 feet wide and 15 feet high;

iv. The elevated pedestrian bridge shall be transparent with the exception of the support structure;

v. The elevated pedestrian bridge shall connect to an existing pier as defined at (c)1 above; and

vi. There shall be no more than one pedestrian bridge per existing pier.

3. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (e)3i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and

iii. There is an eight-foot clearance between the structure and the deck surface of the Boardwalk.

4. Signs which are not awnings, canopies, marquees or other roof extensions are acceptable provided they meet the criteria of (e)4i through iii below:

i. The structure is not enclosed;

- ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and
  - iii. There is a 14 foot six inch clearance between the structure and the deck surface of the Boardwalk.
5. Any development that does not meet the standards in (e)2, 3 or 4 above is prohibited.
- (f) Development is discouraged in the street rights-of-way listed in (f)1 and 2 below as shown on the 2008 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, except in accordance with the provisions in (f)4 below.
- 1. That portion of the following streets located south-east of Pacific Avenue:
    - i. Lincoln Place (50 foot right-of-way);
    - ii. Montpelier Avenue (60 foot right-of-way);
    - iii. Texas Avenue (50 foot right-of-way);
    - iv. Indiana Avenue (60 foot right-of-way);
    - v. New York Avenue (50 foot right-of-way);
    - vi. Tennessee Avenue (60 foot right-of-way); and
    - vii. Rhode Island Avenue (50 foot right-of-way);
  - 2. That portion of the following streets located northeast of Rhode Island Avenue:
    - i. Atlantic Avenue (100 foot right-of-way);
    - ii. Pacific Avenue (60 foot right-of-way); and
    - iii. Grammercy Place (60 foot right-of-way);
  - 3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 2008 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon.
  - 4. The following development is conditionally acceptable provided that mitigation is performed pursuant to (j) below:
    - i. Signage, extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk; and
    - ii. Below-grade utilities, roads, sidewalks, public stairs and ramps that provide access to the Boardwalk.
- (g) Development is acceptable southeast of Pacific Avenue in or over the right-of-way of a street listed in (g)1 through 5 below as shown on the 2008 Atlantic City tax duplicate provided that it either meets the standards of (g)6 and 7 below or of (i) below.
- 1. Iowa Avenue (72 foot right-of-way);
  - 2. Christopher Columbus Boulevard (50 foot right-of-way);
  - 3. Park Place (50 foot right-of-way);
  - 4. Pennsylvania Avenue (72 foot right-of-way); and
  - 5. New Jersey Avenue (50 foot right-of-way).
6. With the exception of any existing pedestrian bridges on the 2008 Atlantic City tax duplicate, a corridor equal to the right-of-way width and 50 feet in height shall be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk. The entire corridor shall be unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public.
7. Mitigation is provided in accordance with (j) below.
- (h) Development is acceptable in or over the right-of-way of any street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) or (g) above provided that it meets the standards of (i) below or mitigation is provided in accordance with (j) below.
- (i) The following may be constructed without mitigation in or over the right-of-way of an existing street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) above:
- 1. Elevated pedestrian bridges are acceptable provided they meet the criteria of (i)1i and ii below:
    - i. The elevated pedestrian bridge meets the standards at (e)2i through iv above; and
    - ii. The elevated pedestrian bridges shall be no closer to one another than 1,000 feet, as measured along the street right-of-way;
  - 2. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (i)2i through iii below:
    - i. The structure is not enclosed;
    - ii. The structure extends no more than 8 feet into the street right-of-way; and
    - iii. There is an eight-foot clearance between the structure and the surface of the sidewalk;
  - 3. Signs which are not awnings, canopies, marquees, or other roof extensions are acceptable provided they meet the criteria of (i)3i through iii below:
    - i. The structure is not enclosed;
    - ii. The structure extends no more than eight feet into the street right-of-way; and
    - iii. There is a 14 foot six inch clearance between the structure and surface of the sidewalk; and
  - 4. Below-grade utilities, roads, sidewalks, and public stairs and ramps providing access to the Boardwalk approved as mitigation under (j) below.
- (j) Mitigation shall be provided for development within the right-of-way of a street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue, except for

those developments listed in (i) above, in accordance with the following:

1. The amount to be paid in mitigation shall be calculated as follows:

i. For development within a street right-of-way at grade, or below a height of 14 feet six inches above grade, the amount of mitigation is five times the property tax on the assessed value of the right-of-way area to be developed. The assessed value is an average of the value of the land on both sides of the area to be developed; and

ii. For development within a street right-of-way at a height of 14 feet six inches or greater above grade, the amount of mitigation is three times the Atlantic City tax on the assessed value of the right-of-way area to be covered by development. The assessed value is an average of the value of the land on both sides of the right-of-way area to be covered by development;

2. Mitigation monies shall be paid in full to the Casino Reinvestment and Development Authority prior to the commencement of construction; and

3. Mitigation monies paid to the Casino Reinvestment and Development Authority in accordance with (j)1 and 2 above, shall be designated only for acquisition and/or improvement of lands for public access and public parks along the oceanfront and inlet. If the money is used for these improvements within a street-end, the money shall be used only in a street-end listed in (f) above.

(k) Standards relevant to intercept parking are as follows:

1. Each hotel-casino facility located in Atlantic City shall provide one of every five non-Absecon Island 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. Nobsecon Island and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon Island and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon Island 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.

2. Alternatives that would reduce vehicle miles traveled and peak hour employee travel demand may be substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the De-

partment of Transportation. The Department will approve alternatives, which it determines will reduce vehicle miles traveled 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 limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

3. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island resident employees. This information shall be provided to the Department along with the necessary data used to establish the vehicle miles traveled 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 Department to verify the success of the proposed traffic reduction program, update the employee travel characteristics pattern, and serve as a basis for future adjustments if necessary.

(l) Development in Atlantic City shall be constructed in conformance with this section and with all other applicable provisions in this chapter.

New Rule, R.2000 d.45, effective February 7, 2000.

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

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

Rewrote (f) and (g).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Rewrote (c)5.

### 7:7E-3.50 Lands and waters subject to public trust rights

(a) Lands and waters subject to public trust rights are tidal waterways and their shores, including both lands now or formerly below the mean high water line, and shores above the mean high water line. Tidal waterways and their shores are subject to the Public Trust Doctrine and are held in trust by the State for the benefit of all the people, allowing the public to fully enjoy these lands and waters for a variety of public uses. Public trust rights include public access which is the ability of the public to pass physically and visually to, from and along the ocean shore and other waterfronts subject to public trust rights and to use these lands and waters for activities such as navigation, fishing and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public trust rights also include the right to perpendicular and linear access.

(b) Public access to lands and waters subject to public trust rights shall be provided in accordance with the public access rule, N.J.A.C. 7:7E-8.11. Development that does not comply with N.J.A.C. 7:7E-8.11, Public access, is discouraged in lands and waters subject to public trust rights.

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

New Rule, R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c).

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

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

Rewrote the section.

## SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

### 7:7E-3A.1 Purpose and scope

(a) This subchapter sets forth the standards applicable to routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks. These standards are referenced at N.J.A.C. 7:7E-3.16, Dunes; N.J.A.C. 7:7E-3.17, Overwash areas; N.J.A.C. 7:7E-3.19, Erosion hazard areas; N.J.A.C. 7:7E-3.22, Beaches; and N.J.A.C. 7:7E-7.11, Coastal engineering. In addition, N.J.A.C. 7:7E-3A.2, 3A.3, and 3A.4 are the standards for the coastal general permit for beach and dune maintenance activities, N.J.A.C. 7:7-7.6.

1. The standards applicable to routine beach maintenance, including debris removal and clean-up; mechanical sifting and raking; maintenance of access ways; removal of sand from street ends; boardwalk promenades and residential properties; repairs or reconstruction of existing gazebos and dune walkover structures, and limited sand transfers from the lower beach to the upper beach or alongshore are found at N.J.A.C. 7:7E-3A.2;

2. The standards that apply to the restoration of all beaches that are impacted by coastal storms with a recurrence interval to or exceeding a five-year storm event are found at N.J.A.C. 7:7E-3A.3;

3. The standards for dune creation and maintenance including the placement and/or repair of sand fencing, 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 are found at N.J.A.C. 7:7E-3A.4; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. 7:7E-3A.5.

(b) Beach and dune maintenance activities subject to this subchapter shall comply with any applicable management plan for protection of State and Federally listed threatened and endangered species, as approved by the Department and the U.S. Fish and Wildlife Service.

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

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

Former N.J.A.C. 7:7E-3A.1, Standards applicable to routine beach maintenance, recodified to N.J.A.C. 7:7E-3A.2.

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

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

In the introductory paragraph of (a), inserted a comma following "3A.3"; and added (b).

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

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

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

### Case Notes

New Jersey Department of Environmental Protection's broad scope of authority under the New Jersey Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 through 13:19-21, included jurisdiction to review fees proposed by a private beach club for the public's use of its beach. *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40, 879 A.2d 112, 2005 N.J. LEXIS 932 (2005).

### 7:7E-3A.2 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand accumulated beneath a boardwalk; 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, except as provided at (a)9 below.

1. All routine beach maintenance activities shall be conducted in a manner that does not destroy, jeopardize, or adversely modify endangered or threatened wildlife or plant species habitat; and shall not jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species.

2. 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 accordance 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.

3. 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 Division of Land Use Regulation is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

4. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*), Least Terns (*Sternula antillarum*), and Black Skimmers (*Rynchops niger*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting seasons. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (a)4i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no beach raking, other mechanical manipulation of the beach, or the use of non-emergency vehicles shall take place between March 15 and August 31 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (a)4i above, but is subsequently found to contain a nest or unflighted chick of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles shall take place between March 15 and August 31 in those areas.

iv. The restrictions contained in (a)4 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7.

5. In areas documented by the Department as supporting known occurrences of Federally listed endangered or threatened plant species such as seabeach amaranth (*Amaranthus pumilus*), or known occurrences of State listed endangered plant species, such as sea-beach

knotweed (*Polygonum glaucum*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles shall take place between May 15 and November 30.

i. The Department, in cooperation with the U.S. Fish and Wildlife Service, shall develop a list of present and documented habitat areas where this restriction shall apply based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. If a particular beach area is not identified on the updated list as described in (a)5i above, but is subsequently found to contain an occurrence of a Federally listed endangered or threatened plant species, or a State listed endangered plant species, the Department shall notify the permittee and no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles shall take place between May 15 and November 30 in those areas.

iii. The restrictions contained in (a)5 above may be waived if the Department determines that the identified areas do not support occurrences of Federally listed endangered or threatened plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7.

6. Mechanical sifting and beach raking shall be limited to recreational beach areas only. For the purposes of this subsection, "recreational beach area" means all areas within 100 yards of a staffed lifeguard stand.

7. The excavation of sand accumulated beneath a boardwalk is conditionally acceptable provided:

i. The elevation of the area after the excavation is completed is not lower than either the upper beach berm design template for an engineered beach, or, for a non-engineered beach, the elevation of the existing beach berm;

ii. The excavated sand is relocated to the seaward toe of the existing dune, if present, or on the upper beach berm;

iii. Where breaching of an existing dune is necessary to allow for sand excavation, the following apply:

(1) The area of the dune breached shall be minimized; and

(2) The dune shall be restored to pre-existing conditions immediately upon excavation of the sand; and

iv. Where sand is excavated from the landward slope of the dune, the slope shall be:

(1) Restored to the preexisting conditions and in no case be steeper than three horizontal to one vertical; and

(2) Revegetated in accordance with N.J.A.C. 7:7E-3A.4(b) and (c).

8. Any sand excavated from boardwalks, street ends, and single-family lots shall be placed on the seaward toe of the existing dune, if present, or on the upper beach berm.

9. Placement of temporary sand fencing during the winter months, which results in the accumulation of sand that is later redistributed on the beach berm, is conditionally acceptable, provided:

i. The sand fencing is:

(1) Placed a minimum of 15 feet waterward of the seaward toe of any existing dune or, if no dune is present, from the waterward side of any structure;

(2) Installed no earlier than October 15 and removed prior to the Memorial Day weekend, unless threatened and endangered species timing restrictions apply;

(3) Installed in a manner that does not prevent public access along the tidal water and does not restrict public access to the beach from existing public access points; and

ii. The accumulated sand that is redistributed:

(1) Is placed on the beach;

(2) Does not result in the grading of the beach below the beach berm design template for an engineered beach or, for a non-engineered beach, below the elevation of the beach berm elevation existing prior to the redistribution; and

(3) Where feasible, does not result in the grading of the beach face to a slope steeper than 10 horizontal to one vertical.

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

1. All sand transfer activities shall be conducted in a manner that does not destroy, jeopardize, or adversely modify endangered or threatened wildlife or plant species habitat; and shall not jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species.

2. 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 vol-

ume from the previous scraping activities has been fully restored.

3. 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.

4. 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 Department or Soil Conservation Service standards. Fencing shall be in place within 30 calendar 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).

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

6. In areas of documented habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*), Least Terns (*Sternula antillarum*), and Black Skimmers (*Rynchops niger*), no sand transfers shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting season. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (b)6i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no sand transfers shall take place between March 15 and August 31 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (b)6i above, but is subsequently found to contain a nest or unflighted chick of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no sand transfers shall take place between March 15 and August 31 in those areas.

iv. The restrictions contained in (b)6 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat due to beach erosion or other causes. Requests for such a waiver shall be made in writing to

the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7.

7. In areas documented by the Department as supporting known occurrences of Federally listed endangered or threatened plant species, or known occurrences of State listed endangered plant species, no sand transfers shall take place between May 15 and November 30.

i. The Department, in cooperation with the U.S. Fish and Wildlife Service, shall develop a list of present and documented habitat areas where this restriction shall apply, based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. If a particular beach area is not identified on the updated list as described in (b)7i above but is subsequently found to contain an occurrence of a Federally listed endangered or threatened plant species, or an occurrence of a State listed endangered plant species, the Department shall notify the permittee and no sand transfer on the beach shall take place between May 15 and November 30 in those areas.

iii. The restrictions contained in (b)7 above may be waived if the Department determines that the identified areas do not support occurrences of a Federally listed endangered or threatened plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7E-1.7.

8. Sand transfers to or from wetland areas that may exist on a beach are not authorized by this permit.

9. 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.

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

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

Rewrote the section.

Recodified from N.J.A.C. 7:7E-3A.1 by R.2003 d.60, effective February 3, 2003.

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

Former N.J.A.C. 7:7E-3A.2, Standards applicable to emergency post-storm beach restoration, recodified to N.J.A.C. 7:7E-3A.3.

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

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

Rewrote the section.

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

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

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

### 7:7E-3A.3 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. Emergency post-storm beach restoration projects not specifically identified in this section may be authorized by the Department through an Emergency Permit authorization pursuant to N.J.A.C. 7:7-1.7 if the Department determines that there is an imminent threat to lives or property.

(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 alongshore transfer of sand on a beach; the placement of concrete, rubble, or rock; and the placement of sand filled geotextile bags or tubes.

(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 alongshore 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 rescarped 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 geotubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. In areas where dunes are present, the geotextile bags or geotubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself;

2. In areas where dunes are not present, the geotextile bags or geotubes shall be placed at the landward limit of the beach and in no case be placed below the mean high water line;

3. The geotextile bags or geotubes shall be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the geotextile bags or geotubes;

4. The crest and seaward side of the geotubes shall be buried to achieve a gradual, uniform slope from the upper beach to the crest of the geotextile bag or geotube;

5. The length of shoreline along which the geotextile bags or geotubes are installed shall not exceed a cumulative length of 500 feet;

6. Fill material for the geotextile bags or geotubes shall be from an upland source, excluding the beach and dune, or from suitable dredged material;

7. The geotextile bag or geotube shall be installed parallel to the shoreline; and

8. The geotextile bag or geotube shall be installed with the manufacturer's recommended scour apron.

(g) The placement of sand, gravel, rubble, concrete, rock, 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, rock, or other inert material;

2. The placement of concrete, rubble, or rock shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a Department-approved, engineered design for permanent shore protection;

3. All concrete, rubble, or rock placed on the beach shall be removed within 90 calendar days, unless an application is filed within 90 calendar days of the placement of the material for Department approval of an engineered design for permanent shore protection. If a

permit application is filed within this period, the material may remain on the beach until a determination is made on the application; and

4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

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

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

Rewrote (a) and (f).

Recodified from N.J.A.C. 7:7E-3.2 and amended by R.2003 d.60, effective February 3, 2003.

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

In (g)3, substituted "Department" for "DEPE". Former N.J.A.C. 7:7E-3.3, Standards applicable to dune creation and maintenance, recodified to N.J.A.C. 7:7E-3.4.

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

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

In (b), substituted ", rubble, or rock" for "or rubble", and deleted the last sentence; in the introductory paragraph of (e), substituted "alongshore" for "longshore"; in (f)6, substituted ", or from suitable dredged material;" for "; and"; in (f)7, substituted "; and" for a period at the end; added (f)8; in the introductory paragraph of (g) and (g)1, inserted "rock, "; in (g)2, substituted "concrete, rubble, or rock" for "concrete or rubble" and "Department-approved" for "DEP approved"; and rewrote (g)3.

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

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

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

#### Case Notes

In an action involving the interpretation of a restrictive covenant in a beach-front community, because the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., and a local zoning ordinance did not: (1) govern the same field; and, (2) have the same purpose or cover the same subject matter, the statute did not preempt the ordinance; moreover, the appeals court did not believe that the New Jersey Legislature intended landowners to circumvent local zoning ordinances that regulated fences by invoking CAFRA, especially when the so-called dune at issue between a landowner and her neighbor did not protect the beach from erosion as dunes generally should. *Bubis v. Kassin*, 184 N.J. 612, 878 A.2d 815, 2005 N.J. LEXIS 949 (2005).

#### 7:7E-3A.4 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 shall be native to New Jersey and should be limited to the following coastal species, to

the maximum extent practicable: American Beachgrass (*Ammophila breviligulata*), Coastal Panicgrass (*Panicum amarulum*), Bayberry (*Myrica pensylvanica*), Beach Plum (*Prunus maritima*), Seaside Goldenrod (*Solidago sempervirens*), Beach Pea (*Lathyrus japonicus*), Bitter Panicgrass (*Panicum amarum*), Switchgrass (*Panicum virgatum*), Partridge Pea (*Chamaecrista fasciculata*), Eastern red cedar (*Juniperus virginiana*), Groundsel tree (*Baccharis halimifolia*), and 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 to the maximum extent practicable, 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.

3. A landscape plan is required as part of any dune creation activity. The landscape plan shall depict the proposed vegetative community on the dune and include:

- i. The species and quantity of each species to be planted;
- ii. The spacing of all plantings;
- iii. The stock type (plugs, potted, seed); and
- iv. The source of the plant material.

(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 Department at the address set forth at N.J.A.C. 7:7E-1.7.

(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.

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

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

In (c), deleted "Japanese Sedge (*Carex kobomugi*)", "Rugosa Rose (*Rosa rugosa*)", "Japanese Black Pine (*Pinus thunbergii*)" and "Dusty Miller (*Artemisia stelleriana*)" in the introductory paragraph.

Recodified from N.J.A.C. 7:7E-3A.3 and amended by R.2003 d.60, effective February 3, 2003.

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

Former N.J.A.C. 7:7E-3A.4, Standards applicable to the construction of boardwalks, recodified to N.J.A.C. 7:7E-3A.5.

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

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

Rewrote the introductory paragraph of (c); in (c)2, substituted "to the maximum extent practicable" for "as much as possible"; added (c)3; and rewrote (d)1.

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

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

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

**7:7E-3A.5 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.

Recodified from N.J.A.C. 7:7E-3A.4 by R.2003 d.60, effective February 3, 2003.

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

\_\_\_\_\_

**SUBCHAPTER 3B: INFORMATION REQUIRED IN TIDAL WETLAND AND INTERTIDAL AND SUBTIDAL SHALLOWS MITIGATION PROPOSALS**

**7:7E-3B.1 Purpose and scope**

(a) This subchapter sets forth the standards for mitigation proposals pursuant to N.J.A.C. 7:7E-3.15 and 3.27.

1. Mitigation for the loss of tidal wetlands and intertidal and subtidal shallows shall comply with the Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E, and include an appropriate buffer area; and
2. Mitigation for the loss of freshwater wetlands shall comply with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, Coastal Permit Program rules, N.J.A.C. 7:7, and the Coastal Zone Management rules, N.J.A.C. 7:7E.

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

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

Former N.J.A.C. 7:7E-3B.1, Mitigation proposal requirements, recodified to N.J.A.C. 7:7E-3B.2.

**7:7E-3B.2 Tidal wetland and intertidal and subtidal shallows mitigation proposal requirements**

(a) All tidal wetland and intertidal and subtidal shallows mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland or intertidal and subtidal shallows mitigation proposal. The introduction shall include the following:

i. The amount, in acres, of:

(1) Wetlands to be created, enhanced, or restored, in accordance with N.J.A.C. 7:7E-3.27 and the associated wetlands buffer area required by N.J.A.C. 7:7E-3.28; or

(2) The amount of intertidal and subtidal shallows to be created as required by N.J.A.C. 7:7E-3.15;

ii. The goals of the mitigation project in terms of either (a)1ii(1) or (2) below:

(1) For creation, restoration or enhancement of wetlands, the wetlands types, values, and functions, and a discussion of how the mitigation proposal will satisfy those goals. For example, the goal of the wetlands mitigation project is to establish a low marsh wetland complex dominated by *Spartina alterniflora* that is flowed twice daily by the tide; or

(2) For intertidal and subtidal shallows creation, the area, depth, and duration of tidal inundation;

iii. The reasons why the mitigation site is an appropriate site for meeting the goals in (a)1ii above, and the aspects of the site that will ensure the success of the mitigation project;

iv. A copy of the USGS quad map(s) showing the location of the permitted activity and showing the mitigation site with the state plane coordinates of the mitigation site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear mitigation projects 2,000 feet in length and longer, additional coordinates shall be provided at each 1,000 foot interval; and

v. The New Jersey Wetlands/Tidelands Map number(s) for the development and for the mitigation site, if the mitigation site is at a different location;

2. A description (such as size, type, vegetation, hydrology, and wildlife use) of the wetlands or intertidal and subtidal shallows that are being destroyed or disturbed by the permitted activity;

3. Photographs of the proposed mitigation site showing topography, vegetation, tidal streams and wetland features;

4. The names and addresses of all current and proposed owner(s) of the mitigation site;

5. The lot, block, municipality and county of the proposed mitigation site. This information shall also be visible on the front page of the proposal and on the site plan;

6. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, and hydrology, wildlife and adjacent land use;

7. A projected water budget for the proposed mitigation site. The water budget should detail the sources of water for the mitigation project as well as the water losses. The

projected water budget should document that an ample supply of water is available to create, enhance, or restore wetland conditions, as applicable. The water budget must contain sufficient data to show that the mitigation project will indefinitely in the future have sustained wetland hydrology, or for intertidal and subtidal shallows, that the mitigation project will have sustained tidal inundation. The water budget shall include the following regional information for the proposed and existing site conditions:

- i. The seasonal high water table;
  - ii. The tidal range (low, high and spring high tide) over the course of a month;
  - iii. For wetland creation, restoration or enhancement, the elevation of the existing reference wetland system in the vicinity of the project site, if applicable; and
  - iv. For wetland creation, restoration or enhancement, the salinity range of adjacent waters;
8. For wetland creation, restoration and enhancement, a detailed discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, as well as a demonstration that the soil texture and pH are appropriate for the proposed wetland community;
9. For wetland creation, restoration and enhancement, a landscape plan showing the proposed vegetative community on the proposed mitigation site, including the buffer area defined at N.J.A.C. 7:7E-3.28. The landscape plan shall include the following:
- i. The species;
  - ii. The quantity and location of each species;
  - iii. The stock type (for example, plugs, potted, seed);
  - iv. The source of the plant material;
  - v. The proper time to plant; and
  - vi. Any appropriate substitutions as approved by the Department;
10. For wetland creation, restoration and enhancement, a preventative maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented. The plan shall describe the measures to be taken if a problem with invasive or noxious plants or predation occurs during the construction or monitoring period. The installation of goose fences to control problems resulting from the presence of geese in the State is encouraged;
11. A draft conservation restriction that meets the requirements of N.J.A.C. 7:7E-3.27(h)6. A model conservation restriction is available from the Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 777-0454;
12. A metes and bounds description of the proposed mitigation site. For wetland creation, restoration or enhancement, the metes and bounds description shall include the buffer area as defined at N.J.A.C. 7:7E-3.28;
13. An estimate of the actual cost of carrying out the construction of the mitigation project. The cost estimate shall include the value of the land, site preparation costs, engineering costs, plantings costs, environmental consul-

tant fees, attorney fees, construction costs, supervising construction fees and monitoring costs. The cost estimate of the project will be used when determining the amount of the financial assurance required;

14. A site plan for the mitigation project which includes:
- i. The lot, block, municipality and county of the proposed mitigation site; and
  - ii. Existing and proposed elevations and grades of the mitigation site, and off-site elevations and grades when the proposed elevations on the mitigation project site will create potentially unstable conditions on the adjoining parcel or create slopes greater than 15 percent. All existing and proposed elevations and grades must be shown in at least one foot intervals. For wetland creation, restoration or enhancement, only, the slope of the proposed mitigation site shall have a run to rise ratio no greater than 10 feet vertical to one foot horizontal (10:1) along a created buffer area as well as along any berms that are intended to function as water control structures or berms created along a stream;
  - iii. Pre and post-construction plan views and cross sectional views of the mitigation site;
  - iv. For wetland creation, restoration or enhancement only, the buffer area required under N.J.A.C. 7:7E-3.28;
  - v. For wetland creation, restoration or enhancement only, a detail that shows, or a statement indicating the soil amendments and the seed stabilization mix, if any, to be used on the mitigation site;
15. A construction schedule including projected dates of excavation, planting, fertilizing, as appropriate;
16. Certification demonstrating that the proposed mitigation will not adversely affect districts, buildings, structures, or archaeological sites that are listed in, or eligible for listing in, the National Register of Historic Places. If during construction of the mitigation site the mitigator encounters National Register of Historic Places listed or eligible historic districts, buildings, structures, or archaeological sites, the mitigator shall notify the Department immediately and proceed as directed by the Department;
17. A financial assurance that meets the requirements at N.J.A.C. 7:7E-3B.3; and
18. Any additional information the Department determines necessary to review an individual mitigation project.

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

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

In (a)10, substituted "recorded" for "registered"; in (a)10 and 11, substituted "conservation" for "deed" throughout.

Recodified from N.J.A.C. 7:7E-3B.1 and amended by R.2003 d.60, effective February 3, 2003.

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

Rewrote the section.

**7:7E-3B.3 Financial assurance requirements**

(a) A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or an entity that is exempt from this requirement under Federal law. The letter of credit or other financial assurance shall be obtained from a firm licensed to do business in New Jersey.

(b) The letter of credit or other financial assurance shall be in the amount sufficient for the Department to hire an independent contractor to complete and maintain the mitigation project should the mitigator default. The financial assurance shall be in the following amounts:

1. For wetland creation, restoration or enhancement, and for intertidal and subtidal shallows creation, a construction assurance, equal to 115 percent of the estimated cost of completing the mitigation; and

2. For wetland creation, restoration or enhancement, a maintenance assurance to ensure success of the mitigation through the completion of the monitoring period, equal to 115 percent of the estimated cost of maintaining and monitoring the mitigation project.

(c) The financial assurance will be reviewed annually by the Department and shall be adjusted to reflect current economic factors.

(d) The portion of the financial assurance required under (b)1 above shall be released upon the Department's determination that the construction phase and planting phase, if any, of the mitigation project have been successfully completed in accordance with the mitigation proposal.

(e) The portion of the financial assurance required under (b)2 above shall be released upon the Department's finding that the mitigation project is successful in accordance with N.J.A.C. 7:7E-3B.5.

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

**7:7E-3B.4 Department review of mitigation proposal**

(a) The Department shall, within 60 days after receiving a mitigation proposal, review the proposal for completeness and:

1. Request any addition information; or
2. Declare the mitigation proposal complete.

(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

(c) Prior to the commencement of mitigation, the mitigator shall submit proof that the conservation restriction required at N.J.A.C. 7:7E-3B.2(a)11 was recorded with the County Clerk (or the Registrar of Deeds and Mortgages, if applicable).

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

**7:7E-3B.5 Post-construction monitoring of the mitigation site**

(a) All mitigation projects subject to this subchapter shall perform post-construction monitoring in accordance with (a)1 or 2 below.

1. All tidal wetland mitigation sites shall demonstrate compliance with each post-construction monitoring season specified in (b) 1, 2 and 3 below. Post-construction monitoring shall begin the first full growing season after the construction/planting of the mitigation project is completed. A full growing post-construction monitoring season, in general, is the period from the beginning of April through the beginning of October, depending upon the location of the site in the State.

2. All intertidal and subtidal shallows mitigation sites shall demonstrate compliance with the post-construction monitoring standards at (c)1 and 2 below for a lunar month after construction of the mitigation site is completed. A lunar month is the period between two successive full moons.

(b) For wetland mitigation projects, the post-construction monitoring required at (a)1 above shall meet the standards listed below for each full growing post-construction monitoring season. Failure to meet the standards for a given post-construction monitoring season described at (b)1, 2 or 3 below shall result in a remedial action by the mitigator. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remedial action may include, but not be limited to, regrading, replanting, or relocation of the mitigation site.

1. For the first post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at (d)1i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described in (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Documentation through soil borings, demonstrating that the appropriate soil was used on the site as indicated in the mitigation approval;

ii. As-built plans, demonstrating that the site was graded and planted in accordance with the approved mitigation plans;

- iii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating the mitigation site is a wetland;
  - iv. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.
2. For the second post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at (b)2i and ii below are satisfied. If the standards at (b)2i and ii listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.
- i. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site continues to be a wetland;
  - ii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.
3. For the final post-construction monitoring season to be considered successful, the post-construction monitoring report described at (d) below shall provide documentation demonstrating that the standards listed at (b)3i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.
- i. Documentation demonstrating that the approved goals of the wetland mitigation project (including the required buffer area) prepared pursuant to N.J.A.C. 7:7E-3B.2(a) and the permit are satisfied. This documentation shall include information concerning invasive/noxious plant species and the percent coverage of these species on the site;
  - ii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland. The documentation shall include, when appropriate, monitoring well data, stream gauge data, photographs and field observation notes collected throughout the monitoring period;
  - iii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved;
  - iv. A field delineation of the wetlands at the wetlands mitigation project site, based on techniques specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989) here incorporated by reference. This manual is available from the Department's Office of Maps and Publications at (609) 777-1038 for a fee; and
  - v. A plan showing the flagged wetland delineation required at (b)3iv above. The wetland line shall include global positioning system data points.
- (c) For intertidal and subtidal shallows mitigation projects, the post-construction monitoring required at (a)2 above shall comply with (c)1 and 2 below. If one or more of the standards listed below are not satisfied, then the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards listed below are satisfied. Failure to meet the standards for a given post-construction monitoring season described at (c)1 or 2 below shall result in a remedial action. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remediation may include, but not be limited to, regrading of the mitigation site. The mitigator shall submit:
1. As-built plans with soundings demonstrating that the site was graded according to the approved mitigation plans; and
  2. Documentation demonstrating that the mitigation site meets the definition of an intertidal subtidal shallow, that is it is permanently or twice daily submerged from the spring high tide to a depth of four feet below mean low water.
- (d) The post-construction monitoring reports required at (b) and (c) above shall be submitted to the Department by November 15 of each year and shall include five copies of the following:
1. A USGS quad map showing the location of the mitigation site; a county road map showing the location (including the lot and block) of the mitigation site, of the mitigation site; and a copy of an aerial photograph of the mitigation site. The point(s) of access to the mitigation site must be clearly indicated on all maps;
  2. A copy of the permit that required the mitigation;
  3. A brief description of the mitigation project;
  4. Photographs of the mitigation site with a location map indicating the location and direction of each photograph;
  5. For mitigation projects requiring the establishment of a vegetative community, an assessment of the planted vegetation and the species that are naturally colonizing the site. This assessment shall include data sheets from the sampling points which describe the vegetation present, the percent coverage of the vegetation, the results of the analysis of the soil borings and the location of the water table;
  6. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland or intertidal or subtidal shallows. The documentation shall

include, as appropriate, monitoring well data, stream gauge data, photographs and/or field observation notes collected throughout the post-construction monitoring period;

7. Documentation, based on field data, that the approved goals of the mitigation project (including the buffer area, for wetland creation, restoration or enhancement only) prepared pursuant to N.J.A.C. 7:7E-3B.2(a), are satisfied;

8. A narrative evaluating the success/failure of the project in accordance with (b) and/or (c) above; and

9. In the event the mitigation monitoring period is a failure in accordance with (b) and/or (c) above, a narrative description of proposed actions that will permanently rectify the problems.

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

### SUBCHAPTER 3C. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION

#### Subchapter Historical Note

Public Notice: Notice of Revision and Updating of Freshwater Wetlands Technical Manual to Incorporate Version 2.0 of the Landscape Maps. See: 36 N.J.R. 1129(a).

#### 7:7E-3C.1 Purpose and scope

(a) This subchapter sets forth the standards for conducting an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and for conducting an Endangered or Threatened Wildlife Species Habitat Evaluation. One or both must be employed by an applicant seeking to demonstrate compliance with or inapplicability of N.J.A.C. 7:7E-3.38 when the site contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps. This subchapter also sets forth the standards for reporting the results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and an Endangered or Threatened Wildlife Species Habitat Evaluation.

(b) An Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment is required to demonstrate that endangered or threatened wildlife or plant species habitat as defined at N.J.A.C. 7:7E-3.38(a) would not, directly or through secondary impacts on the relevant site or in the surrounding area, be adversely affected by the proposed development. The standards for conducting an impact assessment pursuant to N.J.A.C. 7:7E-3.38(b), (d) and (e) are found at N.J.A.C. 7:7E-3C.2.

(c) An Endangered or Threatened Wildlife Species Habitat *Evaluation* is required to demonstrate that a site does not

contain suitable habitat, as defined at N.J.A.C. 7:7E-3.38(a), pursuant to N.J.A.C. 7:7E-3.38(c). The standards for conducting an evaluation are found at N.J.A.C. 7:7E-3C.3.

(d) The reporting requirements for habitat evaluations and impact assessments are found at N.J.A.C. 7:7E-3C.4.

Repeal and New Rule, R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
Section was "Performance standards".

#### 7:7E-3C.2 Standards for conducting Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments

(a) These standards shall be used by applicants who choose not to dispute the Department designation of the site as endangered or threatened wildlife species habitat. Applicants shall demonstrate compliance with N.J.A.C. 7:7E-3.38(b) by providing information required at this section and N.J.A.C. 7:7E-3C.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d).

(b) These standards shall be used by applicants if an endangered or threatened plant species has been documented to be on the site or a portion of the site or an area abutting the site. Applicants shall demonstrate compliance with N.J.A.C. 7:7E-3.38(b) by providing information required at this section and N.J.A.C. 7:7E-3C.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened plant species documented to be on the site or a portion of the site or on an area abutting the site.

(c) Impact assessments shall be conducted for each endangered or threatened wildlife or plant species described in (a) and/or (b) above. The impact assessment shall consider the likely effects of the proposed development on the local populations of the particular species on or abutting the site. The impacts shall be assessed using accepted ecological principles and scientific literature on each species and both direct and indirect impacts of the proposed development shall be considered. This assessment shall be based on habitat requirements and life history of each species, and the manner in which the proposed development may alter habitat, including, but not limited to, vegetation, soils, substrate, bathymetry, salinity, hydrology, wildlife movement corridors, human disturbance, and effects on competitor, parasite, or predator species.

Repeal and New Rule, R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Section was "Reporting standards".

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In (c), inserted "substrate, bathymetry, salinity," and "wildlife movement corridors,".

### 7:7E-3C.3 Standards for conducting Endangered or Threatened Wildlife Species Habitat Evaluations

(a) These standards shall be used by applicants who dispute the Department designation of the site as endangered or threatened wildlife species habitat, or dispute the boundary of that habitat. Applicants who dispute the Department's determination shall provide information that demonstrates that the habitat is not suitable for each of the endangered or threatened wildlife species that resulted in that identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d).

(b) Habitat evaluations for endangered or threatened wildlife species pursuant to N.J.A.C. 7:7E-3.38(c) shall be conducted for each wildlife species described in (a) above. This habitat evaluation shall:

1. Use scientific methodology appropriate for each species or species group;
2. Examine specific attributes and characteristics of the site that limit or eliminate its suitability as habitat, including, but not limited to, an examination of vegetative cover, soils, hydrology, existing land use and any other factors that are used to determine suitability of a site for the species. The site's vegetative analysis shall include an on-site investigation and evaluation; and
3. Include an examination of the area surrounding the site using aerial photographs and/or appropriate cover maps.

(c) A survey for the endangered or threatened wildlife species that resulted in identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7E-3.38(a) and/or (d), will only be considered in the context of supplementing information on habitat suitability. If such a survey is conducted, it shall be conducted consistent with techniques established in the scientific literature.

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

### 7:7E-3C.4 Standards for reporting the results of impact assessments and habitat evaluations

(a) All habitat evaluations and impact assessments submitted to the Department shall include:

1. An introduction describing the goals of the habitat evaluation and/or impact assessment;
2. A copy of the USGS quad map(s) showing the location of the site, with the State plane coordinates of the site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear sites,

2,000 feet in length and longer, additional coordinates shall be provided at each 1,000 foot interval;

3. The lot, block, municipality and county in which the site is located;

4. For wildlife habitat evaluations and impacts assessments only, a map identifying the site, and the areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps onsite and abutting the site, along with a list of the endangered or threatened species that resulted in the mapping of endangered or threatened species habitat;

5. For impact assessments for plant species only, a map identifying the location of the species habitat on the site or abutting the site along with a list of the potential plant species from the Department's Natural Heritage Database;

6. A description of the habitat requirements for each of these species identified at (a)4 and/or 5 above, including appropriate literature citations; and

7. The names and qualifications of all investigators who performed habitat evaluations, species surveys, and/or impact assessments.

(b) For wildlife habitat evaluations only, a narrative, including supporting documentation, including maps, photographs and field logs, which contains the following:

1. A description, for each species, of the findings of the habitat evaluation performed in accordance with N.J.A.C. 7:7E-3C.3;

2. If a survey was conducted in accordance with N.J.A.C. 7:7E-3C.3(b), literature citations for the methodology used and a description of how the methodology was applied to the survey, giving the following information: surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications. This information shall be provided for each species surveyed; and

3. A comparison of the findings of the habitat evaluation with the known habitat requirements for each species, as provided at (a)6 above, and a description of the specific attributes and characteristics of the site that limit or eliminate the site's suitability as habitat.

(c) For impact assessments only, a narrative, including supporting documentation, such as maps and photographs, which contains the following:

1. A description for each species, of how the proposed development will alter habitat, including vegetation, soils, hydrology, human disturbance, and effects on competitor, parasite, or predator species. The impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species on or abutting the site and why the development would not

directly or through secondary impacts adversely affect each endangered or threatened species habitat; and

2. Literature citations used to reach the conclusions in (c)1 above.

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

#### 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:

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

##### 7:7E-4.1 Purpose and scope

(a) General Water Areas are all water areas which are located below either the spring high water line or the normal water level of non-tidal water that are subject to this subchapter and to Special Area rules.

(b) General Water Areas are divided by volume and flushing rate into eight categories as described below:

1. "Atlantic Ocean" includes the area of the Atlantic Ocean that extends out to the three geographical mile limit of the New Jersey territorial sea and is bounded by the boundaries of New York and Delaware (see Appendix, Figure 13c).

2. "Lakes, ponds and reservoirs" are 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.

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

i. 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 Cover, Lower Alloways Creek Township and the Delaware River Basin Commission River and Bay Memorial at Liston Point, Delaware.

ii. 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.

iii. 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.

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

5. "Medium rivers, creeks and streams" are 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).

6. "Open bays" are large, semi-confined estuaries with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into the 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).

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

8. "Tidal guts" are the waterway connections between two estuarine bodies of water. Also known as thorofares or canals, 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).

(c) N.J.A.C. 7:7E-4.2 through 4.20 set forth the requirements for specific types of development within General Water Areas as defined at (a) above. 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 apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

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

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

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

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

Rewrote the section.

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

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

##### 7:7E-4.2 Shellfish aquaculture

(a) Shellfish aquaculture means the propagation, rearing, and subsequent harvesting of shellfish in controlled or selected environments, and the processing, packaging, and marketing of the harvested shellfish. Shellfish aquaculture includes activities that intervene in the rearing process to

increase production such as stocking, feeding, transplanting, and providing for protection from predators. For the purposes of this section, shellfish means any species of benthic mollusks including hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), surf clams (*Spisula solidissima*), bay scallops (*Aequipectin irradians*), and oysters (*Crassostrea virginica*). Shellfish shall not include conch, specifically, knobbed whelks (*Busycon carica*), lightning whelks (*Busycon contrarium*), and channeled whelks (*Busycotypus canaliculatus*).

(b) Shellfish aquaculture is encouraged in all general water areas as defined at N.J.A.C. 7:7E-4.1, provided the activity:

1. Does not unreasonably conflict with other marine uses;
2. Does not cause adverse environmental impacts;
3. Does not present a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers;
4. Does not prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner, in accordance with N.J.S.A. 50:1-33; and
5. Is located in an area for which the person conducting the activity holds a valid shellfish lease pursuant to N.J.S.A. 50:1-23.

(c) Upon expiration or termination of a shellfish lease, or the cessation of aquaculture activities, whichever occurs first, the permittee shall within five days remove all structures relating to the aquaculture activity placed within the lease area.

(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).  
 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.  
 Amended by R.2000 d.428, effective October 16, 2000.  
 See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).  
 Rewrote (e).  
 Repeal and New Rule, R.2003 d.60, effective February 3, 2003.  
 See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
 Section was "Acceptability conditions for uses".  
 Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).  
 See: 45 N.J.R. 1141(a).  
 Section was "Aquaculture". Rewrote the section.  
 Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.  
 See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).  
 Provisions of R.2013 d.078 adopted without change.

#### 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 Boat ramps

(a) 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 constructed of asphalt, concrete or crushed shell.

(b) Boat ramps are conditionally acceptable provided:

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; and
4. Garbage cans are provided near the boat ramp.

(c) Public use ramps shall have priority over restricted use and private ramps.

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

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

#### 7:7E-4.4 Docks and piers for cargo and commercial fisheries

(a) 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.

(b) Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable provided:

1. The width and length of the dock or pier is limited to only what is necessary for the proposed use;
2. The dock or pier will not pose a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers; and
3. The associated use of the adjacent land meets all applicable Coastal Zone Management rules.

(c) The standards for port uses are found at N.J.A.C. 7:7E-7.9. The standards for the construction of a dock or pier composed of fill and retaining structures are found at N.J.A.C. 7:7E-4.10.

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

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".

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

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

#### 7:7E-4.5 Recreational docks and piers

(a) 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 recreational fishing or for the mooring of boats or jet skis used for recreation or fishing, except for commercial fishing, and house boats.

(b) Recreational docks and piers, including jet ski ramps and mooring piles, are conditionally acceptable provided:

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

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

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

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

5. 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;

6. 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 whose width shall not exceed eight feet. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over wetlands and intertidal flats, except as noted at (b)6iii below. For the purposes of this section, an intertidal flat is a low lying strip of land along a shoreline located between spring high and spring low tides. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

i. 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;

ii. 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; and

iii. In man-made lagoons only, the maximum width of the structure shall be eight feet over water and six feet over wetlands; The height of the structure over wetlands shall be a minimum of four feet;

7. In man-made lagoons only, the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

8. The proposed structure and associated mooring piles do not hinder navigation or access to adjacent water areas. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers.

(c) 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.

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

(e) For sites which have existing dock or pier 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 relocating or increasing the number or size of docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats. All structures proposed as part of an expansion must comply with all of the applicable Coastal Zone Management rules.

(f) The construction of covered or enclosed structures such as gazebos or sheds located on or above the decking of recreational docks and piers is prohibited except on public piers owned and controlled by a public agency.

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

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".

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

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

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

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

**7:7E-4.6 Maintenance dredging**

(a) 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 a previously authorized water depth and width for safe navigation.

1. To be considered maintenance dredging:

i. The proposed dredge area must be limited to the same depth, length and width as the previous dredging operation; and

ii. For natural water areas, the area must have been either:

(1) Currently used for navigation or mooring of vessels requiring the proposed water depth; or

(2) Dredged within the last 10 years.

(b) 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:

1. An acceptable dredged material placement site, with sufficient capacity will be used. (see N.J.A.C. 7:7E-4.8, Dredged material disposal in water areas, and N.J.A.C. 7:7E-7.12, Dredged material placement on land);

2. 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 and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. 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 dredged material placement method and site;

3. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry or decant water overflows shall meet applicable State Surface Water Quality Standards at N.J.A.C. 7:9B. The Department 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 are not exceeded;

4. 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, the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under specific circumstances identified at (b)7 below;

5. For mechanical dredges such as clamshell bucket, dragline, grab, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned;

6. For hydraulic dredges specific operational procedures designed to minimize water quality impacts, such as removal of cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts may be required;

7. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

i. Known spawning, wintering or nursery areas of shortnose sturgeon, winter flounder, Atlantic sturgeon, alewife, blueback herring, striped bass, white perch or blue crab;

ii. Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5, Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

iii. 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; or

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

8. Maintenance dredging side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Reprofiling, which is the movement of material from one area of a berth or channel to an adjacent, deeper location, is discouraged in all water areas except the New York New Jersey Harbor Area as provided at (c)1 below.

1. Reprofiling is conditionally acceptable in the New York New Jersey Harbor Area north of Sandy Hook, excluding the Raritan Bay and its tributaries east of the Cheesecake Creek, provided:

i. The applicant has demonstrated that there is no other available dredged material management alternative;

ii. The project involves the movement of less than 5,000 cubic yards of material;

iii. The depth of the material to be removed is limited to three feet;

iv. There exists a suitable adjacent deep water area with sufficient capacity to accommodate the relocated material within which the material will be stable and located so as not to interfere with adjacent navigation channels or berths; and

v. The reprofiling is performed by dragging a steel beam or pipe across the berth and/or channel bottom, thereby leveling accumulated sediment to a uniform, specified depth. Alternative procedures will be considered only under special instances where the use of a drag bar is impractical due to limited space in the project area.

(d) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers, is prohibited.

(e) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey 08625-0420, (609) 777-1038.

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

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".

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

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

#### 7:7E-4.7 New dredging

(a) New dredging is the removal of sediment that does not meet the definition of maintenance dredging at N.J.A.C. 7:7E-4.6.

(b) New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages, provided:

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. The dredge area is reduced to the minimum practical;

7. The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to the bay or ocean;

8. Dredging will have no adverse impacts on ground-water resources;

9. No dredging shall occur within 10 feet of any wetlands. The proposed slope from this 10 foot buffer to the nearest edge of the dredged area shall not exceed three vertical to one horizontal; and

10. Dredging shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:

i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. 7:7E-4.8, Dredged material disposal in water areas, and N.J.A.C. 7:7E-7.12, Dredged material placement on land);

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 and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. 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 dredged material placement method and site;

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 at N.J.A.C. 7:9B. The Department 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 are not 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 at (b)11vii below;

v. For new dredging using mechanical dredges such as clamshell bucket, dragline, grab, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. Where the use of silt

curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned;

vi. For hydraulic dredges, specific operational procedures designed to minimize water quality impacts, such as removal of cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts, may be required;

vii. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning, wintering or nursery areas of shortnose sturgeon, winter flounder, Atlantic sturgeon, alewife, blueback herring, striped bass or blue crab;

(2) Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5, Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(3) 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; or

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

viii. Side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers, is prohibited.

(d) New dredging or excavation to create new lagoons for residential development is prohibited in wetlands, N.J.A.C. 7:7E-3.27, wetlands buffer, N.J.A.C. 7:7E-3.28, endangered or threatened wildlife or plant species habitats, N.J.A.C. 7:7E-3.38, and discouraged elsewhere.

(e) 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.

(f) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing,

management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey 08625-0420, (609) 777-1038.

(g) With the exception of N.J.A.C. 7:7E-4.7(b), (c), (d) and (e) above, new dredging is discouraged.

(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).

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".

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

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

### 7:7E-4.8 Dredged material disposal

(a) Dredged material disposal is the discharge of sediments removed during dredging operations.

(b) The standards relevant to dredged material disposal in water areas are as follows:

1. Dredged material disposal is prohibited in tidal guts, man-made harbors, medium rivers, creeks and streams, and lakes, ponds and reservoirs. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet;

2. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that there is no feasible beneficial use or upland placement site available and it is in conformance with the USEPA and US Army Corps of Engineers Guidelines (40 C.F.R. parts 220-228 and 230-232 and 33 CFR, parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act and the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA-503/8-91/001, February 1991, and Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993, as appropriate to the proposed disposal site;

3. Dredged material disposal in water areas shall conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B;

4. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites in existing anoxic dredge holes, shall comply with the following:

i. Data on water quality, benthic productivity and seasonal finfish use demonstrate that the unconfined disposal site has limited biological value;

ii. All subaqueous dredged material disposal shall utilize best management techniques such as submerged elbows or underwater diffusers and may be limited to a particular tidal cycle to further minimize impacts; and

iii. The hole shall not be filled higher than the depth of the surrounding waters.

5. Overboard disposal of sediments consisting of less than 90 percent sand shall be conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site. Such disposal shall comply with the following:

i. Shellfish habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters;

ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and

iii. Sediment characteristics of the dredged material and disposal site are similar; and

6. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

(c) The standards for dredged material placement on land are found at N.J.A.C. 7:7E-7.12.

(d) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey 08625-0420, (609) 777-1038.

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

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".

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

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

#### 7:7E-4.9 Solid waste or sludge dumping

(a) 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.

(b) The dumping of solid or semi-solid waste of any type in any General Water Area is prohibited.

(c) 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).

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".

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

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

#### 7:7E-4.10 Filling

(a) Filling is the deposition of material including, but not limited to, sand, soil, earth, and dredged material, into water areas for the purpose of raising water bottom elevations to create land areas.

(b) Filling is prohibited in lakes, ponds, reservoirs and open bay areas at greater than 18 feet as defined at N.J.A.C. 7:7E-4.1, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A.

(c) Filling in a man-made lagoon, as defined at N.J.A.C. 7:7E-1.8, is discouraged unless:

1. The filling complies with (d) below; or

2. In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated by the Department, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation rule at N.J.A.C. 7:7E-1.6 shall not be required in such cases.

(d) Filling to establish a living shoreline to protect, restore, or enhance a habitat area is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7E-4.23.

(e) Except as provided in (b) through (d) above, filling is discouraged in all other water areas. In cases where there is no alternative to filling, filling is conditionally acceptable provided:

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, for example, 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. Piling and columnar support or floating structures are unsuitable for engineering or environmental reasons.

(f) Mitigation shall be required for the filling of tidal water areas at a ratio of one acre created to one acre lost in the same estuary. The mitigation standards for the filling of intertidal and subtidal shallows are found at N.J.A.C. 7:7E-3.15(i) and (j). Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c);
2. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(f);
3. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(d)2i or ii;
4. Establishment of living shorelines in accordance with N.J.A.C. 7:7E-4.23; and
5. Construction of a boat ramp in accordance with N.J.A.C. 7:7E-4.3.

(g) Filling of wetlands must comply with the wetlands rule, N.J.A.C. 7:7E-3.27.

(h) Filling using clean sediment of suitable particle size and composition, or dredged material for which the Department has issued a determination of acceptable use, is acceptable for beach nourishment and living shoreline projects provided it meets the standards of the coastal engineering rule, N.J.A.C. 7:7E-7.11(f) or the living shoreline rule, N.J.A.C. 7:7E-4.23, respectively.

(i) Standards for the removal of unauthorized fill are as follows:

1. For filling which took place prior to September 26, 1980 (the effective date of the Coastal Zone Management rules Statewide, or prior to September 28, 1978 for areas within the coastal area as defined by CAFRA (N.J.S.A. 13:19-4)), 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 water body, and its removal will alleviate the adverse impacts.
2. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined as defined by CAFRA (N.J.S.A. 13:19-4)), removal shall be required if the fill does not comply with the standards of (b), (c) or (d) above.

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

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".

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

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

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

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

Added new (d); recodified former (d) through (i) as (e) through (j); in the introductory paragraph of (e), substituted "through (d)" for "and (c)"; in the introductory paragraph of (f), substituted "(i) and (j)" for "(g) and (h)", and inserted "the" after "standards for"; in (f)2, substituted "(f)" for

"(d)" and deleted "and" from the end; in (f)3, substituted "(d)2i" for "(e)2i" and a semicolon for a period at the end; added (f)4 and (f)5; and in (j), amended the Rationale statement.

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

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

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

#### 7:7E-4.11 Mooring

(a) A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

(b) Temporary or permanent boat mooring areas are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. Adverse environmental impacts are minimized to the maximum extent practicable; and
3. 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.

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

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

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

#### 7:7E-4.12 Sand and gravel mining

(a) Sand and gravel mining 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.

(b) Sand and gravel mining is discouraged in all water body types except as provided at (b)1 below.

1. Sand and gravel mining is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts as defined at N.J.A.C. 7:7E-4.1, unless the water body was created by the mining process, in which case the use is conditionally acceptable provided:

- i. Direct and indirect impacts to Special areas are minimized;
- ii. Turbidity and resuspension of toxic materials is controlled throughout the mining operation consistent with the State's Surface Water Quality Standards (N.J.A.C. 7:9B-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 below mean low water;
- v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

(c) Sand and gravel mining for the purposes of beach nourishment is conditionally acceptable provided:

1. Direct and indirect impacts to special areas and marine fish and fisheries are minimized;
2. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet below mean low water;
3. The mining will not increase shoreline erosion;
4. The mining will not create anoxic water conditions; and
5. The beach nourishment project complies with the coastal engineering rule, N.J.A.C. 7:7E-7.11(d).

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

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

#### 7:7E-4.13 Bridges

(a) A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

(b) Bridges are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and
3. 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.

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

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

#### 7:7E-4.14 Submerged pipelines

(a) Submerged pipelines (pipelines) are underwater pipelines which transmit liquids or gas, including crude oil, natural gas, water petroleum products or sewerage.

(b) Submerged pipelines are conditionally acceptable provided:

1. The pipelines are not sited within Special Areas, unless no prudent and feasible alternate route exists;
2. Directional drilling is used unless it is demonstrated that the use of directional drilling is not feasible;
3. The pipeline is buried to a sufficient depth to avoid exposure or hazard;

4. All trenches are backfilled to preconstruction depth with naturally occurring sediment; and

5. The proposed development has been designed to minimize impacts to the water area.

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

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

#### 7:7E-4.15 Overhead transmission lines

(a) Overhead transmission lines are wires hung between supporting pylons for transmission from the site of origin to the site of consumption. Overhead transmission lines include electrical, telecommunication and cable television lines.

(b) Overhead transmission lines are prohibited over open bays, semi-enclosed and back bays, lakes, ponds and reservoirs as defined at N.J.A.C. 7:7E-4.1. Overhead transmission lines are discouraged over large rivers as defined at N.J.A.C. 7:7E-4.1.

(c) Overhead transmission lines are conditionally acceptable over rivers, streams, creeks, and tidal guts as defined at N.J.A.C. 7:7E-4.1, provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. There is no feasible alternative route that avoids crossing water bodies;
3. The transmission line provides adequate vertical clearance for masts; and
4. Visual impacts are minimized to the maximum extent practicable.

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

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

#### 7:7E-4.16 Dams and impoundments

(a) 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.

(b) Except for medium rivers, creeks and stream as defined at N.J.A.C. 7:7E-4.1, the construction of dams and impoundments is prohibited. The construction of these structures is conditionally acceptable in medium rivers, creeks and streams as defined at N.J.A.C. 7:7E-4.1, provided:

1. The structures are essential for water supply purposes or for the creation of special wildlife habitats;
2. Adverse impacts are minimized; and

3. The structures will not adversely affect navigation routes.

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

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

#### 7:7E-4.17 Outfalls and intakes

(a) 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.

(b) Outfalls and intakes are conditionally acceptable provided that the use associated with the intake or outfall meets applicable Coastal Zone Management rules.

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

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

#### 7:7E-4.18 Realignment of water areas

(a) Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the bulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.

(b) Realignment of naturally occurring water areas is discouraged. Discouraged uses can only be approved if it can be demonstrated that the proposed development is in the public interest and mitigation for the impact is provided.

(c) Realignment of previously realigned water areas is conditionally acceptable, provided:

1. It is demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/alteration) will result; and

2. A net recreational/ecological benefit will demonstrably accrue.

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

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

#### 7:7E-4.19 Vertical wake or wave attenuation structures

(a) Vertical wake or wave attenuation structures are structures designed to protect boat moorings, including those at marinas, by intercepting wakes or waves and reducing the wake or wave energy which would normally impact the adjacent boat mooring areas. Typically, timber, metal, or vinyl wake or wave attenuation structures are designed and utilized to protect boat moorings. For the purposes of this

section, a vertical wake or wave attenuation structure does not include a breakwater constructed of concrete or rubble mound. Breakwaters designed to protect shoreline areas shall comply with the filling rule, N.J.A.C. 7:7E-4.10, and the coastal engineering rule, N.J.A.C. 7:7E-7.11.

(b) Construction of a vertical wake or wave attenuation structure is conditionally acceptable. The porosity of a wake or wave attenuation structure, including spacing of planking and the distance between the structure and the bottom of the water body, shall be determined on a case-by-case basis, taking into consideration vessel traffic, water depth, and tidal flow.

(c) A vertical wake or wave attenuation structure may be designed as follows.

1. High wake or wave energy areas: Boat mooring areas in or near deep water that are exposed to port, harbor, and/or ferry traffic, such as the Hudson River between New Jersey and New York, are subject to high wake or wave energy. In this case, the structure may be designed to have no spacing between planking and extend to a depth of between 30 and 40 feet, or to the bottom of the water body, whichever is less, to intercept almost all wave energy. The distance between the structure and the bottom of the waterbody will be dependent upon the water depth of the area in which the structure will be located.

2. Medium wake or wave energy areas: Boat mooring areas adjacent to or near navigation channels, such as boat moorings located in Cape May Harbor, are subject to medium wake or wave energy. In this case, the structure may be designed to provide approximately one inch spacing between planking, and extend to the bottom of the water body.

3. Minor wake or wave energy areas: Boat mooring areas that do not meet the criteria of (b)1 or 2 above, such as boat moorings located in the Upper Manasquan River, are subject to minor wake or wave energy. In this case, the structure may be designed to provide approximately three inch spacing between planks to ensure flushing, and the distance between the structure and bottom of the water body shall be determined on a case-by-case basis taking into account the potential wake or wave energy at that mooring location. In areas of low tidal flow, that is, where the tidal range is less than two feet, the distance between the structure and the bottom of the water body shall be at least 18 inches.

(d) Detached vertical wake or wave attenuation structures which are not fixed directly to a dock or pier structure shall be marked with photocell lights and/or reflectors.

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

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

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

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

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

Section was "Breakwaters". Rewrote (a); added new (b) and (c); recodified former (b) and (c) as (d) and (e); rewrote (d); and in (e), amended the Rationale statement.

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

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

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

#### 7:7E-4.20 Submerged cables

(a) Submerged cables (cables) are underwater telecommunication cables, and shall include all associated structures in the water such as repeaters.

(b) Submerged cables, or portions thereof, which are not located in the Atlantic Ocean shall meet the following conditions:

1. The cable shall not be sited within Special Areas, unless no prudent and feasible alternate route exists;
2. Directional drilling for the installation of cables is encouraged over the use of trenching;
3. The cable route minimizes areas where anchors are likely to foul the cable; and
4. The alignment of the cable route is marked at the landfall. This provision does not apply to cables that are directionally drilled.

(c) Submerged cables, or portions thereof, which are sited in the Atlantic Ocean shall meet the following conditions:

1. Siting a cable in the Atlantic Ocean is discouraged unless the cable complies with the following:
  - i. If the cable is either sited within surf clam areas, N.J.A.C. 7:7E-3.3, or sited within areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, no prudent and feasible land-based alternate route exists and the cable follows the shortest route to waters beyond the surf clam areas and areas where marine fish are commercially harvested using mobile bottom-tending gear; and
  - ii. If the cable is sited within prime fishing areas, N.J.A.C. 7:7E-3.4, shipwreck and artificial reef habitats, N.J.A.C. 7:7E-3.13, or historic and archaeological resources, N.J.A.C. 7:7E-3.36, no prudent and feasible alternate route exists outside of these special areas and the cable follows the route with the least disturbance to these special areas;
2. The submerged cable, shall be buried to a depth of at least 1.2 meters both in surf clam areas, N.J.A.C. 7:7E-3.3, and in areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear except where it is demonstrated that it is not practicable to bury the cable to 1.2 meters due to geologic or topographic features or crossing of existing in-service

cables. Where it is demonstrated that achieving the depth of 1.2 meters is not practicable, the cable shall be buried as close as practicable to the above standard;

3. Where a submerged cable will cross an existing in-service cable either within surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

- i. The cable shall be buried to the depth of the existing cable or as close thereto as practicable at the crossing;
- ii. The number of cable crossings shall be minimized;
- iii. The location of the cable route shall be adjusted after consultation with the fishing interest groups identified in N.J.A.C. 7:7-4.2(a)3 in order to reduce the impact of cable crossings on commercial fishing, to the maximum extent practicable; and
- iv. The permittee shall, to the maximum extent practicable, share information and otherwise cooperate with those responsible for any cables being crossed and with installers of subsequent cables crossing the subject cable so as to reduce the impacts of cable crossings on commercial fishing.

4. Where a submerged cable will cross an existing out-of-service cable either within surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

- i. Where the out-of-service cable is buried less than 0.6 meter, the out-of-service cable shall be cut, and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. For surface laid out-of-service cables, the ends of the remaining out-of-service cable shall be re-laid flat on the seabed to minimize problems for other seabed users. For buried out-of-service cables, the ends of the remaining out-of-service cable shall be re-buried to the original depth;
- ii. Where the out-of-service cable is buried between 0.6 and 1.2 meters, the out-of-service cable shall, if practicable, be cut and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. The ends of the remaining out-of-service cable shall be re-buried as close as practicable

to the original depth, and in no case to a depth of less than 0.6 meters. If the out-of-service cable cannot be cut and recovered, the cable crossing shall comply with (c)3 above; and

iii. Where the out-of-service cable is buried more than 1.2 meters, the cable shall be laid over the out-of-service cable at the depth prescribed in (c)2 above;

5. Directional drilling for the submerged cable landing is encouraged over the use of trenching to minimize impacts to beaches, dunes, and shallow water areas;

6. The submerged cable route minimizes areas where anchors are likely to foul the submerged cable;

7. Prior to installation of the cable, the permittee shall obtain a financial assurance from a lender or insurer regulated and authorized by the New Jersey Department of Banking and Insurance to transact business in New Jersey. The financial assurance shall be in an amount sufficient for the Department to hire an independent contractor to remove the inactive cable should the permittee fail to do so. Letters of credit, surety bonds and insurance assuring that the Department could hire an independent contractor to remove an inactive cable shall be acceptable to satisfy the financial assurance requirement. The financial assurance shall be released upon the permittee's removal of the cable or upon the Department's determination that the cable may remain in place in accordance with (c)11 below;

8. After the submerged cable has been installed, a long-term inspection and maintenance plan, approved by the Department, shall be implemented both within surf clam areas, N.J.A.C. 7:7E-3.3, and within areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom tending gear, to insure that the cable remains at the authorized depth and location. The plan shall provide for the following:

i. An inspection immediately following cable installation;

ii. An inspection two years after cable installation;

iii. An inspection every five years after the inspection required at (c)8ii above;

iv. An investigation within six months after the Department reports to the permittee that it has received information suggesting that the cable has been uncovered. If appropriate, such investigation shall include an inspection of the cable. The Department may require an inspection after reviewing the report submitted pursuant to (c)9 below; and

v. Reburial of the cable within 90 days, if practicable, and in no case later than six months after the permittee discovers that the cable has been uncovered. Reburial shall be to the depth prescribed in (c)2 above to the maximum extent practicable;

9. A report containing the results of the initial inspection required in (c)8i above shall be submitted by the permittee to the Department within six months following the inspection. The report shall identify all areas where inactive cable has been cut and all areas where the cable is not buried to a depth of 1.2 meters, and indicate the actual depth in those areas. The report shall also provide the installed route of the cable. All locations shall be reported using latitude and longitude coordinate pairs, in the WGS 84 (World Geodetic System 1984) datum, that were arrived at using the global positioning system (GPS). To reduce the impacts of fishing on cables by notifying the commercial fishing industry of the locations of areas where the cable is buried less than 1.2 meters deep, a copy of the report shall be submitted to the fishing interest groups identified in N.J.A.C. 7:7-4.2(a)3;

10. A report containing the results of inspection and maintenance of the submerged cable required in (c)8 above, if applicable in the reporting year, a discussion of storm events which could have affected the cable, and reported hits of the cable for the previous year shall be submitted by the permittee to the Department in January of each year. The report shall also indicate if and when the cable becomes out-of-service;

11. Within two years of taking the cable out of service pursuant to Federal Communications Commission regulations, the submerged cable shall be removed both from surf clam areas, N.J.A.C. 7:7E-3.3, and from areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear. The Department may allow all or portions of the cable to remain in place if leaving the cable in place would not result in a long term adverse impact to the ocean and/or ocean resources, and the cable would not unreasonably interfere with fishing or other uses of the seabed. A permittee who seeks to leave an inactive cable in place shall submit a request, including the reasons and justification for leaving the cable in place. The Department shall solicit public input on the request, including input from the fishing interest groups identified in N.J.A.C. 7:7-4.2(a) 3; and

12. If portions of the cable located either within surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where marine fish, as defined at N.J.A.C. 7:7E-8.2, are commercially harvested using mobile bottom-tending gear, are not buried to a depth of 0.6 meters, the permittee shall provide a one-time monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The amount of each mitigation contribution provided under this section shall be based on the length of cable that is not buried to a depth of 0.6 meters, based on the inspection required in (c)8i above. The contribution will be calculated at the rate of \$100.00 per meter of cable which is buried to a depth of less than 0.6 meters. Moneys in the Shellfish Habitat Mitigation account are to be administered by the Department's Bureau of Shellfisheries and utilized for

shellfish habitat restoration, enhancement and related research projects.

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

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

#### 7:7E-4.21 Artificial reefs

(a) Artificial reefs are man-made structures intended to simulate the characteristics and functions of natural reefs created by placing hard structures on the sea-floor for the purpose of enhancing fish habitat and/or fisheries. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines, fish aggregating devices, and other structures not constructed for the sole purpose of fish habitat.

(b) New reefs shall be sited in accordance with the following:

1. The reef site shall not be located in the following special areas: surf clam areas (N.J.A.C. 7:7E 3.3), prime fishing areas (N.J.A.C. 7:7E-3.4), navigation channels (N.J.A.C. 7:7E-3.7), inlets (N.J.A.C. 7:7E-3.9), and submerged infrastructure routes (N.J.A.C. 7:7E-3.12) and historic and archaeological resources (N.J.A.C. 7:7E-3.36);

2. The reef site shall be located in the Atlantic Ocean;

3. The reef site shall be located in a manner that minimizes impacts on commercial fishing operations;

4. The reef site shall not be located within shipping lanes, and/or anchorages;

5. The natural seafloor at the reef site shall have a firm substrate to minimize sinking of reef materials;

6. The reef site shall not be located within an area environmentally influenced by dredge disposal sites, sewage outfalls, or other areas known to experience hypoxic events, contaminated waters or sediment that may impair the quality of fish habitat; and

7. The reef site shall not be located in an area with currents that have the potential to cause material instability, scouring, or sanding over.

(c) Construction of new or expanded artificial reefs is conditionally acceptable provided that at the time of deployment, and at all times after creation, the following conditions are met:

1. The reef materials are of sufficient density so that it will not move outside of the approved reef boundary;

2. The reef materials shall not float;

3. The reef materials shall not pose a hazard to navigation;

4. The reef materials shall not pose a threat to the marine environment;

5. The reef materials shall not be toxic;

6. The reef materials shall not be hazardous;

7. The reef materials shall not be explosive;

8. The reef materials shall not be radioactive;

9. The following reef materials are acceptable for deployment, provided that (c)1 through 8 above are met:

i. Ships;

ii. Armored military vehicles;

iii. Manufactured reef habitats;

iv. Dredge rock;

v. Concrete and steel rubble;

vi. Demolition material free of floating debris;

vii. Obsolete submarine telephone cable; and

viii. Miscellaneous reef materials that meet the conditions in (c)1 through 8 above;

10. The reef material shall be deployed in the following manner:

i. No materials shall be deposited until notification has been provided to the Department at least 72 hours in advance;

ii. Inspection by the Department prior to deployment, to ensure materials are not harmful to the marine environment, and will not pose a threat to human safety, and comply with the reef material conditions (c)1 through 8 above;

iii. Department personnel shall directly observe and oversee the deployment of any reef materials;

iv. To the extent practicable, deployment of reef materials shall not adversely impact the marine environment; and

v. The locations of artificial reef sites shall be recorded using a Global Positioning Satellite (GPS) system.

(d) An Artificial Reef Management Plan shall be submitted for each individual reef permit application and shall include the following:

1. A description of the proposed site;

2. A mechanism for recording materials used in constructing the reef; and

3. A monitoring schedule to measure the stability, durability and biological attributes of reef materials and impacts to the marine environment. The schedule shall include submission of monitoring reports, including a

listing of materials deployed in the previous year, to the Department every year during reef construction, and every five years thereafter.

(e) It shall be the responsibility of the reef-builder to provide the location of the artificial reef to the US Department of Commerce, NOAA, National Ocean Survey, 1315 East West Highway, Silver Spring, MD 20910-3282, for inclusion on nautical charts.

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

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

**7:7E-4.22 Miscellaneous uses**

(a) Miscellaneous uses are uses of Water Areas not specifically defined in this section or addressed in the use rules, N.J.A.C. 7:7E-7.

(b) 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.

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

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

**7:7E-4.23 Living shorelines**

(a) Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of vegetation, sand, or other structural and organic materials.

(b) The establishment of a living shoreline to protect, restore, or enhance a habitat area is conditionally acceptable provided:

1. It is demonstrated that the project:
  - i. Is part of a plan for the restoration, creation, or enhancement of the habitat and water quality functions and values of wetlands, wetland buffers, and open water areas;
  - ii. Is consistent with the requirements of the Wetlands Act of 1970, the Coastal Area Facility Review Act, the Waterfront Development Law, and this chapter;
  - iii. Will improve or maintain the values and functions of the ecosystem; and
  - iv. Will have a reasonable likelihood of success, or, if performed by a college or university, will advance the

level of knowledge regarding living shorelines in the State; and

2. The living shoreline complies with the following:

i. It disturbs the minimum amount of special areas, as defined at N.J.A.C. 7:7E-3, necessary to successfully implement the project plan. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if the Department determines that the activities causing the reduction are sufficiently environmentally beneficial to outweigh the negative environmental effects of the reduction; and

ii. It does not include placement of fill beyond the footprint of the shoreline as it appeared on the applicable Tidelands Map (baseline photography dated 1977/1978), except for a structural component of the project intended to reduce wave energy.

(c) The beneficial use of dredged material is acceptable in the establishment of a living shoreline provided it is determined by the Department that the material is acceptable for use in a living shoreline.

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

Emergency New Rule, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).  
See: 45 N.J.R. 1141(a).  
Adopted concurrent new rule, R.2013 d.095, effective June 15, 2013.  
See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).  
Provisions of R.2013 d.078 adopted without change.

**SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS**

**Authority**

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

**Source and Effective Date**

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

**Subchapter Historical Note**

Subchapter 5, General Land Areas, was repealed and Subchapter 5, Requirement for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas, was adopted as new rules by R.2000 d.45, effective February 7, 2000. See: Source and Effective Date.

**7:7E-5.1 Purpose and scope**

(a) This subchapter sets forth requirements for impervious cover and vegetative cover on sites in the upland waterfront development area, as defined at N.J.A.C. 7:7E-5.2, and in the CAFRA area, as defined at N.J.A.C. 7:7E-5.2. In addition:

1. For a site in the upland waterfront development area, the applicable impervious cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7E-5A, based on the site's growth rating, development potential, and environmental sensitivity; and

2. For a site in the CAFRA area, the applicable impervious cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7E-5B, based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

(b) General Land Areas are all land areas, as defined at N.J.A.C. 7:7E-1.8, that are subject to this chapter and that are located outside of Special Water's Edge Areas. Special Water's Edge Areas are identified at N.J.A.C. 7:7E-3.16 through 3.32.

(c) This subchapter and N.J.A.C. 7:7E-5A and/or 5B apply to development in General Land Areas, Special Land Areas, and the following seven Special Water's Edge Areas:

1. N.J.A.C. 7:7E-3.17, Overwash areas;
2. N.J.A.C. 7:7E-3.18, Coastal high hazard areas;
3. N.J.A.C. 7:7E-3.19, Erosion hazard areas;
4. N.J.A.C. 7:7E-3.20, Barrier island corridor;
5. N.J.A.C. 7:7E-3.23, Filled water's edges;
6. N.J.A.C. 7:7E-3.24, Existing lagoon edges; and
7. N.J.A.C. 7:7E-3.25, Flood hazard areas.

(d) This subchapter and N.J.A.C. 7:7E-5A and 5B do not apply to:

1. The development of a single family home or duplex dwelling unless such development results in development of more than one single family home or duplex dwelling either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8;
2. A linear development, as defined in N.J.A.C. 7:7E-1.8, except that this subchapter and N.J.A.C. 7:7E-5A and 5B shall apply if the linear development is wholly within a development and/or serves the development;
3. A mining operation, under N.J.A.C. 7:7E-7.8;
4. A public park which is publicly owned, or publicly controlled for the purposes of public access;
5. Aquaculture, as defined at N.J.S.A. 58:1A-3;
6. Sanitary landfills;
7. Wastewater treatment plants;
8. Water treatment plants; or
9. Electrical substations.

(e) If a site is located in the Hackensack Meadowlands District, as defined under N.J.S.A. 13:17-1 et seq., the Department shall not apply the requirements in N.J.A.C. 7:7E-5 and 5A, but shall apply the requirements for that area set forth at N.J.A.C. 7:7E-3.45.

(f) A site may include land both within the upland waterfront development area and within the CAFRA area. Where this occurs each portion of the site is treated separately and the impervious cover limits and vegetative cover percentages for the different portions of the site are determined under N.J.A.C. 7:7E-5A or 5B as appropriate.

(g) The rules in this subchapter and N.J.A.C. 7:7E-5A and 5B do not preempt the application of any municipal ordinance that would result in more restrictive impervious cover requirements or more extensive vegetative cover requirements than would otherwise be applicable to a development site under this subchapter and N.J.A.C. 7:7E-5A and 5B.

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

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

In (d)1, amended N.J.A.C. reference.

Amended by R.2001 d.81, effective March 5, 2001.

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

Added (g).

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

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

Substituted "7:7E-1.8" for "7:7E-1.5" in (b), (d)2; added 7, 8 in (d).

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

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

In (d)7, deleted "or" from the end; in (d)8, substituted "; or" for a period at the end; and added (d)9.

### 7:7E-5.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7E-1.8, the following words and terms are defined for the purposes of this subchapter and N.J.A.C. 7:7E-5A and 5B:

"100 percent affordable housing development" means a development in which all dwelling units are available at a sales price or rent within the means of a low or moderate income household as defined by the Council on Affordable Housing pursuant to N.J.A.C. 5:94.

"CAFRA center" means a center with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA core" means a core with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA node" means a node with a boundary incorporated by reference or revised in accordance with N.J.A.C. 7:7E-5B.3.

"CAFRA Planning Map" means the map used by the Department to identify the location of Coastal Planning Areas, CAFRA centers, CAFRA cores and CAFRA nodes. The CAFRA Planning Map is available on the Department's Geographic Information System (GIS).

"Center" means a compact form of development which may have one or more cores and residential neighborhoods. A center may be an urban center, regional center, town, village, or hamlet, based on factors such as comparative size, population density, total population, transportation access, infrastructure, and employment base.

"Coastal center" means a center in the CAFRA area with a boundary delineated by the Department for the purpose of applying the requirements for impervious cover and vegetative cover at N.J.A.C. 7:7E-5 and 5B until such time as, in accordance with N.J.A.C. 7:7E-5B.6, the coastal center ex-

pires or, in accordance with N.J.A.C. 7:7E-5B.3, the coastal center is superseded by a CAFRA center. There are two categories of coastal centers, mainland coastal centers and non-mainland coastal centers. Each of these centers may be further categorized as a coastal regional center, coastal town, coastal village or coastal hamlet.

“Coastal Critical Environmental Site” means a Critical Environmental Site in the CAFRA area with a boundary incorporated by reference in accordance with N.J.A.C. 7:7E-5B.6(h).

“Coastal Planning Area” means a planning area in the CAFRA area with a boundary incorporated by reference in accordance with N.J.A.C. 7:7E-5B.3.

“Community development boundary” means the line delineating a center from the environs of the center. The boundary is defined by physical features such as rivers, roads, or changes in the pattern of development, or by open space or farmland.

“Core” means a pedestrian-oriented area of commercial and civic uses serving the surrounding municipality or center, generally including some housing and access to public transportation.

“Critical Environmental Site” means an area generally less than a square mile which includes one or more environmentally sensitive features located either outside of a planning area classified as environmentally sensitive or within centers located within such planning areas.

“Electrical substation” means a subsidiary facility of an electric power system through which electricity is passed for transmission, transformation, or distribution. For example, an electrical substation may transform high voltage electricity to low voltage electricity for distribution. An electrical substation consists of the footprint of the substation equipment, the safety zone, and the area necessary for access and parking.

“95-97 imagery” means the 1995-1997 National Aerial Photographic Program, New Jersey color infra-red imagery.

“Node” means a concentration of facilities and activities which are not organized in a compact form.

“Planning area” means an area of greater than one square mile that shares a common set of conditions such as population density, infrastructure systems, level of development, or environmental sensitivity. The five types of planning areas are Metropolitan Planning Area, Suburban Planning Area, Fringe Planning Area, Rural Planning Area, and Environmentally Sensitive Planning Area.

“Stormwater management facility” means a facility which receives, stores, conveys, or discharges stormwater runoff and is designed in accordance with all applicable local, county, and State regulations. A stormwater management facility may be a retention or detention basin; infiltration structure;

grassed swale; filter fabric; rip-rap channel; and/or stormwater outfall.

“Tidelands Map” means the Tidelands Base Photo Map, adopted by the Department’s Tidelands Resource Council under N.J.S.A. 13:1B-13.1 et seq.

“Upland waterfront development area” means all lands outside of the CAFRA area extending from the mean high water line of a tidal water body to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line.

Amended by R.2001 d.81, effective March 5, 2001.

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

In “CAFRA center”, “CAFRA core”, “CAFRA node”, “Coastal center” and “Coastal Planning Area”, amended the N.J.A.C. references.

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

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

In the introductory paragraph, substituted “7:7E-1.8” for “7:7E-1.5” and deleted “CAFRA area”.

Amended by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 37 N.J.R. 2985(a), 38 N.J.R. 928(c).

Rewrote definition “Coastal center”; added definitions “Coastal Critical Environmental Site” and “Critical Environmental Site.”

Amended by R.2006 d.363, effective October 2, 2006.

See: 38 N.J.R. 1921(a), 38 N.J.R. 4214(a).

Added definition “100 percent affordable housing development”.

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

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

Added definition “Electrical substation”.

### **7:7E-5.3 Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

(a) This section sets forth impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Impervious cover limits, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B.

(b) A stormwater management facility is not counted toward the impervious cover limit for a site.

(c) The impervious cover allowed on a site shall be placed on the net land area on the site, as determined at (d) below, and in addition, for an unforested site under N.J.A.C. 7:7E-5A.9(b)3 or 5B.4(e)2, the impervious cover shall be placed on the area covered by buildings and/or asphalt or pavement legally existing on the site at the time the application is submitted to the Department. If the amount of impervious cover calculated under N.J.A.C. 7:7E-5, 5A, and/or 5B is greater than the net land area of the site, the acreage of the impervious cover allowed on the site shall be the acreage of the net land area. The placement of impervious cover may be further restricted by other provisions in this chapter. For example, placement of impervious cover would be discouraged in critical wildlife habitat under N.J.A.C. 7:7E-3.39.

(d) To determine the acreage of the net land area on a site:

1. Determine the acreage of the total land area on the site;
2. Identify all areas on the site that are classified as one of the following Special Water's Edge Areas:
  - i. Dunes (N.J.A.C. 7:7E-3.16);
  - ii. Bay islands (N.J.A.C. 7:7E-3.21);
  - iii. Beaches (N.J.A.C. 7:7E-3.22);
  - iv. Wetlands (N.J.A.C. 7:7E-3.27);
  - v. Wetland buffers (N.J.A.C. 7:7E-3.28);
  - vi. Coastal bluffs (N.J.A.C. 7:7E-3.31); and
  - vii. Intermittent stream corridors (N.J.A.C. 7:7E-3.32);
3. Sum the acreage of the land areas identified in (d)2 above;
4. Subtract (d)3 above from (d)1 above; and
5. The result is the net land area to be used in calculating the impervious cover limits in N.J.A.C. 7:7E-5A and 5B.

(e) If a site or a portion of a site is a contaminated site, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for the Remediation of Contaminated Sites, the impervious cover limit for the site may be increased if required under the Technical Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26E in order to properly remediate the contaminated portion of the site.

Amended by R.2001 d.81, effective March 5, 2001.

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

In (c), amended the N.J.A.C. reference in the first sentence.

**7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

(a) This section sets forth vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas. Vegetative cover percentages, specific to each of these areas, are found at N.J.A.C. 7:7E-5A and 5B. More trees may be planted or preserved than required, and if so, the herb/shrub area shall be reduced proportionately.

(b) If a site is located in the northern waterfront region or urban area region in the upland waterfront development area; or if a site is located in a CAFRA center, CAFRA core, or CAFRA node; or if the area of trees on a site required to be planted and/or preserved as calculated under (b)1 below is smaller than one acre, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.5; and

2. The area (in acres) of the site that would have been required under N.J.A.C. 7:7E-5A.10 or 5B.5 to be planted and/or preserved in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(c) If a residential development of 24 units or fewer that is not part of a larger development is proposed on a site in the upland waterfront development area or in the CAFRA area and does not meet the criteria at (b) above, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. 7:7E-5A.10 or 5B.5.

2. The area (in acres) of a forested site or portion to be preserved in trees is not subject to (d) below. However, the trees preserved shall be protected from any future development by a recorded conservation restriction enforceable by the Department which:

i. Requires that the area of trees be preserved in its natural state;

ii. Prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and

iii. Prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement; and

3. The area of an unforested site or portion to be planted in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and/or herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(d) For sites other than those that meet (b) or (c) above, when trees are required to be planted or preserved under N.J.A.C. 7:7E-5A or 5B, the trees shall be planted and/or preserved in a tree cluster as follows:

1. Trees preserved and/or planted shall be located in a cluster within the boundaries of one lot that shall not be further subdivided. However, on a site with existing non-contiguous forested areas larger than five acres each, the Department may require that a tree cluster be preserved on a lot located in each of the forested areas. The tree cluster should, to the maximum extent practicable, be adjacent to existing on-site or off-site forests or other natural resources, such as critical wildlife habitat areas as defined at N.J.A.C. 7:7E-3.39, or water bodies;

2. The boundaries of the tree cluster shall be clearly marked with permanent, visible markers such as concrete blocks or posts, metal stakes, or other easily seen, permanent, immovable markers;

3. The tree cluster shall be protected from any future development by a recorded conservation restriction, which requires that the tree cluster be preserved in its natural state, and prohibits removal or clearing of dead trees greater than five inches in diameter at four and one-half feet above ground except to prevent a safety hazard; and which prohibits removal, clearing or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement;

4. For a residential development of 25 units or more, the recorded conservation restriction required under (d)3 above, shall be enforceable by the Department and:

i. A local public entity;

ii. A private nonprofit organization whose trustees have no other interest in the land; or

iii. A homeowner's association; and

5. For a non-residential development, the recorded conservation restriction required under (d)3 above shall be enforceable by the Department and a local public entity or a private nonprofit organization whose trustees have no other interest in the land, unless no such entity or organization will agree to enforce the conservation restriction.

(e) Trees planted to meet the tree cluster requirement of (d) above shall be planted in accordance with the following:

1. The trees shall be spaced approximately 10 feet apart, and shall be planted in a staggered, non-linear, pattern;

2. If a tree has lost more than 50 percent of its canopy within a full growing season after it is planted, it shall be immediately replaced with another tree as large as the first tree was when planted;

3. All trees shall be native or adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast;

4. The entire area of tree plantings shall be covered with a mulch of hardwood chips at least three inches deep;

5. Two-thirds of the trees planted shall be:

i. Canopy or dominant tree species which typically grow taller than 50 feet at maturity;

ii. A minimum of one and one half inches in diameter at the base; and

iii. Balled, burlapped and supported by staking with guy wires, which shall be removed after one year; and

6. The remaining one-third of the trees planted shall be:

i. Understory or subcanopy tree species which typically grow to a height of less than 50 feet at maturity;

ii. A minimum of four to five feet in height; and

iii. Balled and burlapped, or container-grown.

(f) Herb/shrub vegetation required under N.J.A.C. 7:7E-5A or 5B shall be adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast.

(g) The vegetative cover required on a site shall be planted or preserved only on the net land area determined under N.J.A.C. 7:7E-5.3(d).

Amended by R.2001 d.81, effective March 5, 2001.

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

In (b)1 and 2 and (c)1, amended the N.J.A.C. references.

#### 7:7E-5.5 Determining if a site is forested or unforested

(a) The vegetative cover percentage that applies to a site under N.J.A.C. 7:7E-5A or 5B varies depending on whether the site is forested. If only a portion of a site is forested, separate vegetative cover percentages shall be calculated for the forested and unforested portions of the site.

(b) The following will be considered to be unforested for the purposes of determining vegetative cover percentages:

1. A site, as defined at N.J.A.C. 7:7E-1.8, which is smaller than one acre; and

2. An area of trees, smaller than one acre, that is surrounded on all sides by areas with fewer than one tree per 100 square feet.

(c) To determine if a site or portion of a site is forested:

1. Select two 25-foot by 25-foot plots in each acre of the site as follows:

i. The plots shall be located in the portion of each acre with the highest density of trees, as defined at N.J.A.C. 7:7E-1.8, based on a visual inspection;

ii. If any half-acre of the site has fewer than one tree per 100 square feet, no plots need be selected on that half-acre;

iii. If the tree size and density are very uniform over some or all of the site, fewer plots may be selected in the area of uniformity;

2. In each plot, measure the diameter of each tree at four and one-half feet above ground;

3. Score each tree as follows:

<u>Diameter of tree</u>	<u>Points</u>
2 to 4 inches	1
>4 to 12 inches	2
>12 inches	4

4. Add together the scores for all of the trees in the plot;

5. If the total score for a plot is equal to or greater than 16, the plot is forested. For example, if a 25-foot by 25-foot plot contains three trees which are three inches in diameter, three trees which are six inches in diameter, and three trees which are 15 inches in diameter, the score for the plot would be:  $(3 \times 1) + (3 \times 2) + (3 \times 4) = 21$ , and the plot is considered forested;

6. If a plot is forested, the Department shall assume that the half-acre of the site surrounding the plot is also forested, unless additional plots are sampled in that half-acre and the scores demonstrate that the half-acre is not entirely forested. In that case, a sufficient number of plots shall be sampled to delineate the forested portion of the half-acre; and

7. If a plot is unforested, the Department shall assume that the half-acre of the site surrounding the plot is also unforested, unless a site visit, photographs, or other information indicates that it contains forested areas.

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

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

Substituted "7:7E-1.8" for "7:7E-1.5" in (b)1 and (c)1i.

#### SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA

**7:7E-5A.1 Purpose and scope**

This subchapter sets the impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area, as defined at N.J.A.C. 7:7E-5.2. For a site in the upland waterfront development area, impervious cover limits and vegetative cover percentages are based on the growth rating, environmental sensitivity, and development potential, and on whether the site is forested or unforested.

**7:7E-5A.2 Upland waterfront development area regions and growth ratings**

(a) The growth rating for a site in the upland waterfront development area is determined by the region in which it is located, and the growth rating assigned to that region.

(b) The growth ratings are as follows:

1. A development growth rating is assigned to regions of the upland waterfront development area that are already largely developed. Development in regions with this growth rating is preferred over development in regions with limited growth and extension growth ratings;

2. An extension growth rating is assigned to regions of the upland waterfront development area that qualify for neither a development growth rating nor a limited growth rating; and

3. A limited growth rating is assigned to regions of the upland waterfront development area that contain large environmentally sensitive areas.

(c) The eight different regions and their growth ratings are based on their respective patterns of development and cultural and natural resources.

(d) The regions are as follows:

1. The urban area region, which is the land within the upland waterfront development area that is within a special urban area, as described at N.J.A.C. 7:7E-3.43;

2. The northern waterfront region, which is the land within the upland waterfront development area within Monmouth County, and extending north from Monmouth County to the New York State boundary;

3. The western ocean region, which is the land within the upland waterfront development area that is within Ocean County, west of the Garden State Parkway and south of State Route 37;

4. The southern region, which is the land within the upland waterfront development area that is in Cape May County (but not located in the Great Egg Harbor River region);

5. The Mullica-southern ocean region, which is:

i. The land in Ocean County within the upland waterfront development area that is south of Cedar Run Creek and west of U.S. Route 9;

ii. The land within the upland waterfront development area in Bass River Township, Burlington County; and

iii. The land within the upland waterfront development area in Atlantic County that is north of County Route 561 (Jimmy Leeds Road);

6. The Great Egg Harbor River region, which is:

i. The land within the upland waterfront development area in Atlantic County that is southwest of County Alternate Route 559; and

ii. The land within the upland waterfront development area in Cape May County that is east of State Highway 50, north of County Route 585, and west of U.S. Route 9;

7. The Delaware River region, which is:

i. The land within the upland waterfront development area in the municipalities of Bridgeton and Millville in Cumberland County and Salem in Salem County; and

ii. The land within the upland waterfront development area in Salem County (but not located in the Delaware estuary region), and extending north from Salem County through Gloucester County, Camden County, Burlington County (but not located in Bass River Township), and Mercer County; and

8. The Delaware estuary region, which is:

i. The land within the upland waterfront development area in Cumberland County (but not located in the municipalities of Bridgeton and Millville); and

ii. The land within the upland waterfront development area in Salem County that is south and east of a boundary formed by Interstate 295 from its intersection with the New Jersey Turnpike to County Route 641; County Route 641 from its intersection with the New Jersey Turnpike to U.S. Route 130; U.S. Route 130 from its intersection with County Route 641 to its intersection with Oldmans Creek (but not located within the municipality of Salem).

(e) The growth ratings assigned to the regions described in (d) above are as follows:

1. The following regions are assigned a development growth rating:

i. Urban area region;

ii. Northern waterfront region; and

iii. Delaware River region;

2. The following regions are assigned an extension growth rating:

- i. Western ocean region; and
- ii. Southern region; and

3. The following regions are assigned a limited growth rating:

- i. Mullica-southern ocean region;
- ii. Great Egg Harbor River region; and
- iii. Delaware estuary region.

#### 7:7E-5A.3 Environmental sensitivity

(a) The environmental sensitivity of a site is based on the soil type and the depth to seasonal high water table or the presence of paving or structures. Different portions of a site may have different environmental sensitivities.

(b) A site or portion of a site has a high environmental sensitivity if it has wet or high permeability moist soils.

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 as defined by the United States Department of Agriculture's Soil Texture Triangle, in which case they are soils with a depth to seasonal high water table of four feet or less.

(c) A site or portion of a site has a medium environmental sensitivity if it has neither a high environmental sensitivity nor a low environmental sensitivity.

(d) A site or portion of a site has a low environmental sensitivity if the depth to seasonal high water table is greater than five feet, or the site or portion of the site has paving or structures at the time the application is submitted.

#### 7:7E-5A.4 Development potential

(a) Development potential is determined by the type of development proposed and the presence or absence of certain development-oriented elements at or near the site of the proposed development, including roads; wastewater conveyance, treatment and disposal system; and existing development. Development potential may be high, medium or low, as determined under N.J.A.C. 7:7E-5A.5 through 5A.7. A single development potential applies to an entire site.

(b) If a development proposed on a site is inconsistent with the applicable Areawide Water Quality Management Plan adopted under N.J.A.C. 7:15, the development potential cannot be determined for the site. Any development that is inconsistent with the applicable Areawide Water Quality Management Plan is prohibited under N.J.A.C. 7:7E-8.4(b).

(c) The types of development are:

1. Residential or minor commercial development, which includes housing, hotels, motels, minor commercial facilities of a neighborhood or community scale with 700 or fewer parking spaces and less than 100,000 square feet of enclosed building area, and mixed use developments that are predominantly residential. For the purposes of this section and N.J.A.C. 7:7E-5A.5, residential or minor commercial development also includes libraries, daycare centers, municipal or other government administrative, public works or emergency service buildings, and churches, synagogues or other houses of worship;

2. Major commercial or industrial development, which includes all industrial development, warehouses, offices, manufacturing plants, energy facilities, wholesale and major shopping centers with more than 100,000 square feet of enclosed building area, and major parking facilities with more than 700 parking spaces. For the purposes of this section and N.J.A.C. 7:7E-5A.6, major commercial or industrial development also includes solid waste facilities and wastewater treatment plants; and

3. Campground development, which provides facilities for visitors to enjoy the natural resources of the State. Typically, this type of development is suited to sites somewhat isolated from other development and with access to water, beach, forest and other natural amenities.

(d) The development potential for a site shall be determined as follows:

1. If a proposed development is a residential or minor commercial development as described at (b)1 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.5;

2. If a proposed development is a major commercial or industrial development as described at (b)2 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.6; and

3. If a proposed development is a campground development as described at (b)3 above, the development potential for the site is determined under N.J.A.C. 7:7E-5A.7.

(e) If a proposed development is not a residential development, a minor commercial development, a major commercial development, an industrial development, or a campground development, the development potential for the site shall be that for the most similar type of development described at (b) above.

#### 7:7E-5A.5 Development potential for a residential or minor commercial development site

(a) Subject to the limitation at N.J.A.C. 7:7E-5A.4(b), the development potential for a residential development site or a minor commercial development site is determined using (b) through (d) below.

(b) A site upon which a residential or minor commercial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;
2. If an offsite wastewater conveyance, treatment and disposal system is to be used:
  - i. The existing conveyance component of the system abuts the site; and
  - ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and
3. A majority of the perimeter of the site, excluding wetlands or surface water areas or land areas abutting limited access transportation corridors, is adjacent to or across a public road or railroad from land that is developed, or a majority of the area, excluding wetlands or surface water areas, within 1,000 feet of the site is developed. For the purposes of this paragraph, developed land consists of that part of a property where one of the developments listed below is located and does not include any undeveloped portions of the property that surround the developed portion:
  - i. Residential development at densities of at least one dwelling unit per acre;
  - ii. Commercial development;
  - iii. Industrial development, including warehouses;
  - iv. Schools and other public institutions;
  - v. Ball fields;
  - vi. Those areas of public parks developed for active recreational use; or
  - vii. Transportation facilities including train stations and airfields; and
4. If the site is located in a region with a limited growth or extension growth rating, the site shall, in addition to meeting the requirements at (b)1 through 3 above, be located one-half mile or less from the nearest existing commercial or industrial development that has more than 20,000 square feet of enclosed building area within a single facility.

(c) A site upon which a residential development or a minor commercial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements of either (c)1 or 2 below:

1. The site is located in a region with a development growth rating and the site is located:

- i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and will be constructed before or concurrently with the development; and

- ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:

- (1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; or

2. The site is located in a region with a limited growth or extension growth rating and the site is located:

- i. One thousand feet or less from the nearest existing paved public road;

- ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:

- (1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;

- iii. If a commercial development is proposed, one-half mile or less from the nearest existing commercial or industrial development that has more than 20,000 square feet of enclosed building area within a single facility; and

- iv. If a residential development is proposed, one-half mile or less from developed land, as described at (b)3 above.

(d) A site upon which a residential or minor commercial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

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

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

In (b)3, substituted "area, excluding wetlands or surface water areas," for "land" in the introductory paragraph.

#### **7:7E-5A.6 Development potential for a major commercial or industrial development site**

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(c)4, the development potential for a major commercial or indus-

trial development site is determined under (b) through (d) below.

(b) A site upon which a major commercial or industrial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. An existing paved public road abuts the site;
2. If an offsite wastewater conveyance, treatment and disposal system is to be used:
  - i. The existing conveyance component of the system abuts the site; and
  - ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity;
3. A part of the perimeter of the site is adjacent to, or immediately across a paved road from, existing major commercial or industrial development, or, in a region with a development growth rating, the site is adjacent to or immediately across a paved road from any existing commercial development; and
4. In a region with a limited growth or extension growth rating, the site is located either:
  - i. For a major commercial development, within two miles of an existing intersection with a limited access highway; or
  - ii. For an industrial development, either within:
    - (1) Two miles of an existing intersection with a limited access highway; or
    - (2) One-half mile of a freight rail line that shall be used, or the applicant has a written agreement with the owner of a freight rail line to obtain freight rail service directly to the site.

(c) A site upon which a major commercial or industrial development is proposed is a medium development potential site if it is not a high development potential site under (b) above but does meet the requirements at either (c)1 or 2 below:

1. The site is located in a region with a development growth rating and the site is located:
  - i. One thousand feet or less from the nearest existing paved public road, or 1,000 feet or less from the nearest public road that is approved and shall be constructed before or concurrently with the development;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the conveyance component of that system, or 1,000 feet or less from the conveyance component of a system that is approved and shall be constructed before or concurrently with the development, provided:

(1) The wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. For an industrial development, one-half mile or less from the nearest existing commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility; or

2. The site is located in a region with a limited growth or extension growth rating and the site is located:

i. Either 1,000 feet or less from the nearest existing paved public road, or five miles or less from the nearest intersection with a limited access highway;

ii. If an offsite wastewater conveyance, treatment and disposal system is to be used, 1,000 feet or less from the existing conveyance component of the system, provided:

(1) The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

iii. One-half mile or less from the nearest commercial or industrial development that has more than 50,000 square feet of enclosed building area within a single facility.

(d) A site upon which a major commercial or industrial development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

#### 7:7E-5A.7 Development potential for a campground development site

(a) Subject to the limitations at N.J.A.C. 7:7E-5A.4(b), the development potential for a campground development site is determined using (b) through (d) below.

(b) A site upon which a campground development site is proposed is a high development potential site if it meets all of the requirements at (b)1 through 3 below:

1. An existing paved public or private road abuts the site;

2. If an offsite wastewater conveyance, treatment and disposal system is to be used:

- i. The existing conveyance component of the system abuts the site; and
- ii. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity; and

3. The land surrounding the site is natural; undeveloped; contains beaches, streams, or forests; and is readily accessible by foot to campground users.

(c) A site upon which a campground development is proposed is a medium development potential site if it is not a high development site under (b) above but does meet the requirements of (c)1 and 2 below:

- 1. The site is one-half mile or less from the nearest existing paved public road; and
- 2. If an offsite wastewater conveyance, treatment, and disposal system is to be used, the site is 1,000 feet or less from the existing conveyance component of that system, provided:

- i. The existing wastewater conveyance, treatment and disposal system has adequate capacity to convey, treat, and dispose of the sewage from the proposed development, or the applicant has an agreement with the sewage authority to modify the system to provide adequate capacity.

(d) A site upon which a campground development is proposed is a low development potential site if it is neither a high development potential site under (b) above nor a medium development potential site under (c) above.

**7:7E-5A.8 Development intensity**

(a) The development intensity for a site is based on growth rating, environmental sensitivity, and development potential. Tables A through C below are used to determine the development intensity of a site or portion of a site. Because environmental sensitivity may be different for different portions of a site, development intensity can also be different for different portions of a site.

(b) To determine the development intensity for a site:

- 1. Determine the growth rating for the site under N.J.A.C. 7:7E-5A.2;
- 2. Determine the environmental sensitivity for each portion of the site under N.J.A.C. 7:7E-5A.3;
- 3. Determine the development potential for the site based on the site and the type of development under N.J.A.C. 7:7E-5A.4 through 5A.7;

4. Consult Table A, B, or C below as follows:

- i. For a site with a development growth rating, consult Table A;
- ii. For a site with an extension growth rating, consult Table B; and
- iii. For a site with a limited growth rating, consult Table C.

**TABLE A**  
Development Intensity for a Site with a Development Growth Rating

	Low Environmental Sensitivity	Medium Environmental Sensitivity	High Environmental Sensitivity
High Development Potential	High development intensity	High development intensity	High development intensity
Medium Development Potential	High development intensity	High development intensity	Low development intensity
Low Development Potential	Low development intensity	Low development intensity	Low development intensity

**TABLE B**  
Development Intensity for a Site with an Extension Growth Rating

	Low Environmental Sensitivity	Medium Environmental Sensitivity	High Environmental Sensitivity
High Development Potential	High development intensity	High development intensity	High development intensity
Medium Development Potential	Medium development intensity	Medium development intensity	Low development intensity
Low Development Potential	Low development intensity	Low development intensity	Low development intensity

**TABLE C**  
Development Intensity for a Site with a Limited Growth Rating

	Low Environmental Sensitivity	Medium Environmental Sensitivity	High Environmental Sensitivity
High Development Potential	Medium development intensity	Medium development intensity	High development intensity
Medium Development Potential	Medium development intensity	Low development intensity	Low development intensity
Low Development Potential	Low development intensity	Low development intensity	Low development intensity

**7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area**

(a) If a site or portion of a site is forested, as determined under N.J.A.C. 7:7E-5.5, the impervious cover limit is the acreage of the net land area on the site or portion as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table D below for the

development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8.

(b) If a site or portion of a site is unforested, as determined under N.J.A.C. 7:7E-5.5, the impervious cover limit is the limit at (b)1, 2 or 3 below, whichever is higher:

1. The acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table E below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8;
2. For a site located in the northern waterfront region or urban area region, as determined under N.J.A.C. 7:7E-5A.2(d), the amount of existing impervious cover located on a site as determined under (c) below; or
3. For a site located in a region other than those identified at (b)2 above, the acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department.

(c) For the purposes of determining impervious cover limits under (b) above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;
2. The amount of impervious cover that appears on the applicable Tidelands Map, as defined at N.J.A.C. 7:7E-5.2; or
3. The amount of impervious cover that was placed on the site under the authority of a coastal permit and after the date the photography was performed for the Tidelands Map identified under (c)2 above.

**TABLE D**  
Percentages for Calculating Impervious Cover Limit for a Forested Site under N.J.A.C. 7:7E-5A.9

Development Intensity	Impervious Cover Percentage
High development intensity	70 percent
Medium development intensity	40 percent
Low development intensity	5 percent

**TABLE E**  
Percentages for Calculating the Impervious Cover Limit for an Unforested Site under N.J.A.C. 7:7E-5A.9

Development Intensity	Impervious Cover Percentage
High development intensity in the urban area region	90 percent
High development intensity not in the urban area region	80 percent
Medium development intensity	40 percent
Low development intensity	5 percent

Amended by R.2003 d.60, effective February 3, 2002.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
In (b)2, amended the N.J.A.C. reference.

**7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area**

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

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:
  - i. Identify the forested and/or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5;
  - ii. If a site or portion of a site identified at (a)1i has more than one development intensity, further divide that site or portion into smaller portions based on their respective development intensities;
  - iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation and tree planting percentages in Table F below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8; and
  - iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table G below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7E-5A.8; and

2. To determine the area (in acres) of herb/shrub vegetation preservation and/or herb/shrub vegetation planting on the site:

- i. For each portion of the site identified at (a)1ii above, subtract both the acreage of impervious cover allowed under N.J.A.C. 7:7E-5A.9 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d).

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5A.9(b)2 or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7E-5A.9(b)3 exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3, then trees shall be planted in the area (in acres) remaining after the acreage of impervious cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. 7:7E-5.4.

1. The requirement for tree planting at (a)1 above can be satisfied by preserving equivalent forested areas in addition to that required under (a)1 above.

2. The requirement for planting of herb/shrub vegetation at (a)2 above can be satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under (a)1 above.

TABLE F  
Tree Preservation and Planting Percentages for a Forested Site

Development Intensity	Tree Preservation Percentage	Tree Preservation and/or Planting Percentage
High development intensity in an urban area region	25 percent	5 percent
Medium development intensity	25 percent	5 percent
Low development intensity	30 percent	0 percent

TABLE G  
Tree Planting Percentages for an Unforested Site

Development Intensity	Tree Preservation and/or Planting Percentage
High development intensity	5 percent
Medium development intensity	20 percent
Low development intensity	5 percent

Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
In (c), added 1 and 2.

**SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA**

**7:7E-5B.1 Purpose and scope**

(a) This subchapter sets impervious cover limits and vegetative cover percentages for sites in the CAFRA area. For a site in the CAFRA area, impervious cover limits and vegetative cover percentages are based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

(b) Except as may be required by law, it is not the intent of this subchapter that the extent to which a municipality has or has not conformed its ordinances or development master plan to this subchapter be considered by any department, agency, or instrumentality of State government in:

1. Administering any State grant, loan, or any financial assistance program involving the expenditure of State funds;
2. Making any permitting decision involving infrastructure that is deemed necessary by the permitting authority to alleviate significant and imminent threats to public health and safety; or

3. Making any permitting decision involving transportation infrastructure deemed necessary by the permitting authority solely to meet the needs of existing populations or anticipated populations based on valid development approvals by all relevant entities at the time of permit application, provided the permit application meets all of the substantive requirements of this chapter.

(c) Subsection (b) above shall not be construed to:

1. Prevent the awarding of any financial assistance, grant, or loan for planning purposes;
2. Contravene the legislative intent concerning capital projects pursuant to N.J.S.A. 52:9S-2 et seq.;
3. Contravene the legislative intent concerning coastal planning policies pursuant to N.J.S.A. 52:18A-206; or
4. Prevent the Department from considering secondary impacts in accordance with N.J.A.C. 7:7E-6.3.

(d) Compliance with the impervious cover limits and vegetative cover percentages of this subchapter shall not exempt any development from the Special Areas rules at N.J.A.C. 7:7E-3, the resource rules at N.J.A.C. 7:7E-8, or any other provision of this chapter.

Amended by R.2001 d.81, effective March 5, 2001.  
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).  
Added designation to first paragraph, and added (b) through (e).  
Amended by R.2004 d.43, effective January 20, 2004.  
See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).  
Deleted (c); recodified former (d) and (e) as (c) and (d).

**7:7E-5B.2 Coastal Planning Areas**

(a) For purposes of this subchapter and consistent with all other rules in this chapter, descriptions and policy objectives for the Coastal Planning Areas are set forth in (b) through (f) below.

(b) The Coastal Metropolitan Planning Area includes a variety of communities on the New Jersey coast. This Coastal Planning Area generally has a high population density and existing public water and sewer systems. The policy objectives for the Coastal Metropolitan Planning Area are as follows:

1. Guide development and redevelopment to ensure efficient use of scarce land while capitalizing on the inherent public facility and service efficiencies of concentrated development patterns;
2. Accommodate a variety of housing choices through development and redevelopment;
3. Promote economic development by encouraging redevelopment efforts such as infill, consolidation of property, and infrastructure improvements, and by supporting tourism and related activities;
4. Promote high-density development patterns in coastal urbanized areas to encourage the design and use

of public transit and alternative modes of transportation to improve air quality, to improve travel among population and employment centers and transportation terminals, and to promote transportation systems that address the special seasonal demands of travel and tourism along the coast;

5. Encourage the reclamation of environmentally damaged sites and mitigate future negative impacts, particularly to waterfronts, beaches, scenic vistas, and habitats;

6. Promote public recreation opportunities in development and redevelopment projects, and ensure meaningful public access to coastal waterfront areas; and

7. Encourage the repair or replacement of existing infrastructure systems where necessary to ensure that existing and future development will cause minimal negative environmental impacts.

(c) The Coastal Suburban Planning Area is generally located adjacent to the more densely developed Coastal Metropolitan Planning Area, but can be distinguished by a lack of high intensity centers and by a more dispersed and fragmented pattern of development. The existing inventory of undeveloped and underdeveloped land in this Coastal Planning Area should be sufficient to accommodate much of the market demand for future growth and development in the CAFRA area. Internally oriented, mixed-use centers should be encouraged in the Coastal Suburban Planning Area. While development patterns are well established here, development intensities should be highest within CAFRA centers to concentrate development and take advantage of infrastructure efficiencies. Development in the Coastal Suburban Planning Area outside of centers should be less intense than in centers, and less intense than in the Coastal Metropolitan Planning Area. Development in areas not in centers and not in or adjacent to an existing sewer service area should be less intense than in other parts of the Coastal Suburban Planning Area. The policy objectives for the Coastal Suburban Planning Area are as follows:

1. Encourage mixed-use development and redevelopment in compact centers;

2. Guide opportunities for economic development and employment in centers, and promote seasonal and year-round travel and tourism activities in the coastal resort areas;

3. Encourage links from coastal suburban areas to employment centers with public transit, and promote transportation systems that address the special seasonal demands of travel and tourism along the coast; and

4. Ensure adequate wastewater treatment capacity, and minimize off-site stormwater runoff by encouraging the use of best management practices which protect the character of natural drainage systems.

(d) The Coastal Fringe Planning Area is generally located adjacent to the Coastal Metropolitan Planning Area or the Coastal Suburban Planning Area. It is a predominantly rural area that is neither prime agricultural nor environmentally sensitive land, but which supports agriculture and other resource-based activities. The Coastal Fringe Planning Area is served primarily by a rural, two-lane road network and on-site well water and wastewater systems. It generally lacks public wastewater systems except in existing centers. This Coastal Planning Area is characterized by scattered small settlements and free-standing residential and commercial developments. The policy objectives for the Coastal Fringe Planning Area are as follows:

1. Encourage development in more compact, deliberately designed community patterns to minimize land conflicts and to accommodate growth that would otherwise occur elsewhere, encourage development that does not exceed the carrying capacity of natural or built systems and that maintains or enhances the character of existing communities, and maintain existing low-density and low-intensity development patterns that do not exceed the carrying capacity of natural systems and are consistent with the existing landscape;

2. Encourage rural economic activities, such as agriculture and recreation, and guide higher intensity activities to the centers;

3. Encourage transportation systems that link centers in the Coastal Fringe Planning Area to each other and to the Coastal Metropolitan and Coastal Suburban Planning Areas; and

4. Encourage infrastructure that supports development in centers.

(e) The Coastal Rural Planning Area generally contains most of the CAFRA area's remaining prime agricultural land, as well as large contiguous tracts of forested areas and other open lands. It is interspersed with centers and with scattered commercial, industrial, and low density residential development. It is served by rural road networks and on-site wastewater and water supply systems. The Coastal Rural Planning Area also supports rural economic activities such as recreation related business. The policy objectives for the Coastal Rural Planning Area are as follows:

1. Protect and enhance the rural character and agricultural viability of the Coastal Rural Planning Area by guiding growth into centers, maintain existing low-density and low-intensity development patterns that are supporting rather than conflicting with the rural landscape, encourage creative land use techniques to minimize the impact of new development on rural features, and ensure that development does not exceed the capacity of natural and built systems;

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

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

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

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

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

development of public infrastructure facilities outside of centers;

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

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

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

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

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

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

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

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

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

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

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

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

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

Until the Department promulgates such revised boundary, the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under (a) above shall continue to be operative.

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

(g) The boundaries delineated by the Department for non-mainland coastal centers, as defined at N.J.A.C. 7:7E-5.2, are described in Appendix 3 of this chapter. The boundaries for mainland coastal centers are described in Appendix 2 of this chapter.

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

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

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

Public Notice: Atlantic Highlands Borough CAFRA center boundary acceptance.

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

Public Notice: Manasquan Borough CAFRA center boundary acceptance.

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

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

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

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

Public Notice: Planning area boundary acceptance or rejection.

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

Administrative change.

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

Petition for Rulemaking.

See: 37 N.J.R. 360(b), 537(a), 794(a), 1234(a).

Amended by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Section was "Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers"; in (c), changed Appendix 4 references to Appendix 5; rewrote (g).  
Public Notice: Acceptance of Changed Planning Area Boundary.  
See: 44 N.J.R. 2132(b).

#### Case Notes

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

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

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

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is determined under (c) below. Note that the impervious cover limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;
2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (d) below;
3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (e) below; and
4. If a site is located on a military installation, the impervious cover limit is determined under (f) below.

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

1. Determine if the site is located in a CAFRA center, CAFRA core, or CAFRA node by referring to the CAFRA Planning Map;
2. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, determine if the site is located in a coastal center by referring to Appendix 2 and 3;
3. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in a coastal center, determine the Coastal Planning Area in which the site is located by referring to the CAFRA Planning Map; and
4. If the site is located on a military installation, see (f) below.

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

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

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

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

(d) Subject to limitations regarding mainland coastal centers at N.J.A.C. 7:7E-5B.6(g), if a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is the limit at (d)1 or 2 below, whichever is higher:

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

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

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

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

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

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

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

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

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

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

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;

2. The amount of impervious cover that appears on the applicable 95-97 imagery; or

3. The amount of impervious cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

TABLE H

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

<u>Site Location</u>	<u>Impervious Cover Percentage</u>
CAFRA Urban center	90 percent
CAFRA regional center	80 percent
Coastal regional center	
CAFRA core	
CAFRA node	
CAFRA town	70 percent
Coastal town	
Military installation	
CAFRA village	60 percent
Coastal village	
CAFRA hamlet	50 percent
Coastal hamlet	
Coastal Metropolitan Planning Area	80 percent
Coastal Suburban Planning Area, within a sewer service area*	30 percent
Coastal Suburban Planning Area, outside a Sewer service area*	5 percent
Coastal Fringe Planning Area	5 percent
Coastal Rural Planning Area	3 percent
Coastal Environmentally Sensitive Planning Area	3 percent

\* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and (c)5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be re-

viewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

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

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

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

Petition for Rulemaking.

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

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

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

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

Amended by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Rewrote beginning of introductory paragraph (d) as "Subject to limitations regarding mainland coastal centers at N.J.A.C. 7:7E-5B.6(g), iP".

Petition for Rulemaking.

See: 42 N.J.R. 2332(a), 2992(a).

Petition for Rulemaking.

See: 43 N.J.R. 680(b).

## Case Notes

Numeric limitations on impervious cover established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity were supported by ample evidence. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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

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

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. 7:7E-5B.5(b);

ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5; and

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the impervious cover allowed under N.J.A.C. 7:7E-5B.4 and the acreage of tree planting and/or

preservation required under (a)1 above from the acreage of the net land area on the site.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5B.4(c), (d), (e)3 or (f) or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7E-5B.4(e)2, exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3(d), then trees shall be planted in area (in acres) remaining after the acreage of impervious cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. 7:7E-5.4.

1. The requirement for tree planting at (a)1 above can be satisfied by preserving equivalent forested areas in addition to that required under (a)1 above.
2. The requirement for planting of herb/shrub vegetation at (a)2 above can be satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under (a)1 above.

TABLE I

Tree Preservation and Planting Percentages for Forested and Unforested Sites

Site Location	Tree preservation percentage for forested portion of site	Tree preservation and/or planning percentage for unforested portion of site
CAFRA urban center	10 percent	0 percent
CAFRA regional center		
Coastal regional center		
CAFRA core		
CAFRA node		
Military installation		
CAFRA town	25 percent	5 percent
Coastal town		
CAFRA village	30 percent	5 percent
Coastal village		
CAFRA hamlet	40 percent	5 percent
Coastal hamlet		
Coastal Metropolitan Planning Area	10 percent	0 percent
Coastal Suburban Planning Area, within a sewer service area*	35 percent	5 percent

Coastal Suburban Planning Area, outside a sewer service area*	70 percent	5 percent
Coastal Fringe Planning Area		
Coastal Rural Planning Area		
Coastal Environmentally Sensitive Planning Area		

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

Administrative correction.  
 See: 32 N.J.R. 1515(b).  
 Recodified from N.J.A.C. 7:7E-5B.4 and amended by R.2001 d.81, effective March 5, 2001.  
 See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).  
 In (a) and (b), amended N.J.A.C. references.  
 Amended by R.2003 d.60, effective February 3, 2003.  
 See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).  
 In (b), substituted "7:7E-5B.4(c), (d), (e)3" for "7:7E-5B.4(c), (d)" "7:7E-5B.4(e)2" for "7:7E-5B.4(e)"; in (c), added 1, 2.

Case Notes

Numeric limitations on impervious cover established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity were supported by ample evidence. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7E-5B.6 Mainland coastal centers

(a) On February 7, 2005, the boundaries delineated by the Department for coastal centers not located on barrier islands, oceanfront spits, or peninsulas in the CAFRA area expired. The expired boundaries for such coastal centers are re-established as the boundaries for mainland coastal centers once all conditions set forth at (b)1 or 2 below are met. The boundaries of mainland coastal centers are described in Appendix 2 of this chapter. The boundaries for coastal centers that expired on February 7, 2005 that do not meet the conditions set forth at (b) below are described in Appendix 4 of this chapter.

(b) A mainland coastal center is established under this section if, as explained at (a) above, the boundaries of the coastal center expired on February 7, 2005 and the coastal center is:

1. Located in a municipality that, prior to July 5, 2005, held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3; or
2. Located in a municipality that:
  - i. By August 4, 2005, submits to the Office of Smart Growth a resolution of the municipal governing body requesting a pre-petition meeting in accordance with N.J.A.C. 5:85-7.3. The resolution shall identify the expired coastal centers described in Appendix 4 that the

municipality seeks to re-establish. Only the expired coastal centers identified in the resolution shall be re-established;

ii. Prior to October 15, 2005, holds a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3; and

iii. Prior to March 15, 2006, obtains a determination from the Executive Director of the Office of Smart Growth, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for plan endorsement is complete.

(c) The boundaries of the mainland coastal centers established in accordance with (b) above and described in Appendix 2 shall expire in accordance with (c)1 or 2 below, as applicable. On and after the expiration of the mainland coastal centers, the impervious cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the non-mainland coastal centers in Appendix 3 of this chapter, shall be determined in accordance with N.J.A.C. 7:7E-5B.4(c), (e) or (f).

1. On March 15, 2006, if the municipality in which the mainland coastal center is located has not obtained a determination from the Executive Director of the Office of Smart Growth, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for plan endorsement is complete; or

2. On March 15, 2007.

(d) To reflect changes in mainland coastal centers occurring after February 6, 2006, the Department shall publish in the New Jersey Register a notice of administrative change when the boundaries of a mainland coastal center are established under (a) and (b) above or expire under (c) above.

(e) The areas identified at (e)1 through 6 below shall not be considered part of a mainland coastal center, except for the purposes of (f) and (h) below:

1. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened or Other Priority Species. The data are available as a download at the CAFRA Planning Map layers webpage: [www.nj.gov/dep/gis/CAFRAlayers.htm](http://www.nj.gov/dep/gis/CAFRAlayers.htm);

2. Areas mapped as Natural Heritage Program priority sites, excluding those lands within the boundaries of these sites mapped in the URBAN lands layer extracted from the most recent NJDEP Land Use/Land Cover GIS data set. Both the Natural Heritage Program priority site data and the URBAN lands data are available as a download at the CAFRA Planning Map layers webpage: [www.nj.gov/dep/gis/CAFRAlayers.htm](http://www.nj.gov/dep/gis/CAFRAlayers.htm);

3. Land that is owned by Federal, State, county or municipal agencies or conservation organizations and dedicated to recreation, conservation of natural resources, wildlife protection, or wildlife management;

4. Special water resource protection areas along a Category One water established under the Stormwater Management rules, N.J.A.C. 7:8. Surface waters that are designated Category One are listed in the Surface Water Quality Standards at N.J.A.C. 7:9B;

5. Wetlands as defined at N.J.A.C. 7:7E-3.27; and

6. Areas identified as Coastal Critical Environmental Sites. The data are available as a download at the CAFRA Planning Map layers webpage: [www.nj.gov/dep/gis/CAFRAlayers.htm](http://www.nj.gov/dep/gis/CAFRAlayers.htm).

(f) For purposes of any CAFRA permit application that was received by the Department prior to February 7, 2005, assigned an agency project number pursuant to N.J.A.C. 7:7-4.4(a)1i or ii, and proposes a development in a mainland coastal center established in accordance with (b) above that has not expired pursuant to (c) above, the impervious cover limits and vegetative cover percentages shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5, respectively, provided the CAFRA permit application is complete for final review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2006.

(g) For purposes of any CAFRA permit application that was received by the Department after February 6, 2005 and proposes a development in a mainland coastal center established in accordance with (b) above that has not expired pursuant to (c) above:

1. The impervious cover limits and vegetative cover percentages for those portions of the site located within the mainland coastal center shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5, respectively, provided no portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside the boundaries of the mainland coastal center, or in one of the areas identified at (e)1 through 6 above.

2. If any portion of the proposed development, as defined at N.J.A.C. 7:7E-1.8, is located outside of the mainland coastal center boundaries, or in one of the areas identified at (e)1 through 6 above, then the impervious cover limits and vegetative cover percentages for the entire development shall be determined in accordance with N.J.A.C. 7:7E-5B.4(e) and 5B.5, respectively, for the appropriate Coastal Planning Area.

(h) For purposes of any CAFRA permit application that proposes a 100 percent affordable housing development in a mainland coastal center established in accordance with (b)1 above or an expired coastal center located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3, the impervious cover limits and vegetative cover requirements shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5, respectively, provided the CAFRA permit application is complete for final review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2007. Such applications

shall not be subject to the restrictions at (g) above. This provision shall no longer be applicable to developments proposed within a mainland coastal center or an expired coastal center if the Department establishes a corresponding CAFRA center pursuant to N.J.A.C. 7:7E-5B.2(c) or (e).

(i) For the purposes of (e)5 above, the boundaries of the Critical Environmental Sites on the State Plan Policy Map adopted by the State Planning Commission on March 1, 2001 are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Critical Environmental Sites. Whenever the State Planning Commission formally approves any new or changed Critical Environmental Site boundary within a mainland coastal center, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject, or reject and revise, a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be inconsistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. or this chapter. For those new or changed Critical Environmental Site boundaries located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of (e) above.

1. If the Department accepts the State Planning Commission formally approved new or changed Critical Environmental Site boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Critical Environmental Site, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under this subsection.

2. If the Department determines under this subsection to reject the State Planning Commission formally approved new or changed Critical Environmental Site boundary, any applicable boundary incorporated by reference under this subsection shall continue to be operative, except as provided under (i)3 below.

3. The Department may determine under this subsection to reject the State Planning Commission formally approved new or changed Critical Environmental Site boundary and to establish a revised Coastal Critical Environmental Site boundary by promulgating an amendment to this chapter in accordance with the Administrative Pro-

cedure Act, N.J.S.A. 52:14B-1 et seq. Until the Department promulgates such revised boundary, any applicable Coastal Critical Environmental Site boundary under this subsection shall continue to be operative.

New Rule by R.2006 d.46, effective February 6, 2006.  
See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).  
Amended by R.2006 d.363, effective October 2, 2006.  
See: 38 N.J.R. 1921(a), 38 N.J.R. 4214(a).

In (e), inserted "and (h)"; recodified (h) as (i); added new (h); and in (i)2, substituted "(i)3" for "(h)3".

## SUBCHAPTER 6. GENERAL LOCATION RULES

### 7:7E-6.1 Rule on location of linear development

(a) A linear development, as defined at N.J.A.C. 7:7E-1.8, 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 and marine fish or fisheries as defined at N.J.A.C. 7:7E-8.2;
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).  
Amended by R.2000 d.45, effective February 7, 2000.  
See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (a), rewrote the first sentence of the introductory paragraph.  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a), amended the N.J.A.C. reference in the introductory paragraph and rewrote 1.

### 7:7E-6.2 Basic location rule

(a) A location may be acceptable for development under N.J.A.C. 7:7E-3, 4, 5, 5A, 5B and 6, but the Department 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).

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

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

In (a), amended the N.J.A.C. reference in the introductory paragraph.

### 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 affect 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 Coastal Zone Management rules. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas and to protect and preserve coastal resources.

1. 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.

2. 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 Coastal Zone Management rules.

3. 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, PO Box 301, Trenton, New Jersey 08625-0301.

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).

Amended by R.2001 d.81, effective March 5, 2001.

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

In (a), substituted "affect" for "effect"; in (b)1, inserted "and the CAFRA Planning Map as defined at N.J.A.C. 7:7E-5.2" preceding "an assessment".

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

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

Rewrote (b).

### 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:

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

**7:7E-7.1 Purpose and scope**

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules 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).

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

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

Rewrote the section.

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

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

**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 lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

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, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11. The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, except on bay islands where the requirements of the bay islands 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-4.10) 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) Standards relevant to the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (e)2i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method de-

scribed at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the Dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)10i below, unless the development meets either (e)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equiva-

lent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7E-8.11.

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25;

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or

vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)10i above;

12. The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(f);

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

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (f)2i through iv below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The single family home or duplex legally existed on July 19, 1993;

(2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;

(3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;

(4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single

family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The development is the enclosure of a deck, patio, or porch;

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;

(3) The deck, patio, or porch legally existed on July 19, 1993;

(4) The deck, patio, or porch abuts the dwelling;

(5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;

(6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;

(7) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)10i below, unless the development meets either (f)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of

existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7E-8.11.

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)10i above;

12. The standards for the development of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(e);

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

(g) 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.

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).

Public Notice: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 5333(b); 30 N.J.R. 494(a).

Administrative correction.

See: 30 N.J.R. 217(a).

Petition for Rulemaking.

See: 30 N.J.R. 2525(a), 30 N.J.R. 4077(a).

Amended by R.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

Rewrote (e)1iii(3).

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

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

In (b)3, rewrote the second sentence.

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

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

Deleted former (e), inserted new (e) and (f), and recodified former (f) as (g).

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

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

Rewrote the section.

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

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

In (e)8 and (f)8, deleted "elevation and flood proofing" preceding "requirements" and substituted "Flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "National Flood Insurance Program regulations at 44 CFR Chapter 1".

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (b)2iii, substituted "lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate"; in (b)3, substituted ", N.J.A.C. 7:7E-3.23, lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "(N.J.A.C. 7:7E-3.23) and the Public Access to Waterfront Rule (N.J.A.C. 7:7E-8.11)"; added new (e)5; recodified former (e)5 through (e)12 as (e)6 through (e)13; added new (f)5; and recodified former (f)5 through (f)12 as (f)6 through (f)13.

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

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

In (b)2iii and (b)3, substituted "access" for the second occurrence of "trust rights"; in (b)3, substituted "filled water's edge" for "Filled Water's Edge" and "bay islands" for "Bay Island Corridor"; in the introductory paragraph of (e)5 and (f)5, "public access" for "Public trust rights" and deleted the last sentence; in the introductory paragraph of (e)5, substituted "Public" for "Except as provided in (e)5i below,

public"; deleted (e)5i and (f)5i; and in the introductory paragraph of (f)5, substituted "Public" for "Except as provided in (f)5i below, public".

#### Case Notes

Reviewing court interpreting the regulatory definitions of a dune under N.J.A.C. 7:7E-3.16(a) and a primary frontal dune under N.J.A.C. 7:7-7.8(d)1ii held that the Department of Environmental Protection (DEP) improperly denied a landowner's application to build an ocean-front home as the subject property was not a dune; the DEP's interpretation of the regulatory language also resulted in a fundamental unfairness to petitioner, whose surrounding neighbors had constructed similar homes on their adjacent properties. *Seigel v. N.J. Dep't of Env'tl. Prot.*, 395 N.J. Super. 604, 930 A.2d 461, 2007 N.J. Super. LEXIS 291 (App.Div. 2007).

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).

Where a Settlement Agreement and Letter of Authorization (LOA) following alternative dispute resolution authorized the reconstruction and expansion of the footprint of an existing single-family dwelling located on the property adjacent and easterly to that owned by the petitioners but there were no houses or commercial buildings within 100 feet of the property on either the northerly or southerly sides, the LOA was not a "waiver" of the third prong of the infill development rule of N.J.A.C. 7:7E-7.2(f)4 but rather a settlement based on the totality of the facts of a case in litigation. The Department of Environmental Protection has the ability to enter into reasonable settlements on a case-by-case basis that are in the best interest of the environment and that are consistent with the purpose of Coastal Area Facility Review Act, and in this case, the settlement mitigated the litigation risk and required the homeowner to enhance the dune area with plantings, to file a deed restriction prohibiting any future development seaward of the proposed reconstructed home, and to come into compliance with FEMA requirements governing flooding and storm damage prevention. *Dragon v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 2988-06, 2007 N.J. AGEN LEXIS 919, Final Decision (June 25, 2007).

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.

(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 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 facilities shall be provided.

ii. 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 facility 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-8.21; 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

iii. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access 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. With the exception of pilings, bulkhead sheathing and planking, and dock planking, shall be constructed of non-polluting materials. 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;

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion; and

vi. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50;

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

In (a), deleted N.J.A.C. reference; and in (e), inserted a new 1, and recodified former 1 through 3 as 2 through 4.

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

In (d)2iii(2), amended the N.J.A.C. reference.  
Amended by R.2007 d.374, effective December 17, 2007.  
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (d)2iv, substituted "lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule, N.J.A.C. 7:7E-8.11" for "Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11)"; in (e)2iv; deleted "and" from the end; in (e)2v, inserted "; and" at the end; and added (e)2vi.

Amended by R.2012 d.182, effective November 5, 2012.  
See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (d)2iv, substituted "access" for the second occurrence of "trust rights"; deleted former (e)1; recodified former (e)2 through (e)4 as (e)1 through (e)3; and in (e)1vi, deleted ", and the public trust rights rule, N.J.A.C. 7:7E-8.11" from the end.

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

See: 45 N.J.R. 1141(a).  
Rewrote (d)2 and (d)10ii.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.  
See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

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

#### 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).

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

#### 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 dredged material 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 the Department 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).

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

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

In (b)6, substituted "dredged material" for "dredge spoil"; in (c)2, substituted "the Department" for "DEP".

#### 7:7E-7.4 Energy facility use rule

(a) Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in Special Areas as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

i. The CAFRA area; and

ii. The Western Ocean, Southern, Mullica Southern Ocean, Great Egg Harbor River and Delaware Estuary regions, as defined at N.J.A.C. 7:7E-5A.2(d);

3. Notwithstanding (b)2 above, wind and solar energy facilities, including blades, towers and site disturbance, shall be sited at least 50 feet inland of the mean high water line of tidal waters, excluding manmade lagoons and manmade ditches, in the areas identified at (b)2i and ii above, except for the following:

i. A wind energy facility that meets N.J.A.C. 7:7E-3.49(c)5;

ii. A wind energy facility that meets (b)3ii(1) and (2) below. The Department shall limit approvals under this subparagraph to ensure that the cumulative number of wind turbines approved does not exceed five, each with a power rating as determined by the manufacturer of five megawatts or less, or six, each with a power rating as determined by the manufacturer of four megawatts or less. The wind energy facility shall be:

(1) Located in the Atlantic Ocean within State waters between latitude 39 degrees 55 minutes 56 seconds N (offshore of Seaside Park) and latitude 39 degrees 01 minute 58 seconds N (offshore of Stone Harbor); and

(2) No closer than 2.5 nautical miles to the mean high water line; or

iii. A wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for, the pier;

4. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11; and

5. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.12.

(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, but not limited to, facilities for work boats, crew boats and helicopters, pipe-laying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in the Urban Area, Delaware River and Northern Waterfront regions and discouraged in the CAFRA area.

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 the Urban Area, Delaware River and Northern Waterfront regions, 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 Urban Area, Delaware River and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area as defined at N.J.A.C. 7:7E-1.8, but not on a continual, longterm 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 in the CAFRA area and encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia.

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 of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

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 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 rightsofway, to the maximum extent practicable;

iii. 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 in terms of the entire pipeline corridor through the State of New Jersey and its coastal waters;

iv. Pipeline corridors through the State coastal waters shall, 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;

v. 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. New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines, not specifically identified in this section, are discouraged in the CAFRA area and coastal waters;

3. Oil and gas pipeline related facilities shall provide adequate visual, sound, and vegetative buffers; and

4. Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

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

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. For the purposes of this subsection, the following terms have the following meanings:

i. "Separation" means the removal of free liquids from a gas stream. Free liquids may be either hydrocarbon liquids (which may be processed into fuels such as ethane, butane (and propane) or free water.

ii. "Dehydration" means 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 CAFRA area and coastal waters.

3. Separation and dehydration facilities shall:

i. Provide adequate visual, sound, and vegetative buffers; and

ii. Be reviewed as part of the overall proposed gas transportation system.

4. 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 in the CAFRA area and coastal waters.

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 onshore 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 CAFRA 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 CAFRA 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.

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 CAFRA area if adequate visual, sound, and vegetative buffer areas are provided.

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 CAFRA area provided they are consistent with all applicable location and resource rules.

2. New oil refineries and petrochemical facilities outside the CAFRA area are encouraged to locate in established industrial areas accessible to their potential labor force and existing infrastructure.

3. New oil refineries and petrochemical facilities are prohibited in the CAFRA area.

4. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the CAFRA area, will be acceptable if such expansion does not violate applicable State air and water quality standards.

5. 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 CAFRA area.

2. The storage of crude oil, gases and other potentially hazardous liquid substances is conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

4. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable along the water's edge unless the storage facility is supplied by ship, in which case it is acceptable on the filled water's edge

provided the storage facility complies with (p)1, 2 and 3 above.

5. 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 are acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multicompany use of existing and new tanker terminals is encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

2. New tanker terminals are discouraged in areas not identified in (q)1 above.

3. Offshore tanker terminals and deepwater ports are discouraged.

4. 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 provided:

i. The proposed location and site design of the electric generating facility is the alternative which has the least practicable impacts to the coastal zone, based on a comparative evaluation of alternative sites within the coastal zone and inland.

ii. 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.

iii. 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, the nuclear generating facility shall be located in an area 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.

iv. The construction and operation of a nuclear generating station shall not be approved unless 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. 13:1911) 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., certif. den., 75 N.J. 538 (1977)) and Federal law.

v. The cogeneration of electricity and process steam for industrial, community and commercial use is encouraged.

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 conditionally acceptable provided that such facilities do not significantly detract from scenic or recreational values, and for wind energy facilities, comply with (r)1vii and viii below.

vii. In order to minimize adverse effects on birds and bats, wind energy facilities located on land shall:

(1) For a wind turbine(s) 200 feet in height or taller or having a cumulative rotor swept area greater than 4,000 square feet on a site, be sited such that no portion of the wind turbine(s), including blades, towers and site disturbance shall be located in the areas identified on the Department's Large Scale Wind Turbine Siting Map, dated August 8, 2009, incorporated by reference into this chapter. This map is available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>. The Department may revise the Large Scale Wind Turbine Siting Map in accordance with (r)3 below. The rotor swept area is the area of a circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;

(2) Have no light(s) placed on or directed at the wind turbine(s), except for lighting required by the Federal Aviation Administration. Shielded ground security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

(3) Use a freestanding monopole tower if the wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position. Guy wires or lattice towers are prohibited for a wind turbine more than 120 feet in height;

(4) Perform pre and/or post construction monitoring in order to establish the flight patterns and distribution of avian species and bats and impacts of the operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior, and flight pattern heights, as well as collisions associated with wind turbine construction and/or operation. Pre and/or post

construction monitoring is dependent upon the scope of the facility including the number, height and rotor swept area of the turbines. Pre and post-construction monitoring may include visual, radar and acoustic surveys. Post construction monitoring shall also include carcass searches as well as removal and efficiency trials. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse); and

(5) Curtail operations of wind turbines, as directed by the Department pursuant to (r)1vii(5)(A) below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse).

viii. In order to minimize adverse effects on birds, bats, and marine organisms, wind energy facilities located in tidal waters shall:

(1) Have no light(s) placed on the wind turbine(s), except for lighting required by the Federal Aviation Administration and the United States Coast Guard. Shielded ground security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

(2) Use a monopole tower or other tower design that does not provide perching or roosting opportunities or other obstructions to birds or bats;

(3) Perform a habitat evaluation, including species surveys, an impact assessment and post-construction monitoring in order to establish the movement corridors and distribution of avian species, bats, and marine organisms and impacts of the construction and/or operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior and, for avian species and bats, flight pattern heights, as well as collisions and behavioral changes associated with wind turbine construction and/or operation. The habitat evaluation, impact assessment and post construction monitoring are dependent upon the scope of the facility including the number, height and rotor swept area of the turbines. Habitat evaluations may include visual, radar and acoustic surveys. Post construction monitoring may include visual surveys and other collision detection systems. Habitat evaluations, impact assessments and post-construction monitoring and reporting requirements will be coordinated with the Department, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on habitat evaluations and assessments, monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse); and

(4) Curtail operations of wind turbines, as directed by the Department pursuant to (r)1viii(4)(A) below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approach-

ing weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse).

2. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest is conditionally acceptable provided it meets applicable State and Federal laws and standards.

3. The Large Scale Wind Turbine Siting Map identifies areas where large scale wind turbines cannot be constructed in accordance with (r)1vii(1) above and N.J.A.C. 7:7-7.31 in order to minimize adverse effects on birds and bats. The Department may revise the Large Scale Wind Turbine Siting Map based on new information on species occurrence, new information on appropriate buffers, or new information on impacts developed from ongoing monitoring or from published and unpublished studies or data as follows:

i. The Department shall publish notice of its intent to revise the Large Scale Wind Turbine Siting Map in the New Jersey Register, as well as in a newspaper of general circulation in each affected county and post the proposed revision of the map on the Department's interactive mapping website at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis). The notice shall include:

- (1) A description of the proposed revision;
- (2) An explanation of why it is being proposed; and
- (3) An invitation for interested parties to submit written comments for a period of 30 days.

ii. Upon consideration of the available information and public comments, if the Department concludes that revising the Large Scale Wind Turbine Siting Map is appropriate based on the potential risk to birds and bats

associated with the operation of large scale wind turbines, the Department shall:

- (1) Revise the map as the Department deems necessary;
- (2) Publish a description of the revision in the New Jersey Register, including a response to any public comments;
- (3) Publish a public notice describing the revision in a newspaper of general circulation in each affected county; and
- (4) Post the revised map on the Department's interactive mapping website at [www.nj.gov/dep/gis](http://www.nj.gov/dep/gis).

4. 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 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. 13:1910f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. §§ 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including, but not limited to:

- (1) The risks inherent in tankering LNG along New Jersey's waterways;
- (2) The risks inherent in transferring LNG onshore; and
- (3) 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).  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.  
Amended by R.2007 d.374, effective December 17, 2007.  
See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (b)3.  
Amended by R.2010 d.193, effective September 7, 2010.  
See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Added new (b)3, (r)1v, (r)1vii, (r)1viii and (r)3; recodified former (b)3 and (b)4 as (b)4 and (b)5, former (r)1v as (r)1vi and former (r)3 as (r)4; and rewrote (r)1vi.

Special amendment, R.2011 d.101, effective March 3, 2011 (to expire March 3, 2012).

See: 43 N.J.R. 886(a).  
In (b)3i, deleted "or" from the end; in (b)3ii(2), inserted "or" at the end; and added (b)3iii.

Readopted by R.2012 d.138, effective June 19, 2012.  
See: 44 N.J.R. 12(a), 44 N.J.R. 1972(a).

Provisions of R.2011 d.101 readopted without change.  
Amended by R.2012 d.182, effective November 5, 2012.  
See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (b)4, substituted "access" for the second occurrence of "trust rights".

## 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 at N.J.A.C. 7:7E-6.1, 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, excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26), 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. 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).

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

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

In (d), deleted a former 3 and recodified former 4 as 3.

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

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

In (a)1, substituted "rule on location of linear development at N.J.A.C. 7:7E-6.1," for "Rule on Location of Linear Development".

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

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

In (c)2, inserted ", excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26),".

#### 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) Solid waste facility means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. Solid waste facilities are conditionally acceptable provided:

i. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction are explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable;

ii. The solid waste facility is not located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b); and

iii. The solid waste facility complies with the Solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

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

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. The wastewater treatment facility, including sewer lines, is consistent with an approved Water Quality Management (208) Plan;

2. The secondary impacts associated with the facility are consistent with the Coastal Zone Management rules; and

3. The facility shall provide for multiple use of the site, including open space and recreation use, to the maximum extent feasible.

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

(d) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

3. The public facility would not generate significant secondary impacts inconsistent with the Coastal Zone Management rules.

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).

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

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

Rewrote the section.

#### 7:7E-7.7 Industry use rule

(a) Industry uses are uses that involve industrial processing, manufacturing, storage or distribution activities. These uses include, but are not limited to, electric power production, food and food byproduct processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore, subject to the standards of N.J.A.C. 7:7E-7.4.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply 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 the buffers and compatibility of uses 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 the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the

public access 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).

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

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

Rewrote (a) and (b).

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

In (b), substituted "lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public trust rights rule" for "public access to the waterfront rule".

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

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

In (b), substituted "access" for the second occurrence of "trust rights".

#### 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 areas rule at N.J.A.C. 7:7E-3.25.

(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).

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

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

Section was "Mining Use rule". In (b), substituted "flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.)".

### 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 as defined at N.J.A.C. 7:7E-3.11(a) 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).

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

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

In (c), amended N.J.A.C. reference.

**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 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:

1. 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.

2. 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.

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. 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.

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

(b) 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.

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

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

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

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

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

Substantially amended and recodified.

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

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

References specified in (b)2iii.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Deleted a former (b); and recodified former (c) and (d) as (b) and (c).

### 7:7E-7.11 Coastal engineering

(a) Coastal engineering measures include a variety of non-structural, hybrid, and structural shore protection and storm damage reduction measures to manage water areas and protect the shoreline from the effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian crossing of dunes, stabilization of dunes, dune restoration projects, dredged material management, living shorelines, and the construction of retaining structures such as bulkheads, gabions, revetments, and seawalls are all examples of coastal engineering measures.

(b) Nonstructural, hybrid, and structural shore protection and/or storm damage reduction measures shall be used according to the following hierarchy:

1. Non-structural shore protection and/or storm damage reduction measures that allow for the growth of vegetation shall be used unless it is demonstrated that use of non-structural measures is not feasible or practicable. Factors considered in determining whether use of a non-structural measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel, the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site receives, substrate composition, and presence of shellfish habitat, submerged vegetation, and wetlands at the site. For guidance on measures that may be appropriate depending upon factors impacting a site, see Guidance for Appropriate Shoreline Protection and/or Storm Damage Reduction Measures for a Site available from the Division of Land Use Regulation's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse). This guidance follows N.J.S.A. 52:14B-3a and does not impose any new or added requirements nor can it be used for enforcement purposes.

2. Where the use of non-structural shore protection and/or storm damage reduction measures under (b)1 above is demonstrated to be not feasible or practicable, then hybrid shore protection and/or storm damage reduction measures that allow for the growth of vegetation, such as stone, rip-rap, sloped concrete articulated blocks or similar structures, or gabion revetments, shall be used. Factors considered in determining whether use of a non-structural measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel,

the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site receives, substrate composition, and presence of shellfish habitat.

3. Where the use of hybrid shore protection and/or storm damage reduction measures under (b)2 above is demonstrated to be not feasible or practicable, then structural shore protection and/or storm damage reduction measures such as bulkheads, revetments, sea walls, or other retaining structures shall be used. Factors considered in determining whether use of a hybrid shore protection measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel, the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site receives, substrate composition, and presence of shellfish habitat.

(c) The hierarchy set forth at (b) above does not apply to water dependent uses within existing ports.

(d) The construction, maintenance, or reconstruction of a bulkhead shall comply with the following:

1. A bulkhead that is subject to wave runup forces, specifically, a bulkhead in a V-Zone as described at N.J.A.C. 7:7E-3.18, shall be designed and certified by a professional engineer to withstand the forces of wave runup, and shall include a splash pad on the landward side. The splash pad shall 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 used, an appropriate sub-base and filter cloth shall be incorporated into the design. 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;

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable provided that it meets (d)2i, ii, or iii below. All measurements specified below shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (d)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead that does not meet (d)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (d)2i or ii above. In that case, the replacement bulkhead shall be

as close as physically possible to the original bulkhead alignment.

(e) Dune restoration, creation, and maintenance projects as non-structural shore protection and/or storm damage reduction measures are encouraged. These projects, including sand fencing, revegetation, additions of non-toxic appropriately sized material, and measures to control pedestrian and vehicular traffic, shall comply with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

(f) Beach nourishment projects as non-structural shore protection and/or storm damage reduction measures are encouraged, provided:

1. 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;

2. The elevation, width, slope, and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;

3. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels;

4. Public access to the nourished beach is provided in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(g) Structural shore protection and/or storm damage reduction measures that are conducted using monies from the Shore Protection Fund established by N.J.S.A. 13:19-16 and/or any other Department monies shall comply with (g)1 and 2 below.

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material, is acceptable only if the structure meets the following 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 threatened by erosion, or the structure, for example, a retained earthen berm, is essential to mitigate the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under this chapter;

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; and

vi. If the proposed project requires filling of a water area, the filling is consistent with filling rule, N.J.A.C. 7:7E-4.10, and all other applicable rules in this chapter; and

2. Public access to the shore protection project shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11.

(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 and recodified.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Expansion or fortification of structures included at (e).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Amended by R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Rewrote (d)liv and (e)4.

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In (d)liv and (e)4, substituted "access" for the second occurrence of "trust rights".

Emergency Repeal and New Rule, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

Section was "Coastal engineering".

Adopted Concurrent Repeal and New Rule, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

#### Case Notes

Property owners' application for permit to construct a bulkhead on property adjacent to bay failed to satisfy coastal engineering rule establishing standards applicable to structural shore protection, where there was no evidence that approval of construction of bulkhead was essential to protect existing structures. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Permit to install septic systems by filling in area back of bay was not issuable absent satisfaction of waterfront development criteria. *Myles v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 232.

Issuance of waterfront development permit did not endanger navigation to adjoining bulkhead and dock. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead and dock permit allowed. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

Record established that landowner was entitled to waterfront development permit to bulkhead 100 foot lot and relocate drainage pipe.

Baron v. New Jersey Department of Environmental Protection, 92 N.J.A.R.2d (EPE) 18.

### 7:7E-7.12 Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, capping material, topsoil, bricks, and light-weight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E-4.8.

(b) Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of the dredged material may be required as needed to determine the acceptability of the placement of the material on a particular site.

(c) Dredged material disposal and/or construction of a confined disposal facility is prohibited in wetlands unless the criteria found at N.J.A.C. 7:7E-3.27 are met.

(d) The beneficial use of dredged material of appropriate quality and particle size for purposes such as restoring landscape, enhancing farming areas, capping and remediating landfills and brownfields, transportation projects, beach protection, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

(e) Adverse effects associated with the transfer of the dredged materials from the dredging site to the upland confined disposal facility or upland placement site shall be minimized to the maximum extent feasible.

(f) Dredged material disposal in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. 7:7E-3.14, and 3.35).

(g) If pre-dredging sediment analysis indicates contamination, then special precautions shall be imposed including but not necessarily limited to increasing retention time of water in the disposal site or rehandling basin through weir and dike design modifications, use of coagulants, ground water monitoring, or measures to prevent biological uptake by colonizing plants.

(h) All potential releases of water from confined (diked) disposal facilities and rehandling basins shall meet existing State Surface Water Quality Standards (N.J.A.C. 7:9B) and State Ground Water Quality Standards (N.J.A.C. 7:9C).

(i) The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.

(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) 6 and 7 added.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

In (a), inserted "capping material," and inserted a comma following "bricks"; in (c), inserted "and/or construction of a confined disposal facility" and "are met", substituted "in" for "on", and deleted "the disposal satisfies" following "unless"; in (d), inserted "beneficial" and "transportation projects,"; in (e), substituted "Adverse effects" for "Effects", and inserted "upland confined" and "facility or upland placement"; in (h), substituted "facilities" for "sites", "Ground Water" for "Groundwater", "7:9C" for "7:9"; and in (j), amended the Rationale statement.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted without change.

### 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 defenselated use.

(b) National defense facilities are conditionally acceptable provided the development meets either (b)1 or 2 below:

1. The proposed facility is consistent with all relevant Coastal Zone Management rules; or

2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with Coastal Zone Management rules, 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).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b), in main paragraph substituted "provided the development meets either (b)1 or 2 below" for "and will be approved if one of two findings can be made".

#### 7:7E-7.14 High-rise structures

(a) High-rise structures are structures which are more than six stories or more than 60 feet in height as measured from existing preconstruction ground level.

(b) The standards for high-rise structures are as follows:

1. High-rise structures are encouraged to locate in an urban area of existing high density, high-rise and/or intense settlements;

2. Highrise 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. 7:7E3.48;

3. The longest lateral dimension of any highrise structure must be oriented perpendicular to the beach or coastal waters, except for a highrise structure that is located in the Redevelopment Zone of the City of Long Branch and authorized pursuant to the Long Branch Redevelopment Zone Permit at N.J.A.C. 7:77.4.

4. 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;

5. High-rise structures outside of the Hudson River waterfront special area as defined by N.J.A.C. 7:7E3.48 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;

6. 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 Zone Management rules;

7. The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure; and

8. 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.

(c) The high-rise structures rule shall not apply to the following types of development:

1. Development in Atlantic City on existing ocean piers which meets the standards at N.J.A.C. 7:7E-3.49(c) or

pedestrian bridges which meet the standards at N.J.A.C. 7:7E-3.49(i)1;

2. Utility structures that have a demonstrated need; or

3. Wind turbines.

(d) 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).

Amended by R.1998 d.108, effective February 17, 1998.

See: 29 N.J.R. 3920(a), 30 N.J.R. 645(a).

In (a)2, added exception and N.J.A.C. reference.

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (a), rewrote the introductory paragraph; inserted a new (b); and recodified former (b) as (c).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

In (c)1, deleted "or" from the end; in (c)2, substituted "; or" for a period at the end; and added (c)3.

## 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:

Office of Administrative Law  
Quakerbridge Plaza  
Bldg. No. 9  
P.O. Box 049  
Trenton, New Jersey 08625-0049

### 7:7E-8.1 Purpose and scope

In addition to satisfying the location and use rules, a proposed development must satisfy the requirements of this subchapter. This subchapter contains the standards the Department utilizes to analyze the 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.

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).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote (a); deleted (b).

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

Deleted the paragraph identifier.

#### 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) Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries means:

1. One or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

2. The catching, taking or harvesting of marine fish.

(b) Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with (c) below.

(c) The following coastal activities are conditionally acceptable provided that the activity complies with the appropriate general water area rule(s) at N.J.A.C. 7:7E-4;

1. Construction of submerged cables and pipelines;

2. Sand and gravel mining to obtain material for beach nourishment, provided:

i. The beach nourishment project is in the public interest;

ii. There are no alternative borrow sites that would result in less impact to marine fish and fisheries;

iii. Any alteration of existing bathymetry within Prime Fishing areas, as defined at N.J.A.C. 7:7E-3.4, does not reduce the high fishery productivity of these areas; and

iv. Measures are implemented to minimize and compensate for impacts to marine fish and fisheries;

3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any rules developed and adopted pursuant thereto; and

4. The establishment of living shorelines to protect, restore, or enhance a habitat area, in accordance with N.J.A.C. 7:7E-4.23.

(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).

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.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote section.

Emergency amendment, R.2013 d.078, effective April 16, 2013 (to expire June 15, 2013).

See: 45 N.J.R. 1141(a).

In (c)2iv, deleted "and" from the end; in (c)3, substituted ";" and" for a period at the end; added (c)4; and in (d), amended the Rationale statement.

Concurrent adopted amendment, R.2013 d.095, effective June 15, 2013.

See: 45 N.J.R. 1141(a), 45 N.J.R. 1696(a).

Provisions of R.2013 d.078 adopted with one change to the Rationale statement (effective July 15, 2013).

### 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 Environmental Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Environmental 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. 7:9C), 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.  
Administrative change.  
See: 34 N.J.R. 1902(a).  
Administrative correction.  
See: 37 N.J.R. 4245(a).

#### 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 Department 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).  
Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(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

If a project or activity meets the definition of "major development" at N.J.A.C. 7:8-1.2, then the project or activity shall comply with the Stormwater Management rules at N.J.A.C. 7:8.

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)1i.  
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).  
Amended by R.1996 d.391, effective August 19, 1996.  
See: 28 N.J.R. 324(a), 28 N.J.R. 3924(a).

Amended by R.2000 d.45, effective February 7, 2000.  
See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Rewrote (d)1iv(3).  
Repeal and New Rule, R.2004 d.48, effective February 2, 2004.  
See: 35 N.J.R. 119(a), 35 N.J.R. 1328(a), 36 N.J.R. 670(a).

Section was "Stormwater management".

#### 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 coastal species, native to New Jersey 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.

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b), substituted "coastal species, native to New Jersey" for "native coastal species".

#### 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 the 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 transportational services, in accordance with the traffic rule, N.J.A.C. 7:7E-8.14.

(d) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.  
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Substantially amended.

Amended by R.1990 d.413, effective August 20, 1990.  
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text added at (b)1, 2 and (c) to require developments to monitor and mitigate impact.

Amended by R.2003 d.60, effective February 3, 2003.  
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "in accordance with the traffic rule, N.J.A.C. 7:7E-8.14" for "as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b))".

### 7:7E-8.11 Public access

(a) Public access to the waterfront is the ability of the public to pass physically and visually to, from, and along tidal waterways and their shores and to use such shores, waterfronts and waters for activities such as navigation, fishing, and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public accessways and public access areas include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of-way. No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. 7:7E-3.50. Further, no authorization or approval under this chapter shall be considered a Tidelands approval or shall exempt an applicant from the obligation to obtain a Tidelands approval, if needed.

(b) In addition to the broad coastal goals outlined at N.J.A.C. 7:7E-1.1(c), public access shall be provided in a manner designed to achieve the following public access goals:

1. All levels of government in New Jersey shall seek to create and enhance opportunities for public access to tidal waterways and their shores, on a non-discriminatory basis;

2. All existing public access to, and along tidal waterways and their shores shall be maintained to the maximum extent practicable;

3. New development shall provide opportunity for public access to tidal waterways and their shores on or offsite;

i. Public access proposed by an applicant may include any one or combination of the following:

(1) A public accessway designed in accordance with (x) below, located parallel to the shoreline with perpendicular access;

(2) A boat ramp, pier, fishing, or other direct access to the waterway;

(3) A waterfront pocket park;

(4) Public restrooms to accommodate those utilizing public access; and/or

(5) Additional public parking to accommodate those utilizing public access;

ii. Public access proposed by an applicant shall incorporate, to the maximum extent practicable, fishing access and associated amenities, including parking that accommodates nighttime fishing for a reasonable duration of time, on or adjacent to tidal waterways and their shores. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming.

4. Public access to tidal waterways and their shores shall be provided in such a way that it shall not create conditions that may be reasonably expected to endanger public health or safety, or damage the environment. To that end, public access may be restricted seasonally, hourly, or in scope (for example, access restricted to a portion of the property, or access allowed for fishing but not swimming due to consistent strong currents); and

5. Public access to tidal waterways and their shores shall be provided in such a way that it shall not create a significant homeland security vulnerability, as determined by the Department in consultation with the New Jersey Office of Homeland Security and Preparedness or the United States Department of Homeland Security. Therefore, public access may be prohibited in locations where homeland security concerns are present or where it is not practicable based on the risk of injury from hazardous operations or substantial permanent obstructions, and no measures can be taken to avert these risks.

(c) Development proposed on sites which are located on or adjacent to tidal waterways and their shores shall provide public access in accordance with (c)1 through 4 below. Municipalities are encouraged to develop and submit to the Department an application for approval of a Municipal Public Access Plan. Public transportation agencies and counties are encouraged to submit to the Department an application for approval of a Transportation Public Access Plan.

1. In municipalities from which the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (k) below on or before the date of receipt of a permit application by the Department, public access requirements shall be satisfied in accordance with the Municipal Public Access Plan;

2. In municipalities from which the Department has not received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Mas-

ter Plan in accordance with (k) below on or before the date of receipt of a permit application by the Department, access shall be provided in accordance with (n) below, for commercial, residential, industrial and public development, for homeland security facilities and ports. Coastal permit applications shall include a project specific access plan that provides for public access in accordance with all applicable requirements; and

3. In all municipalities, regardless of whether the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (k) below, access shall be provided in accordance with (p) below for marinas, (q) below for piers, (r) below for beach and dune maintenance activities, and (s) below for shore protection projects. Coastal permit applications shall include a project specific access plan that provides for public access in accordance with all applicable requirements.

4. In all municipalities, regardless of whether the Department has received a resolution incorporating a Department-approved Municipal Public Access Plan into the municipality's Master Plan in accordance with (d) below, public access for public highways shall be provided in accordance with (o) below.

(d) Municipal Public Access Plans shall satisfy the goals specified at N.J.A.C. 7:7E-1.1(c) and the public access goals at (b) above. Municipal Public Access Plans shall additionally meet the requirements at (d)1 through 4 below, as well as all other requirements of this section.

1. Municipal Public Access Plans shall incorporate fishing access and associated amenities, including parking that accommodates nighttime fishing for a reasonable duration of time, to the maximum extent practicable on or adjacent to tidal waterways and their shores. In the case of a beach, fishing access shall not be required in areas designated for swimming during hours designated for swimming.

2. Municipal Public Access Plans shall require public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 consistent with N.J.A.C. 7:7E-3.48(d) and (e).

3. Municipal Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. 7:7E-8.11(u).

4. Municipal Public Access Plans shall not provide for access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules).

(e) A municipality seeking approval of a Municipal Public Access Plan shall file an application for approval with the

Department. The application shall include a proposed Municipal Public Access Plan consisting of the following elements:

1. A statement describing the overall goal of the Municipal Public Access Plan and the administrative mechanisms (for example, conservation restrictions, easements, ordinances) that either are already in place, or that shall be put in place to ensure that the municipality will provide permanently protected access to the water and water dependent and water oriented activities along all tidal waterways and their shores within the municipal boundaries. If the Municipal Public Access Plan proposes to provide access to the same waterway outside of municipal boundaries through a joint effort with a county or adjacent municipal governmental body, the statement shall include a description of the administrative mechanisms that will ensure access through that effort will be permanently protected;

2. A statement of consistency with any applicable provisions of the municipal Master Plan;

3. A public access needs assessment that evaluates:

i. Existing access points or locations providing perpendicular access to tidal waterways and their shores within the municipality;

ii. Existing water dependent and water oriented activities that provide public access to tidal waterways and their shores within the municipality;

iii. Existing practical limitations to public access. Examples of practical limitations include, but are not limited to, a lack of restrooms or parking, including restrictions on parking availability and duration, which could effectively limit the public's access to tidal waterways and their shores. Alternatives to address any limitations determined to exist shall be provided, where feasible; and

iv. The need for additional locations to provide perpendicular access to tidal waterways and their shores within the municipality;

4. A digital map and inventory identifying:

i. All tidal waterways and their shores within the municipality and all lands held by the municipality adjacent thereto;

ii. All existing and proposed public accessways to tidal waterways and their shores including, but not limited to, streets, roads, paths, trails, easements, paper streets, dune walkovers/walkways, and public dedicated rights-of-way held by the municipality;

iii. All proposed public access facilities, including, but not limited to, public accessways located parallel to

the shoreline with perpendicular access; boat ramps, piers, or other direct access to the waterway; sitting/observation areas; public restrooms; off and on-street parking; and

iv. Those facilities identified in (e)4ii and iii above that are compliant with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.);

5. An implementation strategy that:

i. Describes the forms of public access proposed in order to satisfy the need for public access as determined by the public access needs assessment, while taking into account the population, anticipated demand and local availability of alternatives;

ii. Provides a comprehensive list of public access projects and initiatives to be undertaken along with an implementation schedule;

iii. Identifies proposed tools to implement the municipal public access plan measures, including, but not limited to, the adoption or amendment of municipal ordinances, the creation of a Public Access Fund established in accordance with (f) below to be used solely for the development and enhancement of public access, and the development of other municipal programs that ensure reasonable access to the water, and water dependent and water oriented activities along all tidal waterways and their shores;

(1) If the Municipal Public Access Plan includes a provision for monetary compensation in lieu of onsite public access in accordance with (f) below, this portion of the plan shall specify the location and/or type of uses, for example, residential, commercial, industrial, homeland security, and/or public highways, for which a monetary contribution shall be required;

iv. Identifies and, as necessary, proposes modifications to existing plans, ordinances and programs necessary to implement the Municipal Public Access Plan;

v. For municipalities conducting a shore protection project pursuant to (s) below, identifies how the municipality proposes to provide access points to achieve compliance with that subsection;

vi. Provides an estimate of the cost of implementing, constructing and maintaining the access facilities proposed in the plan and specifies how this cost will be funded;

vii. Provides a schedule for implementation of the municipal public access plan;

viii. Identifies ordinances already in place or to be adopted requiring appropriate signage and placement of signage for public access areas;

ix. Identifies measures to be implemented to permanently protect the public access identified in the plan through the required recording of conservation easements/restrictions, or, for municipally owned properties providing public access, through placement of the property providing access on the municipal Recreation and Open Space Inventory (ROSI) (see Green Acres Program rules at N.J.A.C. 7:36-6.5, Recreation and Open Space Inventory submissions);

x. Provides examples and/or model(s) of existing and proposed conservation easements/restrictions that preserve all public access identified in the municipal public access plan, to protect the access in perpetuity; and

xi. Includes a draft resolution for incorporating the Department-approved, Municipal Public Access Plan into a Master Plan element (for example, the land use, recreation, and/or conservation plan element); and

6. Documentation of any public meetings held by the municipality to accept comments on the proposed Municipal Public Access Plan.

(f) A Municipal Public Access Plan may require a monetary contribution to be used to provide new or enhanced public access elsewhere in the municipality or outside the municipal boundaries along the same waterway as part of a joint project with a county or adjacent municipal governmental body in lieu of onsite public access. Municipalities that require a monetary contribution shall establish a dedicated Public Access Fund into which all funds collected shall be deposited. A Municipal Public Access Plan containing a monetary contribution requirement shall specify the circumstances in which such contribution will be required in accordance with (e)5iii(1) above.

1. For projects other than linear projects, the amount of the contribution shall be based upon a determination of the costs that would be incurred if land was purchased for creating access and the access was provided in the form of a walkway, using the following formula:

$$\text{Total Contribution} = \text{TWC} + \text{LAC}$$

where:

TWC = total walkway cost

LAC = land acquisition cost

i. The TWC is calculated by first adding the length of the perpendicular access, as measured in feet along the shorter property line, running from the non-waterward property boundary to waterward property boundary, to the length of the waterfront portion of the property as measured in feet. This total accessway length is multiplied by 10 feet, the minimum walkway width (subsection (x) below), to give the total square feet of walkway. The TWC is determined by multiplying the total square feet of walkway by \$7.00 (approximate average cost per square foot for walkway construction).

ii. The LAC is calculated by dividing the equalized assessed land value of the property by the total square footage of the property and multiplying the resulting value per square foot by the total square footage of the walkway utilized in calculating TWC in (f)1i above. "Equalized assessed land value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with N.J.S.A. 54:1-35 et seq.

iii. For example, the total contribution for a 10,000 square foot property with a perpendicular access length of 50 feet, a total length of the waterfront portion of the property of 100 feet and an equalized assessed land value of \$300,000 would be calculated as follows:

<u>Total Walkway Cost:</u>	
Length of perpendicular access	50 ft.
Length of waterfront portion of property	+ 100 ft.
<b>Total linear feet</b>	<b>150 ft.</b>
<b>Minimum walkway width (feet)</b>	<b>× 10 ft.</b>
<b>Total square feet of walkway</b>	<b>1,500 sq. ft.</b>
<b>Total walkway cost (1,500 sq. ft. × \$7.00)</b>	<b>\$10,500</b>

<u>Land Acquisition Cost</u>	
Equalized assessed land value of property	\$300,000
Lot size	÷ 10,000 sq. ft.
<b>Cost per sq. ft.</b>	<b>\$30.00/sq. ft.</b>
<b>Land acquisition (\$30.00/sq. ft. × 1,500 sq. ft. total walkway)</b>	<b>\$45,000</b>
<b>Total Contribution = \$10,500 + \$45,000 = \$55,500</b>	

2. For linear projects, other than projects of the New Jersey Department of Transportation which shall provide public access in accordance with (o) below, the amount of contribution shall be based upon a determination of the costs that would be incurred if land was purchased for creating access and the access was provided in the form of a walkway, using the following formula:

$$\text{Total Contribution} = \text{TWC} + \text{LLAC}$$

where:

TWC = total walkway cost

LLAC = linear land acquisition cost

i. The TWC is calculated by first adding the length of the perpendicular access, as measured in feet along the right-of-way from the first non-waterward public road to the waterward portion of the property as measured in feet or one-quarter mile, whichever is less, to the width of the right-of-way along the waterfront. This total access way length is multiplied by 10 feet, the minimum walkway width (subsection (w) below), to give the total square feet of walkway. The TWC is determined by multiplying the total square feet of walkway by \$7.00 (approximate average cost per square foot for walkway construction).

ii. The LLAC is calculated by dividing the equalized assessed land value, as defined at (f)1ii above, of all waterfront lots located within one-half mile upstream and downstream from the right-of-way centerline at the location where the linear project crosses the water body by the total square footage of all waterfront lots located within one-half mile upstream and downstream from the right-of-way centerline at the location where the linear project crosses the water body and multiplying the resulting value by the total square footage of the walkway utilized in calculating TWC in (f)2i above.

(g) A Municipal Public Access Plan shall not require:

1. Public access along the Hudson River in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 inconsistent with N.J.A.C. 7:7E-3.48(e). Public access elsewhere in the Hudson River Waterfront Area shall be governed by this section;

2. Public access at marinas, as defined at N.J.A.C. 7:7E-7.3(d)1. Public access requirements at marinas shall be governed by (p) below;

3. Public access at piers. Public access requirements at piers shall be governed by (q) below;

4. Public access at existing commercial development that is not classified as "new commercial development" pursuant to (n)1ii below. Public access requirements at existing commercial development shall be governed by (n)1i below;

5. Public access at existing residential development or new residential development where the development consists solely of the construction of one single family home or duplex not in conjunction with a previous development. Public access requirements at existing residential development shall be governed by (n)2i below. Public access at new residential development, consisting solely of the construction of one single family home or duplex not in conjunction with a previous development, shall be governed by (n)2ii below;

6. Public access at existing industrial or public development. Public access requirements at existing industrial or public development shall be governed by (n)3i below;

7. Public access at existing homeland security facilities. Public access requirements at existing homeland security facilities shall be governed by (n)4i below; or

8. Public access at existing or new ports. Public access requirements at ports shall be governed by (n)5 below.

(h) A municipality filing an application for approval of a Municipal Public Access Plan pursuant to (e) above shall provide a full copy of the submittal to the county planning board for the county within which the municipality is located as well as to any regional planning entities with jurisdiction over any portion of the municipality affected by the Municipal Public Access Plan. If the municipality filing an

application for approval of a Municipal Public Access Plan has proposed, as a component of the plan, any joint projects with one or more neighboring municipalities, a full copy of the submittal shall also be provided to the neighboring municipality(s) and the county planning board for the county within which the neighboring municipality(s) are located should the municipality(s) be located in a different county.

(i) The Department shall review an application for approval of a Municipal Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. 7:7E-1.1(c), the goals for public access at (b) above and all other requirements of this section.

1. Upon receipt of an application for approval of a Municipal Public Access Plan that meets the requirements of (e) above, the Department shall seek public comment on the application by:

- i. Posting the proposed Municipal Public Access Plan on the Department's website;
- ii. Notifying by e-mail individuals who have requested notice of applications for approval of Municipal Public Access Plans; and
- iii. Publishing notice in the DEP Bulletin.

2. The Department shall accept public comments on the proposed application for approval of a Municipal Public Access Plan for 30 days following publication of the notice in the DEP Bulletin.

3. After the close of the public comment period, the Department may request revisions to the proposed Municipal Public Access Plan.

4. If revisions are requested, the Department shall, in writing, notify the municipality within 60 days of receipt of the revisions that the proposed Municipal Public Access Plan either:

- i. Satisfies the requirements of this section and is approved; or
- ii. Does not satisfy the requirements of this section and is not approved with explanation.

5. If no revisions are requested by the Department, the Department shall, in writing, notify the municipality within 60 days of the end of the public comment period that the proposed Municipal Public Access Plan either:

- i. Satisfies the requirements of this section and is approved; or
- ii. Does not satisfy the requirements of this section and is not approved with explanation.

6. The Department shall provide notice of its determination under (i)4 or 5 above by:

- i. Posting on the Department's website;

ii. Notifying by e-mail individuals who have requested notice of applications for approval of Municipal Public Access Plans; and

iii. Publishing the determination in the DEP Bulletin.

(j) A municipality which has received approval of a Municipal Public Access Plan shall as a condition of the approval:

1. Initiate action necessary to incorporate the Department-approved Municipal Public Access Plan into the municipality's Master Plan;

2. Notify the Department two weeks in advance of the dates and times of any scheduled public meetings on the Department-approved Municipal Public Access Plan. The Department shall post the meeting information on its website and notify by e-mail individuals who have requested notice of applications for approval of Municipal Public Access Plans;

3. Upon adoption of the Municipal Public Access Plan into the municipal Master Plan, provide the Department with a copy of an approved resolution incorporating the Department-approved Municipal Public Access Plan into the Master Plan; and

4. Five years after the date of adoption of the Municipal Public Access Plan into the municipal Master Plan, and every five years thereafter, submit to the Department a report detailing:

i. The status of all projects that have been undertaken in accordance with the Municipal Public Access Plan;

ii. All monies received into the municipality's dedicated Public Access Fund and an accounting of all expenditures of those monies; and

iii. Any problems encountered in pursuit of the plan's objectives and goals and proposed remedies to assure the objectives and goals of the plan are met.

(k) Upon receipt by the Department of the resolution incorporating the approved Municipal Public Access Plan into the municipality's Master Plan, public access required to satisfy the conditions of a coastal permit for development in the municipality for permit applications filed with the Department subsequent to the Department's receipt of the resolution shall be provided in accordance with the Municipal Public Access Plan. The Department shall include on the posted Department-approved Municipal Public Access Plan the date of receipt of the resolution.

(l) Department review and approval is required before a municipality may make changes to an approved Municipal Public Access Plan that impact the location or type of access to be provided, or that institute or amend the terms of a contribution in lieu of an onsite public access requirement

pursuant to (f) above. In support of a request to amend the approved plan under this subsection, the municipality shall submit to the Department the approved plan with the information specified in (e) above updated to reflect the proposed change. This submission shall detail how the proposed change affects the approved plan. The Department shall review and make a determination on the Municipal Public Access Plan amendment request in accordance with (i) above. Upon Department approval of the amended Municipal Public Access Plan, the municipality shall comply with (j) above.

(m) The Department shall revoke its approval of a Municipal Public Access Plan for good cause. Good cause includes failure to implement the Municipal Public Access Plan and/or noncompliance with the Municipal Public Access Plan such as, but not limited to, inappropriate expenditure of dedicated Public Access Fund monies for purposes other than public access, conversion of public access sites to other uses, and failure to maintain existing public access and signage.

1. Upon determination that good cause exists, the Department shall furnish written notice of its determination to the municipality by certified mail, providing 30 days within which to either remedy the noncompliance, provide an explanation of why such noncompliance cannot be remedied, offer a plan to remedy such noncompliance, or demonstrate to the Department that good cause for revocation does not exist. Any remedial plan shall indicate the time necessary to implement the remedy.

2. If the above requirements are not met, the Department shall provide the Municipality with written notice, by certified mail, of intent to revoke the Department's approval of the Municipal Public Access Plan and of the Municipality's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-5. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, Mail Code 401-04L, PO Box 402, 401 East State St., 4th floor, Trenton, New Jersey 08625-0402. A copy shall also be submitted to the Office of Land Use Planning, Mail Code 401-07C, PO Box 402, 401 East State St., 7th floor, Trenton, New Jersey 08625.

3. If a hearing under (m)2 above is not requested within 10 days of receipt of said notice, the Municipal Public Access Plan shall be revoked.

(n) In municipalities that do not have an approved Municipal Public Access Plan, for sites which are located on or adjacent to tidal waterways and their shores, public access along and use of the beach and the shores shall be provided as specified in this subsection and, as applicable, in (p) below for marinas and (q) below for piers. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, the Department shall consider factors such as type of public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, square footage of access area, and

environmental impact or benefit. The Department shall not approve public access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules):

1. Commercial development shall provide both visual and physical access as follows:

i. For existing commercial development, except for existing commercial development classified as "new commercial development" pursuant to (n)lii below, where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent public access shall be provided onsite. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming and passive recreation, in the same manner and by the same number of people as in the existing public access area;

ii. Except as provided in (n)lii(1) below, for new commercial development, access shall be provided onsite, at a minimum during normal operating hours. For the purposes of this subparagraph, "new commercial development" also includes the conversion of any existing non-commercial use to a commercial use and any change in an existing development that would result in either greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving; or development outside the parcel containing the existing development;

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 shall be provided in accordance with N.J.A.C. 7:7E-3.48(d) and (e).

2. Residential development shall provide both visual and physical access as follows:

i. At an existing residential development, where the proposed activities consist solely of accessory development or structural shore protection, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained. If it is necessary to permanently impact the existing public access in order to perform the activities, equivalent access shall be provided onsite;

ii. For new residential development, where the development consists solely of the construction of one single family home or duplex not in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, no public access is required;

iii. Except as provided in (n)2iii(3) below, for new residential development consisting of more than one single family home or duplex, or the conversion of any existing non-residential use to a residential use consisting of more than one single family home or duplex, that has a total frontage of 500 linear feet or less on areas subject to N.J.A.C. 7:7E-3.50, public access shall be provided onsite.

(1) If the applicant demonstrates that onsite public access is not feasible, based on the size of the site, the character of the waterway, and environmental impact or benefits, equivalent offsite public access shall be provided on the same waterway within the same municipality as the residential development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

(2) If the applicant demonstrates that offsite public access within the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (n)2iii(1) above, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

(3) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 shall be provided in accordance with N.J.A.C. 7:7E-3.48(d) and (e).

iv. Except as provided in (n)2iv(1) below, for new residential development consisting of more than one single family home or duplex or the conversion of any existing non-residential use to a residential use consisting of more than one single family home or duplex, where the development has a total frontage of more than 500 linear feet on areas subject to N.J.A.C. 7:7E-3.50, public access shall be provided onsite.

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as

defined at N.J.A.C. 7:7E-3.48(a)2 shall be provided in accordance with N.J.A.C. 7:7E-3.48(d) and (e).

3. Except as provided at (n)4 and 5 below, industrial development and public development, except for public highways, shall provide both visual and physical access in accordance with (n)3i through iv below. Public highways shall meet the requirements at (o) below.

i. For existing industrial or public development, except as provided at (n)3ii below, where the proposed activity consists of the maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent onsite public access shall be provided. Equivalent public access shall include access that provides for opportunities to participate in the same activities (such as fishing, swimming, or passive recreation), in the same manner and by the same number of people as in the existing public access area;

ii. Except as provided in (n)3ii(1) below, for new industrial or public development, including the conversion of any existing use to an industrial or public use, public access shall be provided onsite during normal operating hours, unless it can be demonstrated that continued public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no measures can be taken to avert these risks. In cases where the Department concurs that the risk is too great for onsite public access, access shall be provided in accordance with (n)3iii below. For the purposes of this paragraph, "new industrial or public development" includes development of areas not within the parcel containing the existing development.

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 shall be provided in accordance with N.J.A.C. 7:7E-3.48(d) and (e).

iii. Where it has been demonstrated that onsite access is not practicable based on the presence of substantial permanent obstructions or the risk of injury from proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no reasonable measures can be taken to avert these risks, equivalent offsite public access shall be provided on the same waterway and within the same municipality as the development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), square footage of access area, and environmental impact/benefit

when determining whether the proposed offsite public access is equivalent to that which would have been required onsite;

iv. If the applicant demonstrates that offsite public access within the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (n)3ii above, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above.

4. Homeland security facilities shall provide both visual and physical access as follows:

i. For existing homeland security facilities, except as provided at (n)4ii below, where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained onsite or equivalent public access shall be provided either onsite or offsite on the same waterway and within the same municipality as the development. Equivalent public access shall include access that provides for opportunities to participate in the same activities such as fishing, swimming, or passive recreation, in the same manner and by the same number of people as in the existing public access area;

ii. Except as provided in (n)4i(1) below, for new homeland security facilities, including the conversion of a non-homeland security facility to a homeland security facility, or the expansion of an existing homeland security facility onto areas not within the parcel containing the existing development, the applicant may provide either onsite public access or equivalent offsite public access on the same waterway and within the same municipality as the development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), square footage of access area, and environmental impact/benefit when determining whether proposed offsite public access is equivalent to that which would have been required onsite;

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. 7:7E-3.48(a)2 shall be provided in accordance with N.J.A.C. 7:7E-3.48(d) and (e).

5. Ports, as defined at N.J.A.C. 7:7E-3.11, shall provide both visual and physical access as follows:

i. For existing ports, public access shall be provided as follows:

(1) No public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent onsite public access shall be provided. If it can be demonstrated that continued onsite public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no measures can be taken to avert these risks, equivalent public access shall be provided offsite on the same waterway and within the same municipality as the development. The Department shall consider factors such as the type of public access available (for example, if linear or visual access is available onsite then linear or visual access should be available at the offsite location), square footage of access area, and environmental impact/benefit when determining whether the proposed offsite public access is equivalent to that which would have been required onsite.

(2) If the applicant demonstrates that offsite public access within the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (n)5i(1) above, equivalent offsite public access shall be provided on the same waterway within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above.

ii. For new ports, no public access is required.

(o) Public highways, including superhighways, shall provide both visual and physical access as follows. For purposes of this subsection, an example of visual and physical access is a sidewalk on or adjacent to a bridge. Public transportation agencies and counties are encouraged to submit to the Department an application for approval of a Transportation Public Access Plan in accordance with (o)3 below:

1. Superhighways, specifically, the Garden State Parkway, New Jersey Turnpike, Atlantic City Expressway, and Interstates 76, 78, 80, 95, 276, 278, 195, 295, and 676, shall provide access as follows:

i. Where the proposed activity consists of maintenance, rehabilitation, reconstruction, or expansion that remains entirely within the right-of-way existing as of November 5, 2012, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located. Equivalent public access shall include access that provides for opportunities to participate in the same activities, in the same manner and by the same number of people as in the existing public access area;

ii. Where the proposed activity is an expansion outside the right-of-way existing as of November 5, 2012 and the expansion crosses or proposes fill in a tidal waterway, public access shall be provided offsite on the waterway(s) and within the municipality(s) where the development is located or in accordance with the following:

- (1) A Department approved Transportation Public Access Plan;
- (2) A Department approved Municipal Public Access Plan; or
- (3) An agreement between the New Jersey Department of Transportation and the Department specifying the payment of funds to the Department or the municipality to be used to provide new or enhanced public access;

iii. If the applicant demonstrates that offsite public access in the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (o)1i and ii above, equivalent offsite public access shall be provided on the same waterway(s) within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above.

2. Public highways, other than superhighways, shall provide both physical and visual access as follows:

i. For existing public highways, except as provided at (o)2ii below, where the proposed activity consists of the maintenance, reconstruction, rehabilitation, or expansion that remains entirely within the right-of-way existing as of November 5, 2012, no public access is required if there is no existing public access onsite. Any existing public access shall be maintained or equivalent onsite public access shall be provided. Equivalent public access shall include access that provides for opportunities to participate in the same activities, in the same manner and by the same number of people as in the existing public access area.

ii. For new public highways, or expansion of existing public highways outside the right-of-way existing as of November 5, 2012 where the new public highway or expansion crosses or proposes fill in a tidal waterway, public access shall be provided in accordance with a Department approved Transportation Public Access Plan if one exists or onsite unless it can be demonstrated that public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no measures can be taken to avert these risks. In cases where the Department concurs that the risk is too great for onsite public access,

access shall be provided in accordance with (o)2iii below;

iii. Where a Transportation Public Access Plan does not exist and it has been demonstrated that onsite access is not practicable based on the presence of substantial permanent obstructions or the risk of injury from proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no reasonable measures can be taken to avert these risks, equivalent public access shall be provided in accordance with the following:

- (1) Offsite on the waterway(s) and within the municipality(s) where the development is located where the access is consistent with the municipality's Municipal Public Access Plan;
- (2) Consistent with an agreement between the New Jersey Department of Transportation and the Department specifying the payment of funds to the Department or the municipality to be used to provide new or enhanced public access; or
- (3) In accordance with (b) above if there is no Municipal Public Access Plan;

iv. If the applicant demonstrates that offsite public access in the same municipality is not feasible because there are no sites available upon which to provide public access in accordance with (o)2ii and iii above, equivalent offsite public access shall be provided on the same waterway(s) within a neighboring municipality where the access is consistent with the neighboring municipality's Municipal Public Access Plan or, if there is no Municipal Public Access Plan, the access is located and designed to be consistent with (b) above.

3. Transportation Public Access Plans shall satisfy the goals specified at N.J.A.C. 7:7E-1.1(c) and the public access goals at (b) above. Transportation Public Access Plans shall additionally meet the requirements at (o)3i through iii below:

i. Transportation Public Access Plans shall incorporate fishing access and associated amenities where appropriate.

ii. Transportation Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. 7:7E-8.11(u).

iii. Transportation Public Access Plans shall not provide for access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules).

4. A public transportation agency or county seeking approval of a Transportation Public Access Plan shall file an application for approval with the Department. The

application shall include a proposed Transportation Public Access Plan consisting of the following elements:

- i. A statement describing the overall goals of the Transportation Public Access Plan;
- ii. A public access policy for public roadways included in the Transportation Public Access Plan;
- iii. A description of potential public access options;
- iv. A description of the general locations where public access will be provided;
- v. A description of the general locations where public access will not be provided due to practical limitations;
- vi. An implementation strategy that describes the forms of public access proposed in order to satisfy the public access policy and measures to be implemented to permanently protect public access;
- vii. Demonstration that at least two public informational meetings have been held to take public comment on the proposed Transportation Public Access Plan and that the applicant notified the Department two weeks in advance of the dates and times of the public meetings so that the Department can provide notice of the public meetings by posting the meeting information on its website and notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and
- viii. A description of any changes made to the Transportation Public Access Plan as a result of public comments received.

5. The Department shall review an application for approval of a Transportation Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. 7:7E-1.1(c), and the goals for public access at (b) above as follows:

- i. Upon receipt of an application for approval of a Transportation Public Access Plan that meets the requirements of (o)4 above, the Department shall seek public comment on the application by:
  - (1) Posting the proposed Transportation Public Access Plan on the Department's website;
  - (2) Notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and
  - (3) Publishing notice in the DEP Bulletin.
- ii. The Department shall accept public comments on the proposed application for approval of a Transportation Public Access Plan for 30 days following publication of the notice in the DEP Bulletin.

iii. After the close of the public comment period, the Department may request revisions to the proposed Transportation Public Access Plan.

iv. If revisions are requested, the Department shall, in writing, notify the applicant within 60 days of receipt of the revisions that the proposed Transportation Public Access Plan either:

- (1) Satisfies all applicable requirements of this section and is approved; or
- (2) Does not satisfy all applicable requirements of this section and is not approved with explanation.

v. If no revisions are requested by the Department, the Department shall, in writing, notify the applicant within 60 days of the end of the public comment period that the proposed Transportation Public Access Plan either:

- (1) Satisfies all applicable requirements of this section and is approved; or
- (2) Does not satisfy all applicable requirements of this section and is not approved with explanation.

vi. The Department shall provide notice of its determination under (o)5iv or v above by:

- (1) Posting on the Department's website;
- (2) Notifying by e-mail individuals who have requested notice of applications for approval of Transportation Public Access Plans; and
- (3) Publishing the determination in the DEP Bulletin.

6. A public transportation agency or county which has received approval of a Transportation Public Access Plan shall as a condition of the approval, every five years after the date of approval, submit to the Department a report detailing:

- i. The status of all projects that have been undertaken in accordance with the Transportation Public Access Plan; and
- ii. Any problems encountered in pursuit of the plan's objectives and goals and proposed remedies to assure the objectives and goals of the plan are met.

7. Department review and approval is required before a public transportation agency or county may make changes to an approved Transportation Public Access Plan. In support of a request to amend the approved plan under this subsection, the applicant shall submit to the Department the approved plan with the information specified in (o)4 above updated to reflect the proposed change. This submission shall detail how the proposed change affects the approved plan. The Department shall review and make a determination on the Transportation Public Access Plan amendment request in accordance with (o)5 above.

(p) Marinas, as defined at N.J.A.C. 7:7E-7.3(d)1, shall provide both visual and physical public access in accordance with this subsection. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, the Department shall consider factors such as type of public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, square footage of access area, and environmental impact or benefit.

1. For existing marina development where the proposed activity consists of maintenance, rehabilitation, renovation, redevelopment, or expansion that remains entirely within the parcel containing the existing development, no public access is required if there is no existing public access onsite, except as provided at (p)3 below. Any existing public access shall be maintained. If it is necessary to impact the existing public access in order to perform the proposed activities, equivalent public access shall be provided onsite. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming, and passive recreation, in the same manner and by the same number of people as in the existing public access area;

2. For new marina development, public access shall be provided onsite during normal operating hours. For the purposes of this subsection, "new marina development" includes any change in the existing development that would result in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete paving, or proposed development of areas not within the parcel containing the existing development;

3. If the marina development includes a beach area, public access along and use of the beach shall be provided and activities that have the effect of discouraging or preventing the exercise of public trust rights, as described at N.J.A.C. 7:7E-3.50, are prohibited in accordance with (v) below;

4. Applicants for new marinas, as described at (p)2 above, shall provide to the Department at the time of application, for its review and approval, a public access plan for the marina development which shall include the following:

i. A site plan identifying the location and type of access provided, including both existing and proposed, as well as any areas closed to public access based on the presence of substantial permanent obstructions, the risk of injury from proposed hazardous operations, or a threat to public safety due to unique circumstances concerning the subject property, and where no reasonable measures can be taken to avert these risks. The plan shall include an explanation of what the specific risks and hazards are and shall indicate where access has been enhanced to compensate for the area closed due to the dangerous or hazardous conditions; and

ii. A listing of the normal operating hours for the marina;

5. Once a marina access plan has been approved by the Department, any proposed changes to that plan shall require additional Department review and approval, regardless of whether or not a permit modification is also required. In support of a request to amend the approved plan under this paragraph, the applicant shall submit to the Department the approved plan updated to reflect the proposed change(s). This submission shall provide information with reference to the requested change(s) to the plan and shall detail how the proposed change(s) affects the approved plan. If the proposed change(s) results in a reduction in any way of public access, the submission shall additionally specify proposed changes to offset proposed reductions in public access.

(q) Except in accordance with the Hudson Waterfront Area at N.J.A.C. 7:7E-3.48, and Atlantic City at N.J.A.C. 7:7E-3.49, development which is proposed to be located on an existing pier shall provide public access in accordance with the type of development being proposed, that is, commercial, residential, industrial or public, homeland security, or ports (see (n) above).

(r) For coastal permit applications that include beach and dune maintenance activities, existing public access shall be maintained or equivalent onsite public access shall be provided regardless of whether the loss of access is temporary or permanent. Equivalent public access shall include access that provides for opportunities to participate in the same activities, such as fishing, swimming, or passive recreation, in the same manner and by the same number of people as in the existing public access area.

(s) For applicants obtaining permits to conduct shore protection projects along the shores of the Atlantic Ocean, Sandy Hook Bay, Raritan Bay or Delaware Bay, and/or estuaries directly connected therewith, under the guidance of, and with participation by, the Army Corps of Engineers (ACOE), access shall be provided in accordance with the ACOE Planning Guidance Notebook Section IV- Hurricane and Storm Damage Prevention (CECW-P Engineer Regulation 1105-2-100, April 22, 2000), incorporated herein by reference, as amended and supplemented. The ACOE guidance states, "Reasonable access is access approximately every one-half mile or less," and further states, "lack of sufficient parking facilities for the general public (including nonresident users) located reasonably near and accessible to the project beaches may constitute a restriction on public access and use, thereby precluding eligibility for Corps participation." (See section E-24d., Public Use and its Relation to Federal Participation, provisions (2) and (3).)

(t) Public access must be available on a nondiscriminatory basis. All establishments, including municipalities, counties, marinas, condominium associations, homeowner associations and beach clubs, which control access to tidal waterways and

their shores shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

(u) Public access to tidal waterways and their shores shall be clearly marked. Department approved public access signs shall be installed at each public accessway, public access area and/or public parking area at the development site and maintained in perpetuity by the permittee and its successors in title and interest.

(v) Activities that have the effect of discouraging or preventing the exercise of public trust rights, as described at N.J.A.C. 7:7E-3.50, are prohibited. These activities include, but are not limited to, requiring photographic identification, requiring a liability waiver, requiring the purchase of drinks or food from a specific vendor, or prohibiting bringing beach equipment such as blankets or beach chairs.

(w) Development on or adjacent to tidal waterways and their shores shall provide barrier free access where feasible and warranted by the character of the site.

(x) If a public accessway is chosen to satisfy the public access requirement in (n) and (p) above, the accessway shall provide a minimum width of 10 feet free of obstructions to public access. Amenities such as public benches, litter or recycling receptacles, and lighting fixtures are provided to enhance public access and shall not be considered obstructions.

(y) A fee for use of bathing and recreational facilities and safeguards, such as lifeguards, toilets, showers, and parking, at publicly or privately owned beach or waterfront areas, may be charged in accordance with (y)1 through 6 below. However, no fees shall be charged solely for access to or use of tidal waterways and their shores. The fee schedule and documentation of compliance with this paragraph shall be submitted to the Department by the permittee and its successors in title and interest upon request.

1. Fees shall be no greater than that which is required to operate and maintain the facility, taking into consideration basic support amenities provided, such as lifeguards, restroom/shower facilities and trash pickup. This requirement applies to facilities and services directly associated with using the tidal waterways and their shores and does not apply to additional amenities such as cabanas, pools, or restaurants;

2. Fees shall not discriminate between residents and non-residents or on any other basis, except as allowed by this rule or other law;

3. Fees shall not be charged for children under the age of 12 years;

4. Badges or passes must be available for sale at times and places that are reasonably convenient for the public. Badges and passes shall be offered for sale in person at the beach or waterfront area during the hours that the beach is staffed. In addition, if the entity that owns or operates the

beach or waterfront area offers private memberships, public badges or passes must be offered for sale to the public in the same manner, times and places as private memberships;

5. Weekly, monthly or seasonal badges or passes shall be transferable at the discretion of the badge or pass holder; and

6. Public access to and use of tidal waterways and their shores may not be conditioned upon providing identification or signing or otherwise agreeing to any waiver or similar disclaimer of rights.

(z) The areas set aside for public access to tidal waterways and their shores shall be permanently dedicated for public use through the recording of a Department approved conservation restriction under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., maintaining the publicly dedicated areas in perpetuity. A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department;

2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.;

3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof; and

4. Be recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county in which the development, project, or project site is located.

i. Proof of recording shall be submitted to the Department prior to the commencement of site preparation or construction, or permit effectiveness.

(aa) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.  
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(b)3-7 added.

Amended by R.1988 d.338, effective August 15, 1988.  
See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Deleted (b)7 and substituted new.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

In (b), inserted a new 9, and recodified former 9 through 13 as 10 through 14.

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

In (b)11, substituted "restriction" for "easements".

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Rewrote the section.

Repeal and New Rule, R.2007 d.374, effective December 17, 2007.

See: 38 N.J.R. 4570(a), 39 N.J.R. 5222(a).

Section was "Public access to the waterfront".

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c); in (f)3, deleted "or" preceding "military facility", inserted ", or superhighway" and "at the site", and substituted ", public access shall be provided in accordance with (f)3i or ii below" for a colon and inserted the final sentence; in (f)6iii, deleted "or" from the end; in (f)7, substituted "; or" for a period at the end; added (f)8; in the introductory paragraph of (j)1, substituted "; except as provided at (j)1i below;" for a semicolon at the end; added (j)1i; and rewrote (p)2 through (p)5, (p)7 through (p)9, and (q).

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 1864(a), 44 N.J.R. 2559(a).

Section was "Public trust rights". Rewrote the section.

#### Law Review and Journal Commentaries

Resolving State Title Claims to Tidelands: Practice and Procedure. William E. Andersen, 168 N.J.Law. 8 (Mag.) (April 1995).

#### Case Notes

New Jersey Department of Environmental Protection (DEP) rules that require a municipality to allow public access to tidal waterways and their shores "at all times" unless it obtains the DEP's permission to close the area and that require a municipality that seeks an appropriation from the Shore Protection Fund to enter into a State Aid Agreement that obligates the municipality to provide such additional parking spaces and restroom facilities in proximity to the oceanfront as the DEP may mandate are declared invalid. *Borough of Avalon v. New Jersey Dep't of Env'tl. Prot.*, 403 N.J. Super. 590, 959 A.2d 1215, 2008 N.J. Super. LEXIS 239 (App.Div. 2008).

Department of Environmental Protection (DEP) had jurisdiction under the Coastal Area Facility Review Act (CAFRA) to determine the appropriate fee that beach club could charge the public for use of its private beach; boardwalk extension over the dune leading to the beach and waterfront that was maintained by club qualified as development and triggered the DEP's jurisdiction over all related issues of use and public access. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Beach club's minimum fee for access to private beach, which required the minimum seasonal payment of \$700 for up to eight household members, discriminated against individuals and small families by forcing them to pay an amount bearing no rational relationship to the cost associated with individual use of the property, and thus, the fee was exclusionary and undermined the objectives of the public trust doctrine by limiting public access to the beach; fee should be limited to expenses actually incurred by the club for reasonable management services in addition to reimbursement for other costs incurred for the services provided. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Regulation requiring coastal development to permit access to the waterfront to the maximum extent practicable, including both visual and physical access, did not impose absolute prohibition against oceanfront development which interferes with the view of inland property owners. *Bubis v. Kassin*, 323 N.J. Super. 601, 733 A.2d 1232 (N.J. Super. A.D. 1999).

Project promoting public access and water dependent uses of waterfront property complied with Waterfront Development Act. Matter of Waterfront Development Permit No. 87-1235-1 by Dept. of Environmental Protection to Union County Utilities Authority, 257 N.J. Super. 524, 608 A.2d 973 (A.D. 1992).

Shoreline development that limits public access and the diversity of shorefront experiences is discouraged (citing former N.J.A.C. 7:7E-9.12). *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

Where petitioner applied for a Coastal Area Facility Review Act Coastal General Permit, proposing remediation of oil and gasoline

product soil contamination at petitioner's industrial property on the Cohansey River waterfront, DEP properly required the petitioner to sign and record a Department-approved conservation restriction for the entire waterfront portion of the site in order to guarantee the public's ability to access the waterfront in the event the property's land use changed. *J.A. Petrunis, Inc. v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 6547-06, 2007 N.J. AGEN LEXIS 389, Initial Decision (June 5, 2007).

#### 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 comply with the following, unless it meets the requirements at (e) or (f) below:

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, except for the following:

- i. 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; and

- ii. Wind turbines.

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development as defined at N.J.A.C. 7:7E-1.8.

1. The development preserves the historic structure; and
2. The development will not detract from, damage, or destroy the value of the historic structure.

(f) Federal, State, county, or municipal development projects which are located adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk, and are greater than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with the setback requirements in (d)2 above provided that the development contains design elements that enhance physical or visual public access to the waterfront beyond that which would be afforded by strict compliance with (d)2 above and the development, as proposed, would remain in compliance with N.J.A.C. 7:7E-3.50.

(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).

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).

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In the introductory paragraph of (d), inserted "comply with the following, unless it meets the requirements at (e) below"; added new (e); and recodified former (e) as (f).

Amended by R.2010 d.193, effective September 7, 2010.

See: 41 N.J.R. 3168(a), 41 N.J.R. 4168(a), 42 N.J.R. 642(a), 42 N.J.R. 2066(b).

Section was "Scenic Resources and Design". Rewrote (d)2.

Petition for Rulemaking.

See: 42 N.J.R. 2277(a), 2992(b).

Petition for Rulemaking.

See: 43 N.J.R. 451(a).

Amended by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

In the introductory paragraph of (d), substituted the first occurrence of "Region" for "region" and inserted "or (f)"; added new (f); and recodified former (f) as (g).

### 7:7E-8.13 Buffers and compatibility of uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area

to be affected by the development, and shall be determined on a case by case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

Deleted "policy" from (b).

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Stylistic changes.

Administrative change to (b)1.

See: 23 N.J.R. 1662(b).

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2003 d.60, effective February 3, 2003.

See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (b)1, amended N.J.A.C. reference; in (b)2, substituted "standards for" "rule regarding" and "is" for "are".

### Case Notes

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at least one existing port. In Matter of Bridgeton Bulk Materials Handling Facility. 93 N.J.A.R.2d (EPE) 203.

### 7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the

design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e)1 and 3 below, shall satisfy the requirements for parking specified in this subsection. Coastal development subject to this subsection shall provide sufficient on-site and/or off-site parking for its own use. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;

ii. Brick, Toms River and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;

iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and

iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower

Thorofare and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;

2. Except as provided in (e)2i through iii below, residential development located within one-half mile of an oceanfront beach or dune shall provide on-site and/or off-site parking at a ratio of two parking spaces per unit for each dwelling unit.

i. The Department shall reduce the parking requirement for developments restricted to senior citizen housing that is, restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit;

ii. The Department shall reduce the parking requirement for development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, provided the proposed development complies with (e)2ii(1) through (5) below. The reduced parking requirement does not apply to any new development located outside of the existing footprint of development.

(1) The development preserves the historic structure;

(2) The development will not detract from, damage, or destroy the value of the historic structure;

(3) The development is located within the footprint of development of the historic structure, as defined at N.J.A.C. 7:7E-1.8;

(4) The development provides on site and/or off site parking for any new units created through the addition of new floors within the footprint of development as defined at N.J.A.C. 7:7E-1.8 at a ratio of one space per new residential unit; and

(5) All existing parking spaces associated with the historic structure are retained;

iii. On-site and/or off-site parking shall be provided at a ratio of one parking space per unit for each dwelling unit that is 650 square feet or smaller; and

3. Nursing homes and assisted living facilities are excluded from the parking requirements of this subsection.

(f) Rationale: See the OAL Note at the beginning of this subchapter.

Amended by R.1990 d.413, effective August 20, 1990.

See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Old 8.14 Solid Waste was repealed and section 8.16 was recodified here. Amendments to old 8.14 listed below.

Amended by R.1985 d.715, effective February 3, 1986.

See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).

(c) added.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Amended by R.2000 d.428, effective October 16, 2000.

See: 32 N.J.R. 864(a), 32 N.J.R. 3784(b).

Rewrote (b).

Amended by R.2008 d.82, effective April 7, 2008.

See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).

In the introductory paragraph of (e), substituted "(e)1, 2, 3 or 4" for "(e)1, 2 or 3"; in (e)2, deleted "or" from the end; in (e)3, substituted "; or" for a period at the end; and added (e)4.

Amended by R.2010 d.045, effective June 7, 2010.

See: 41 N.J.R. 356(a), 42 N.J.R. 1039(a).

Rewrote the introductory paragraph of (e); in (e)1ii, substituted "Toms River" for "Dover"; added new introductory paragraph (e)2; recodified former (e)2 as (e)2i; deleted former (e)3; recodified former (e)4 as (e)2ii; in (e)2ii, substituted "(e)2ii(1) through (5)" for "(e)4i through v"; recodified former (e)4i through (e)4v as (e)2ii(1) through (e)2ii(5); in (e)2ii(5), substituted a semicolon for a period at the end; and added (e)2iii and (e)3.

### 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 the requirements of the flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(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).

Amended by R.2007 d.340, effective November 5, 2007.  
 See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).  
 Rewrote (b)3.

**7:7E-8.22 Solid and hazardous waste**

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:
  - i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;
  - ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26; and
  - iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(c) Rationale: See the OAL Note at the beginning of this subchapter.

New Rule, R.2002 d.60, effective February 3, 2003.  
 See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

SUBCHAPTER 8A. (RESERVED)

**APPENDIX 1**

**DESIGN STANDARDS AND SPECIFICATIONS**

(OAL NOTE: None of the figures comprising N.J.A.C. 7:7E Appendix 1 are reproducible in the New Jersey Admin-

istrative Code, but may be reviewed or a copy obtained by contacting the Office of Administrative Law, PO Box 049, Trenton, NJ 08625-0049.)

Amended by R.2000 d.45, effective February 7, 2000.  
 See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).  
 Amended by R.2007 d.340, effective November 5, 2007.  
 See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).  
 Repealed Figure 6.  
 Amended by R.2008 d.82, effective April 7, 2008.  
 See: 39 N.J.R. 725(a), 40 N.J.R. 1836(a).  
 Repealed Figure 11.

**APPENDIX 2**

**(RESERVED)**

New Rule, R.2000 d.45, effective February 7, 2000.  
 See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).  
 Administrative change.  
 See: 32 N.J.R. 1803(b).  
 Administrative change.  
 See: 32 N.J.R. 3828(a).  
 Petition for Rulemaking.  
 See: 33 N.J.R. 329(b), 33 N.J.R. 590(b).  
 Amended by R.2001 d.81, effective March 5, 2001.  
 See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).  
 Rewrote the section.  
 Amended by R.2001 d.152, effective May 7, 2001.  
 See: 33 N.J.R. 156(a), 33 N.J.R. 1371(a).  
 Rewrote the section.  
 Petition for Rulemaking.  
 See: 33 N.J.R. 1475(a).  
 Administrative change.  
 See: 34 N.J.R. 1421(b).  
 Administrative change.  
 See: 34 N.J.R. 4196(a).  
 Petition for Rulemaking.  
 See: 35 N.J.R. 3720(a), 4786(a).  
 Administrative change.  
 See: 36 N.J.R. 5674(a).  
 Amended by R.2006 d.46, effective February 6, 2006.  
 See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).  
 Heading was "Boundaries of Coastal Centers in the CAFRA Area Not Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the section.  
 Administrative changes.  
 See: 38 N.J.R. 1669(a).  
 Administrative change (effective March 5, 2007 and operative April 4, 2007).  
 See: 39 N.J.R. 768(b).  
 Administrative change. (Administrative notice that Appendix 2 expired.)  
 See: 39 N.J.R. 2018(b).

**APPENDIX 3**

**BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA**

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of the non-mainland coastal centers in the CAFRA area.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further

restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. Atlantic County coastal centers on barrier islands, spits, and peninsulas

A. Brigantine coastal town

1. The coastal town boundary follows the municipal boundary of the City of Brigantine, but does not include any bay islands or the Absecon Wildlife Management Area.

II. Cape May County coastal centers on barrier islands, spits and peninsulas

A. Lower Township coastal centers

1. Diamond Beach coastal town

a. The coastal town boundary extends from the intersection of the Wildwood Crest/Lower Township municipal boundary and Park Boulevard thence southwest on Park Boulevard to North Station Avenue, thence southeast on North Station Avenue to Ocean Drive (County route 621), thence southwest on Ocean Drive (County route 621) to Madison Avenue, thence southeast on Madison Avenue to its end, thence southeast on the same bearing to the water's edge, thence northeast along the water's edge to the municipal boundary, and thence northwest along the municipal boundary to Park Boulevard.

B. Sea Isle City coastal town

1. The coastal town boundary follows the municipal boundary of Sea Isle City, but does not include the area north of a line that extends along 22nd Street and along the same bearing from either end of 22nd Street to the mean high water line.

III. Monmouth County coastal centers on barrier islands, spits and peninsulas

A. Monmouth Beach coastal town

1. The coastal town boundary follows the municipal boundary of the Borough of Monmouth Beach, but does not include any bay islands.

B. Sea Bright coastal town

1. The coastal town boundary follows the municipal boundary of the Borough of Sea Bright, but does not include any bay islands.

IV. Ocean County coastal centers on barrier islands, spits and peninsulas

A. Barnegat Light coastal village

1. The coastal village boundary follows the municipal boundary of Barnegat Light Borough, but does not include any bay islands or Barnegat Light State Park.

B. Bay Head coastal town

1. The coastal town boundary follows the municipal boundary of Bay Head Borough.

C. Beach Haven Borough coastal town

1. The coastal town boundary follows the municipal boundary of Beach Haven Borough, but does not include any bay islands.

D. Berkeley Township coastal town

1. The coastal town boundary circumscribes that part of Berkeley Township that is east of Barnegat Bay, north of Island Beach State Park and south of Seaside Park Borough.

E. Brick Township coastal centers

1. South Mantoloking coastal village

a. The coastal village boundary circumscribes that part of Brick Township that is east of Barnegat Bay, north of Toms River Township, and south of Mantoloking Borough, but does not include any bay islands.

F. Toms River Township coastal centers

1. Normandy Beach/Chadwick coastal town

a. The coastal town boundary circumscribes that part of Toms River Township that is east of Barnegat Bay, north of Lavallette Borough and south of Brick Township, but does not include any bay islands.

2. Ortley Beach coastal town

a. The coastal town boundary circumscribes that part of Toms River Township that is east of Barnegat Bay, north of Seaside Heights Borough, and south of Lavallette Borough, but does not include any bay islands.

G. Harvey Cedars coastal town

1. The coastal town boundary follows the municipal boundary of Harvey Cedars Borough, but does not include any bay islands.

H. Lavallette coastal town

1. The coastal town boundary follows the municipal boundary of Lavallette Borough, but does not include any bay islands.

I. Long Beach coastal town

1. The coastal town boundary circumscribes those non-contiguous parts of Long Beach Township that are east of Barnegat Bay, but does not include any bay

islands or the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge.

J. Mantoloking coastal village

1. The coastal town boundary follows the municipal boundary of Mantoloking Borough, but does not include any bay islands.

K. Seaside Park coastal town

1. The coastal town boundary follows the municipal boundary of Seaside Park Borough, but does not include any bay islands.

L. Ship Bottom coastal town

1. The coastal town boundary follows the municipal boundary of Ship Bottom Borough, but does not include any bay islands.

M. Surf City coastal village

1. The coastal village boundary follows the municipal boundary of Surf City, but does not include any bay islands.

New Rule, R.2000 d.45, effective February 7, 2000.

See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

Administrative change.

See: 32 N.J.R. 1803(b).

Administrative change.

See: 36 N.J.R. 5674(a).

Amended by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Heading was "Boundaries of Coastal Centers in the CAFRA Area Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the introductory paragraph.

Administrative change.

See: 39 N.J.R. 2018(b).

Administrative change (effective April 19, 2010 and operative May 19, 2010).

See: 42 N.J.R. 787(a).

**APPENDIX 4**

(RESERVED)

New Rule by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Former N.J.A.C. 7:7E Appendix 4, CAFRA Centers, recodified as N.J.A.C. 7:7E Appendix 5.

Administrative changes.

See: 38 N.J.R. 1669(a).

Amended by R.2006 d.363, effective October 2, 2006.

See: 38 N.J.R. 1921(a), 38 N.J.R. 4214(a).

Added the second paragraph; and inserted asterisks following multiple entries in the list of coastal centers with expired boundaries.

Administrative change. (Administrative notice that Appendix 4 expired.)

See: 39 N.J.R. 2018(b).

**APPENDIX 5**

**CAFRA CENTERS**

This non-regulatory appendix contains the list of CAFRA centers the boundaries of which have been accepted by the Department under N.J.A.C. 7:7E-5B.3(b), and which are incorporated into and shown on the CAFRA Planning Map.

As required under N.J.A.C. 7:7E-5B.4(b), an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable impervious cover limits under this chapter.

The Department will update the list of CAFRA centers, in this Appendix by notice of administrative change as part of the New Jersey Register notice required in N.J.A.C. 7:7E-5B.3(b). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers are listed alphabetically.

I. Atlantic County CAFRA centers and CAFRA cores

A. Atlantic City

1. Atlantic City CAFRA urban center

B. Galloway Township CAFRA centers and CAFRA cores

1. Galloway Downtown CAFRA core
2. Oceanville CAFRA village
3. Smithville CAFRA core
4. Smithville CAFRA town
5. Wrangleboro CAFRA town

II. Burlington County CAFRA centers

A. Bass River Township

1. Bass River Township CAFRA node

III. Cape May County CAFRA centers

A. Avalon Borough

1. Avalon Borough CAFRA town

B. Cape May City

1. Cape May City CAFRA town

C. Cape May Point Borough

1. Cape May Point CAFRA village

D. City of Ocean City

1. Ocean City regional center

E. Middle Township

1. Cape May Court House CAFRA Regional Center
2. Del Haven CAFRA Village Center
3. Goshen CAFRA Hamlet
4. Green Creek CAFRA Village Center
5. Hildreth CAFRA Village Center
6. Rio-Grand-Whitesboro-Burleigh CAFRA Regional Center

- 7. Swainton CAFRA Village Center
  - F. Stone Harbor Borough
    - 1. Stone Harbor Borough CAFRA town
  - G. Upper Township
    - 1. Seaville CAFRA Town
    - 2. Marmora CAFRA Town
    - 3. Petersburg CAFRA Village
    - 4. Tuckahoe CAFRA Village
  - H. Wildwood City/North Wildwood City/Wildwood Crest Borough/West Wildwood Borough
    - 1. The Wildwoods CAFRA regional center
  - IV. Cumberland County CAFRA centers
    - A. Bridgeton City
      - 1. Bridgeton CAFRA Regional Center
    - B. Commercial Township CAFRA centers
      - 1. Mauricetown-Haleyville CAFRA village
    - C. Lawrence Township
      - 1. Cedarville CAFRA Village
    - D. Maurice River Township
      - 1. Mauricetown Station CAFRA hamlet
    - E. Millville City/Vineland City
      - 1. Millville-Vineland CAFRA regional center
  - V. Monmouth County CAFRA centers
    - A. Asbury Park City
      - 1. Asbury Park CAFRA urban center
    - B. Atlantic Highlands Borough
      - 1. Atlantic Highlands Borough CAFRA town
    - C. Long Branch City
      - 1. Long Branch CAFRA regional center
    - D. Manasquan Borough
      - 1. Manasquan Borough CAFRA town
    - E. Red Bank Borough
      - 1. Red Bank CAFRA regional center
  - VI. Ocean County CAFRA centers
    - A. Brick Township
      - 1. Brick CAFRA town
    - B. Berkeley Township
      - 1. Berkeley CAFRA Town Center
      - 2. Berkeley CAFRA Core
      - 3. Berkeley CAFRA Node
  - C. Barnegat Township
    - 1. Barnegat CAFRA Town Center
    - 2. Barnegat CAFRA Core
  - D. Little Egg Harbor Township
    - 1. Mystic Island CAFRA town
    - 2. Parkertown CAFRA village
  - E. Little Egg Harbor Township/Tuckerton Borough
    - 1. Tuckerton CAFRA town
  - F. Ocean Township
    - 1. Waretown CAFRA Town Center
  - G. Seaside Heights Borough
    - 1. Seaside Heights CAFRA Town
  - H. Stafford Township
    - 1. Stafford/Manahawkin CAFRA regional center
  - VII. Salem County CAFRA centers and CAFRA nodes
    - A. Lower Alloways Township CAFRA centers
      - 1. PSE & G Energy Facility node
    - B. Salem City
      - 1. Salem City CAFRA regional center
- New Rule, R.2001 d.81, effective March 5, 2001.  
 See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).  
 Administrative change.  
 See: 34 N.J.R. 1421(b).  
 Administrative change.  
 See: 34 N.J.R. 4196(a).  
 Administrative change.  
 See: 36 N.J.R. 5674(a).  
 Administrative change.  
 See: 37 N.J.R. 4435(a).  
 Recodified from N.J.A.C. 7:7E Appendix 4 by R.2006 d.46, effective February 6, 2006.  
 See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).  
 Administrative change (effective March 5, 2007 and operative April 4, 2007).  
 See: 39 N.J.R. 768(b).  
 Administrative correction.  
 See: 39 N.J.R. 2536(a).  
 Administrative change (effective March 3, 2008 and operative April 2, 2008).  
 See: 40 N.J.R. 1085(a), 1088(a).  
 Administrative correction.  
 See: 40 N.J.R. 4320(a).  
 Administrative change (effective September 8, 2009 and operative October 8, 2009).  
 See: 41 N.J.R. 3245(a).  
 Administrative change (effective April 19, 2010 and operative May 19, 2010).  
 See: 42 N.J.R. 787(a).

Administrative change (effective May 7, 2012 and operative June 6, 2012).

See: 44 N.J.R. 1521(a), 1524(a).

Administrative change (effective January 22, 2013 and operative February 21, 2013).

See: 45 N.J.R. 115(a).

Administrative change (effective December 2, 2013 and operative January 1, 2014).

See: 45 N.J.R. 2477(a).

**APPENDIX 6**

(RESERVED)

New Rule, R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Repealed by R.2012 d.182, effective November 5, 2012.

See: 43 N.J.R. 772(a), 44 N.J.R. 614(a), 44 N.J.R. 2559(a).

Section was "Public Access Requirements for Marinas through December 31, 2010".