

*N.J.L. 1 (1821), Borough of Neptune v. Borough of Avon-by-the-Sea*, 61 N.J. 296 (1972), *Hyland v. Borough of Allenhurst*, 78 N.J. 190 (1978); *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984); *Slocum v. Borough of Belmar*, 238 N.J.Super. 179 (Law Div. 1989); *National Ass'n of Homebuilders v. State, Dept. of Env'tl Protect.*, 64 F.Supp.2d 354 (D.N.J. 1999); *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40 (2005); *Illinois Central R.R. v. Illinois*, 146 U.S. 387 (1892); *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988); *Karam v. NJDEP*, 308 N.J. Super. 225, 240 (App. Div. 1998), *aff'd*, 157 N.J. 187 (1999), *cert. denied*, 528 U.S. 814 (1999).

"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.

"Qualifying municipality" means a municipality that qualifies under N.J.S.A. 52:27D-178 et seq. to receive State aid for the purpose of enabling such municipalities 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 for each State 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, (609)292-0060.

"Regulated activity" or "activity" means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970 or Waterfront Development Law, and shall also include the terms "project" and "development".

"Regulated wetland" means any wetland which has been mapped and the map promulgated pursuant to the Wetlands Act of 1970.

"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.

"Rotor swept area" means the area of the 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.

"Seasonal or temporary structures related to the tourism industry" means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds, wooden walkways, stage platforms, and portable restrooms, which remain in place only during the period from May 1 through October 31, and provided that the

placement of such structures does not involve the excavation, grading or filling of a beach or dune.

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

"Site preparation" means physical activity which is an integral part of a continuous process of land development or re-development for a particular development which must occur before actual construction of that development may commence. It does not include the taking of soil borings, performing percolation tests, or driving of less than three test pilings.

"Structure" means any assembly of materials above, on or below the surface of the land or water, including but not limited to buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, bridges, and includes floating structures.

"Tidelands instrument" means a written document conveying, leasing or licensing lands owned or claimed to be owned as present or formerly flowed tidelands by the State of New Jersey to public entities or private interests pursuant to N.J.S.A. 12:3-1 et seq. and N.J.S.A. 13:1B-13 et seq. Tidelands instruments include licenses, long-term leases, conveyances (often called grants), and management agreements. These documents are recorded in the office of the clerk of the county or registrar of deeds and mortgages of the county in which the property is located.

"Waterward side of development" means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries. (see Appendix A, herein incorporated by reference).

Amended by R.1987 d.217, effective May 18, 1987.  
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Amended Division and Permit; added pesticide.  
Amended by R.1994 d.378, effective July 18, 1994.  
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).  
Amended by R.1995 d.550, effective October 16, 1995.  
See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(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 the section.  
Amended by R.2003 d.44, effective January 21, 2003.  
See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

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

In "Dune", inserted "and all landward dune ridges and mounds" preceding "as well as man-made dunes".  
Amended by R.2006 d.142, effective April 17, 2006.  
See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Added definitions "beach berm" and "charitable conservancy"; updated definition "seasonal or temporary structures related to the tourism industry".

Amended by R.2007 d.242, effective August 20, 2007.  
See: 38 N.J.R. 2907(a), 39 N.J.R. 3517(a).

Added definition "Grace Period".  
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"; in the introductory paragraph of definition "Conservation restriction", inserted "or for public access to

tidal waterways and their shores,” and “of the following”; in paragraph 1 of definition “Conservation restriction”, substituted “of” for “or” following “placing”; and added definitions “Public accessway” and “Public Trust Doctrine”.

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 definitions “Floodway”, “Impervious cover” and “Rotor swept area”.

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 definition “Amusement pier”, inserted the next-to-last sentence, and deleted “, bars or restaurants” following the second occurrence of “payoffs”.

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

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

Added definitions “Living shoreline”, “Non-polluting material” and “Pumpout facility”.

#### Law Review and Journal Commentaries

Watch Out for the CAFRA II Rules. Lewis Goldshore and Marsha Wolf, 159 N.J.L.J. 1196 (2000).

#### Case Notes

Borough was properly assessed civil administrative penalties by the Department of Environmental Protection for violations of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., as a result of development activities in a coastal zone without a permit, including removing existing vegetation from the site, filling and grading the site with asphalt millings, tamping the asphalt millings, setting telephone poles on the site to create a parking area, and constructing a fence around the site. The Borough’s reliance on the CAFRA exception with respect to the construction of the fence was inapplicable because the fence was not associated with a public highway. N.J. Dep’t. of Env’tl. Prot., Coastal and Land Use Compliance and Enforcement v. Seaside Heights Borough, OAL Dkt. No. ESA 4458-06, 2009 N.J. AGEN LEXIS 924, Final Decision (May 11, 2009).

#### 7:7-1.4 Standards for evaluating permit applications

(a) All applications for coastal permits (as defined in N.J.A.C. 7:7-1.3), water quality certificates, and Federal consistency determinations shall be approved, conditionally approved or denied pursuant to the Department’s Coastal Zone Management rules, N.J.A.C. 7:7E. In addition, applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.

(b) The Department shall not issue a permit under CAFRA unless the Department makes the findings required by N.J.S.A. 13:19-10. The findings shall be made in accordance with N.J.A.C. 7:7E-1.5(a).

Amended by R.1987 d.217, effective May 18, 1987.

See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Deleted Policies from text.

Amended by R.1994 d.378, effective July 18, 1994.

See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(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).

Added designation to first paragraph and added (b).

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), substituted “Coastal Zone Management rules” for “Rules on Coastal Zone Management”; 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 second sentence of (b), substituted “The” for “Such” and updated the N.J.A.C. reference.

#### Law Review and Journal Commentaries

Watch Out for the CAFRA II Rules. Lewis Goldshore and Marsha Wolf, 159 N.J.L.J. 1196 (2000).

#### Case Notes

New Jersey Department of Environmental Protection (NJDEP) had a sufficient factual basis to grant permits to fill approximately 7.69 acres of wetlands in connection with the Xanadu Redevelopment project, its determination that mitigation of traffic and air quality problems must be addressed in stages due to the nature of the project was not an arbitrary and capricious resolution, and development of the surrounding wetlands did not violate N.J.A.C. 7:7E-3.27(c)1 because there was little, if any, possible water dependent use for the property and no prudent or feasible alternative to developing the project on a non-wetlands site. However, the NJDEP process of reviewing future submissions for compliance with conditions contained in the approval failed to provide an adequate opportunity for public comment; therefore, the NJDEP was required to develop a system that ensures the opportunity for such comment. In re Stream Encroachment Permit, 402 N.J. Super. 587, 955 A.2d 964, 2008 N.J. Super. LEXIS 201 (App.Div. 2008).

Implementing rules propounded by Department of Environmental Protection (DEP), with respect to Coastal Area Facility Review Act (CAFRA), did not incorporate, expressly or impliedly, requirement that DEP make specific findings required by statute. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J. Super. 293.

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).

Application for waterfront development permit; failure to comply with rules for coastal zone management. Haldone v. DEPE, 94 N.J.A.R.2d (EPE) 2.

#### 7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

1. Potential applicants may request a written jurisdictional determination from the Department to determine the applicability of 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., and the Waterfront Development Law, N.J.S.A. 12:5-3 et seq., to a proposed project. A jurisdictional determination is optional. If a potential applicant is unsure whether a particular activity is regulated, the Department encourages the potential applicant to obtain a written jurisdictional determination prior to commencing work since unauthorized regulated activities may result in substantial fines or other penalties.

2. An application for a jurisdictional determination shall contain the following:

i. A completed jurisdictional determination/preapplication request form including a written description of the site and the proposed development including

accordance with Department specifications found at N.J.A.C. 7:7E, Coastal Zone Management rules, shall be considered a "similar structure" at a residential development.

v. For the purposes of this paragraph, the following shall not be considered "similar structures" at a residential development: swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings, except as provided at (c)5iii above.

6. Services provided, within the existing public right-of-way, by any government entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing unpaved roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects (including new paving or repaving) which do not increase the number of travel lanes;

iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices; or

iv. Re-striping of public highways and the addition of toll booths provided that these activities do not result in any increase in asphalt or concrete pavement.

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994 provided that construction, as defined at N.J.A.C. 7:7-2.1(c)1iii, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-2.1(c)1iii on or before September 19, 1973 expired on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to Special Areas, as defined at N.J.A.C. 7:7E-3, which additional impacts are greater than the impacts associated with the originally exempt development.

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may

be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this subchapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. A folded copy of the approved site plan or subdivision plan, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit and approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 18, 1997. To make such a determination, the Department will require documentation that the new permit authorized exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:7-10.4(e); and

iv. A completed LURP application form.

2. For an exemption pursuant to (c)3, 4, and 5 above, the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

(1) For exemptions based on fire, storm, natural hazard or Act of God, the site plans submitted shall also indicate all preexisting structures to be rebuilt.

ii. Photographs of the site;

iii. The fee specified at 7:7-10.4(e); and

iv. A completed LURP application form.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site;

- v. The fee specified at N.J.A.C. 7:7-10.4(e); and
- vi. A completed LURP application form.

Amended by R.1986 d.461, effective November 17, 1986.  
See: 18 N.J.R. 1772(a), 18 N.J.R. 2326(a).

(b)4viii added.

Amended by R.1987 d.217, effective May 18, 1987.  
See: 18 N.J.R. 2156(a), 19 N.J.R. 861(b).

Substantially amended.

Amended by R.1988 d.136, effective March 21, 1988.  
See: 19 N.J.R. 807(a), 20 N.J.R. 643(b).

(b)6 substantially amended.

Amended by R.1994 d.378, effective July 18, 1994.  
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).  
Petition for Rulemaking.

See: 27 N.J.R. 769(a), 27 N.J.R. 1696(b).

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(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 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 (f), amended the N.J.A.C. references in 1iii, 2iii, and 3v.

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

In (b)8ii, substituted "September 19" for "September 1" and deleted "(the effective date of CAFRA)".

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 (b)13.

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

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

In (b)13i(4), deleted "or" from the end; in (b)13ii(4), substituted "; or" for a period at the end; and added (b)13iii.

#### 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 et seq., the Coastal Permit Program Rules, N.J.A.C. 7:7-1.1 et seq., and the Coastal Zone Management Rules, N.J.A.C. 7:7E-1.1 et seq., 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).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Proposed paved parking lot of more than three acres in coastal area constituted "public facility" and "road, airport, or highway construction" under Act and project was therefore subject to review. *In Re: DEP Reg. N.J.A.C. 7:7-2.1(b)1.iii*, 214 N.J.Super. 579, 520 A.2d 794 (App.Div. 1987) certification denied 107 N.J. 134, 526 A.2d 199 (1988).

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).

Borough was properly assessed civil administrative penalties by the Department of Environmental Protection for violations of the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., as a result of development activities in a coastal zone without a permit, including removing existing vegetation from the site, filling and grading the site with asphalt millings, tamping the asphalt millings, setting telephone poles on the site to create a parking area, and constructing a fence around the site. The Borough's reliance on the CAFRA exception with

respect to the construction of the fence was inapplicable because the fence was not associated with a public highway. *N.J. Dep't. of Env'tl. Prot., Coastal and Land Use Compliance and Enforcement v. Seaside Heights Borough*, OAL Dkt. No. ESA 4458-06, 2009 N.J. AGEN LEXIS 924, Final Decision (May 11, 2009).

Where a homeowner sought to reconstruct and expand the footprint of an existing single-family dwelling (constructed originally in 1950) located adjacent to the property owned by petitioners (whose dwelling was constructed in 1988), and the two properties had been a single parcel until 1981, both homes were legally existing and pre-dated 1994, which was the date under the Coastal Area Facility Review Act (CAFRA) when single-family homes began to be regulated, and the Department of Environmental Protection's determination that the homeowner's proposed project would constitute the first development and thus could be reviewed for substantive compliance with a General Permit, rather than an Individual Permit, was a reasonable exercise of its discretion. The Department's determination that the proposed project would not be undertaken "in conjunction with" the 1988 construction of the single-family dwelling on the adjacent property, within the meaning of N.J.A.C. 7:7-7.9(b) and 7:7-2.1(b)8ii, was a reasonable interpretation of CAFRA and the implementing regulations. *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).

#### 7:7-2.2 Wetlands

(a) Wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;
2. The excavation of an individual mooring slip;
3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure. Written notification of such repairs shall be provided to the Program within seven days after their initiation;
4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;
5. The installation of utilities;
6. Excavation of boat channels and mooring basins;
7. The construction of impoundments;
8. The construction of sea walls;
9. The diversion or appropriative use of water;
10. The use of pesticides, except those applied to the skin or clothing for personal use;
11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and
12. Filling, excavation or the construction of any structure.

**Case Notes**

Amendments to waterfront development rules extending permit requirement to previously exempt properties were invalid. *Long Beach Tp. Oceanfront Property Owners Ass'n v. New Jersey Dept. of Environmental Protection*, 245 N.J.Super. 143, 584 A.2d 820 (A.D.1990).

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region exceeded its statutory authority. *Last Chance Development Partnership v. Kean*, 119 N.J. 425, 575 A.2d 427 (1990).

Department of Environmental Protection did not have jurisdiction over development in upland areas of a coastal region. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Department of Environmental Protection's asserted jurisdiction over development in upland areas of a coastal region was preempted by a Coastal Area Facility Review Act exemption. *Last Chance Development Partnership v. Kean*, 232 N.J.Super. 115, 556 A.2d 796 (A.D.1989) certification granted 117 N.J. 135, 564 A.2d 860, affirmed 119 N.J. 425, 575 A.2d 427.

Dredging without a permit so as to cause loss of bay's benefits to people and wildlife was violation warranting fine. *Department of Environmental Protection v. Gallagher*, 95 N.J.A.R.2d (EPE) 28.

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.

Waterfront Development Law; construction of floating dock and registering it as vessel. *Department of Environmental Protection v. Grossman*, 94 N.J.A.R.2d (EPE) 236.

opment, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

Amended by R.1994 d.378, effective July 18, 1994.  
See: 26 N.J.R. 918(a), 26 N.J.R. 1561(a), 26 N.J.R. 2934(a).

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

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

Designated the section as (a) and inserted a second sentence beginning with "Pre-application meetings".

**7:7-3.2 Request for a pre-application review**

(a) Potential applicants for major projects, other than the installation of submarine cables in the Atlantic Ocean, are encouraged to request a preapplication review with the Department at the earliest opportunity. A request for a preapplication review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. The conceptual proposal shall include:

- i. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;

- ii. Maps indicating the site's location and rough internal plan of development; and

- iii. A tax lot and block designation of the site and a United States Geological Survey quadrangle map or county road map showing the site.

(b) Potential applicants for the installation of submarine cables in the Atlantic Ocean shall schedule the pre-application review early in the design process. A request for a pre-application review shall be made in writing and include a written description of the proposed project along with a National Oceanic and Atmospheric Administration (NOAA) nautical chart depicting potential cable routes in relationship to existing cable routes. All pre-application review requests for the installation of submarine cables shall be submitted to the Manager of the Department's Bureau of Coastal Regulation, PO Box 439, Trenton, New Jersey, 08625-0439.

**SUBCHAPTER 3. PRE-APPLICATION REVIEW****7:7-3.1 Purpose**

(a) A preapplication review is an optional service especially recommended for major development. Pre-application meetings are, however, mandatory for coastal permit applications involving the installation of submarine cables in the Atlantic Ocean. At this review the Department will discuss apparent strengths and weaknesses of the proposed devel-

iv. No portion of the wind turbine, including blades, tower, and site disturbance, shall be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)13iv(1) and (2) below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

(1) The wind turbine(s) is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or

(2) The wind turbine(s) is located on legally existing impervious cover;

v. If the wind turbine(s) is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower shall be a freestanding monopole(s);

vi. No lighting shall be placed on or directed at the wind turbine except for lighting required by the Federal Aviation Administration. Shielded ground level 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; and

vii. Development under this permit-by-rule shall not result in construction of more than three wind turbines on a site, either solely or in conjunction with a previous wind turbine development.

14. The installation of solar panels on a maintained lawn or landscaped area at a single family home or duplex lot provided:

i. The solar panel development shall not be located in or on dunes, beaches, wetlands, floodways, or coastal bluffs;

ii. The solar panel development shall be setback a minimum of 50 feet from the inland limit of any wetlands, beach, or dune;

iii. The maintained lawn or landscaped area is not subject to a previous coastal permit requirement that it remain as vegetative cover; and

iv. The solar panel development shall not be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps), except as provided at (a)14iv(1) and (2) below. The Landscape Maps are

available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

(1) The solar panel(s) is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or

(2) The solar panel(s) is located on legally existing impervious cover.

15. The reconfiguration of any legally existing dock, wharf, or pier located at a legally existing marina, provided the marina is not located within shellfish habitat, submerged vegetation habitat, or a wetland. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water, 33 U.S.C. §§ 1251 et seq. The proposed reconfiguration shall:

i. Not extend outside of the area covered by an existing Tidelands instrument;

ii. Not result in an increase in the number of boat slips;

iii. Not hinder navigation;

iv. Not increase the total linear footage of docks or piers within the marina;

v. Minimize the water area covered by structures by:

(1) Providing a minimum of eight feet of open water between any docks if the combined width of the docks over water exceeds eight feet; and

(2) 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 relocate, 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; and

vi. Provide a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline;

16. The placement of sand fencing to create or sustain a dune, provided the sand fencing complies with (a)16i through iii below. This permit-by-rule does not authorize the excavation or grading of a dune. The sand fencing shall:

i. Be placed on the landward side of the dune;

- ii. Be placed parallel to the mean high water line; and
- iii. Not prevent perpendicular public access to the beach.

17. The placement of land-based upwellers and raceways, including intakes and discharges, for aquaculture activities. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The aquaculture activities shall comply with the following:

- i. The structures are located on the upland portion of a lot with a legally existing, functioning bulkhead;
- ii. No grading, excavation, filling, or placement of a structure(s) is undertaken on a beach, dune, or wetland; and
- iii. The discharge from the aquaculture activities is to a water body and not directly into a wetland.

18. The placement of predator screens and oyster spat attraction devices in an area subject to a valid shellfish lease pursuant to N.J.S.A. 50:1-23. Upon expiration or termination of the shellfish lease, or the cessation of the use of predator screens and oyster spat attraction devices, whichever occurs first, within five days the permittee shall remove all predator screens and oyster spat attraction devices placed within the lease area. This permit-by-rule does not authorize the placement of shell within a shellfish lease area. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The placement of predator screens and oyster spat attraction devices shall comply with the following:

- i. So as not to pose a hazard to navigation, predator screens shall not extend more than six inches above the substrate and oyster spat attraction devices shall not extend more than 24 inches above the substrate; and
- ii. No activity undertaken pursuant to this permit-by-rule shall prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner pursuant to N.J.S.A. 50:1-33.

19. The placement of shellfish cages in an area subject to a valid shellfish lease pursuant to N.J.S.A. 50:1-23. Upon expiration or termination of the shellfish lease, or the cessation of the use of shellfish cages, whichever occurs first, within five days the permittee shall remove all shellfish cages placed within the lease area. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The placement of shellfish cages shall comply with the following:

i. There shall be a minimum of four feet of water between the top of any cage and the water surface at mean low water;

ii. The cages shall be continuously checked and repaired to ensure that they are not displaced off the lease area;

iii. The cages shall be constructed of non-polluting materials; and

iv. No activity undertaken pursuant to the permit-by-rule shall prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner pursuant to N.J.S.A. 50:1-33.

20. The construction and/or installation of a pumpout facility and/or pumpout support facilities in the circumstances set forth at (a)20i and ii below. The construction and/or installation of a pumpout facility or pumpout support facility shall have no adverse impacts to any special areas described at N.J.A.C. 7:7E-3.

i. At a marina, boat yard, boat sales facility, yacht club, restaurant, boat ramp, or other waterfront facility, the construction and/or installation of a pumpout facility and/or the construction of pumpout support facilities, such as stanchions, hydrants, piping, pumps, holding tanks, a concrete pad for a holding tank (not to exceed a surface area of 100 square feet), a platform to elevate a pump above flood level, macerator pumps, or other equipment necessary to transfer sewage from the holding tank on a boat to a sanitary sewer line or holding tank, provided the pumpout discharges to:

- (1) A municipal or regional treatment plant where practicable;
- (2) A subsurface sewage disposal system; or
- (3) A holding tank with waste being removed by a licensed septage hauler.

(A) Any facility using a holding tank for the pumpout discharge shall maintain a record of removal of the waste.

ii. A sewer line connecting a pumpout facility and/or pumpout support facility into an existing sewer line located on-site or located immediately adjacent to the site, provided:

- (1) The sewer line and the area of the connection into the existing sewer are located within areas of non-porous cover;
- (2) For a sewer line that connects from a pumpout facility and/or pumpout support facility that is located on an existing dock, the sewer line does not extend below the stringers of the dock; and
- (3) The sewer line receives a Treatment Works Approval as required in accordance with the

Department's rules at N.J.A.C. 7:14A from the Department's Division of Water Quality.

21. The implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site. 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. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 §§ 1251 et seq. This permit-by-rule authorizes the implementation of a sediment sampling plan for sampling to be conducted within a water area described at N.J.A.C. 7:7E-4.1, as part of a dredging or dredged material management activity or as part of a remedial investigation, provided:

i. If the sampling is part of a dredging or dredged material management activity, the sediment sampling plan shall be approved in writing by the Department's Office of Dredging and Sediment Technology; or

ii. If the sampling is part of a remedial investigation of a contaminated site, the sediment sampling plan shall be prepared in accordance with the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and approved by the Department or certified by a Licensed Site Remediation Professional in accordance with the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C.

(b) For activities subject to (a)5, 6 and 10 above, the Department shall review the activities subject to the permit-by-rule in conjunction with the Waterfront Development permit application.

(c) Notification to the Department prior to commencement of a development which meets the conditions of (a)1, 3, 4, 7, 8 and 9 above is not required.

Amended by R.1995 d.550, effective October 16, 1995.

See: 27 N.J.R. 1005(a), 27 N.J.R. 3976(a).

Amended by R.1997 d.534, effective December 15, 1997.

See: 28 N.J.R. 4836(a), 29 N.J.R. 5287(a).

Inserted (a)7; rewrote (b); deleted (b)1 through (b)4; rewrote (c); and deleted (c)1 and (c)2.

Recodified from N.J.A.C. 7:7-7.4 and 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. Former N.J.A.C. 7:7-7.2, General Permit authorization, repealed.

Amended by 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.340, effective November 5, 2007.

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

Rewrote (a)1; in (a)3viii, substituted "meet the requirements of N.J.A.C. 7:7E-3.25" for "comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1"; in (a)7iii, deleted "and" from the end; added new (a)7iv; and recodified former (a)7iv and (a)7v as (a)7v and (a)7vi.

Amended by R.2008 d.378, effective December 15, 2008.

See: 40 N.J.R. 4386(b), 40 N.J.R. 6960(a).

Added (a)11.

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 (a)12 and (a)13.

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

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

Section was "Permits-By Rule". In the introductory paragraph of (a), substituted "permit-by-rule" for "Permit-By-Rule"; rewrote the introductory paragraph of (a)7; in (a)7iv, deleted "and" from the end; in (a)7v, substituted ";" and "for a period at the end; added new (a)8; recodified former (a)8 through (a)13 as (a)9 through (a)14; in (a)13iv, substituted "(a)13iv(1)" for "(a)12iv(1)"; in (a)14iv, substituted "(a)14iv(1)" for "(a)13iv(1)"; and added (a)15 through (a)21.

#### Law Review and Journal Commentaries

Implications of the New CAFRA Legislation. Michael J. Gross, Jeffrey S. Beenstock, 168 N.J.Law. 13 (Mag.) (April 1995).

### 7:7-7.3 Application procedure for a coastal general permit authorization

(a) A person proposing to engage in an activity covered by a coastal general permit shall submit the following to the Department:

1. A completed LURP application form;

2. Photographs showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation;

3. The general site location of the development, which may be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

4. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package have been submitted to the clerk of the municipality in which the proposed development would occur, including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission, or any public body with similar responsibilities. The third copy shall be maintained in the clerk's office. Applications for coastal general permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission;

5. Verification that a certified mail notice (white receipts or green cards are acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the construction code official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Verification that notice has also been provided to all owners of real property, including easements, as shown on the tax duplicate, surrounding and sharing a property boundary at any point on the perimeter of the proposed development. Verification in the form of a list certified by

the municipality of all owners of real property, including easements as shown on the tax duplicate, surrounding and sharing a property boundary at any point, except as provided at (a)5i and ii below shall also be provided. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows:

“This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for authorization under a coastal general permit for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk’s office or by appointment at the Department’s Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental  
Protection  
Land Use Regulation Program  
PO Box 439  
Trenton, New Jersey 08625-0439  
Attn: (Municipality in which property is located)  
Section Chief”;

i. For beach and dune maintenance permit applications which involve more than one single family lot, the applicant shall provide public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements, as shown on the tax duplicate within 200 feet of a proposed dune walkover structure, rather than to all owners of real property, including easements within 200 feet of the beach and dune maintenance activities. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location;

ii. For additional development proposed on the site of an existing park facility of at least 50 acres in size, the Department may at its discretion eliminate, modify or reduce the requirement for individual notice to owners of real property, including easements, depending on the scope, location and anticipated impacts of the proposed development. For example, an applicant proposing to construct tennis courts located on one side of a 200 acre park facility might be required to notice only those property owners within the vicinity of the proposed tennis court.

4. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15; and

5. The development shall meet the requirements of N.J.A.C. 7:7E-3.25.

(d) In addition to the application and information required under N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Three copies of a site(s) plan showing the following:
  - i. The mean high, mean low and spring high water lines of the tidal waters at the site;
  - ii. Existing features at the site including, topography, structures, utilities, beach areas and dune areas;
  - iii. The upper and lower limits of wetlands within 150 feet of the proposed limit of disturbance;
  - iv. The proposed development including all limits of disturbance, structures and building heights, grading, and existing and proposed clearing areas;
  - v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and
  - vi. Where sewers are to be used, the location of the existing sewer line abutting the site;
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed marina support facility complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys; and
3. A copy of any previous coastal permit for the site.

New Rule, R.2000 d.428, effective October 16, 2000.

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

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

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

Deleted (b)4iv(2); recodified former (b)4iv(3) and (b)4iv(4) as (b)4iv(2) and (b)4iv(3); added (c)4.

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)3, deleted "and" from the end; in (c)4, substituted "; and" for the period at the end; and added (c)5.

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)2; and in (d)1v, substituted "All" for "The location of all" and inserted "and public accessways to tidal waterways and their shores on the site".

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)2, 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 the introductory paragraph of (b), substituted "6" for "7"; in the introductory paragraph of (b)1, inserted "and storage,"; rewrote (b)1ii and (b)2iii; in (b)1vi, substituted "facilities" for "stations"; deleted former (b)3; recodified (b)4 through (b)7 as (b)3 through (b)6; in the introductory paragraph of (b)3, inserted a comma following "water lines" and substituted "pumpout facilities, and/or pumpout support facilities" for "and pumpouts"; in (b)3iv(1), inserted "as required in accordance with the Department's rules at N.J.A.C. 7:7-14A," and

substituted "Division of Water Quality" for "Bureau of Connection and Construction Permits"; in (b)3iv(3), substituted a period for a semicolon at the end; in (b)4iii, substituted "All necessary" for "Any other required"; in (b)5, inserted a comma following "fork lifts"; in the introductory paragraph of (c), substituted "6" for "7"; and in (c)5, deleted "and 3.26" following "7:7E-3.25".

#### 7:7-7.14 Coastal general permit for reconstruction of a legally existing functioning bulkhead

(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead provided:

1. For project sites which are located on a lagoon lot, the reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead;
2. For project sites which are not located on a lagoon lot:
  - i. The reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead; or
  - ii. The reconstruction of a legally existing bulkhead is:
    - (1) Located within 18 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a timber bulkhead is used; or
    - (2) Located up to a maximum of 24 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead; and

(1) Located within 18 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a timber bulkhead is used; or

(2) Located up to a maximum of 24 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead; and

3. For all project sites, reconstruction of certain bulkhead structures in place located below the mean high water line may be exempt from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d)4.

(b) The reconstruction of a legally existing bulkhead as described in (a) above is acceptable provided that:

1. The replacement bulkhead is located upland of any wetlands;

2. 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.

3. The construction of bulkheads subject to wave run up forces (V-zones) shall be designed and certified by a professional engineer to withstand the forces of wave runoff, and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate sub-base and filter cloth shall be incorporated into the design;

4. The placement of rip-rap along the seaward toe of the replacement bulkhead structure may qualify for this coastal general permit if the Department determines that such rip rap is required to limit scour potential and the areas and volume of rip rap are minimized;

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

6. The construction shall have no adverse impact to any Special Areas defined at N.J.A.C. 7:7E-3; and

7. Clean fill from an upland source shall be used for backfill.

(c) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including, all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;

iii. Bulkheads or other retaining structures on adjacent properties;

iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-zone; and

v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed reconstructed bulkhead complies with (a) and (b) above, including supplemental documents as appropriate such as maps or surveys.

New Rule, R.2000 d.428, effective October 16, 2000.

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

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

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

Amended by R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

Rewrote (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 (b)2; and in (c)1v, substituted "All" for "The location of all" and inserted "and public accessways to tidal waterways and their shores on the site".

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 (b)2.

#### **7:7-7.15 Coastal general permit for investigation, cleanup, removal or remediation of hazardous substances**

(a) This coastal general permit authorizes all regulated activities above the mean high water line that are undertaken, authorized or otherwise expressly approved in writing by the

Department for the investigation, cleanup, removal or remediation of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met:

1. If the proposed cleanup activity is to take place in Special Areas as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives to the investigation, cleanup, removal and remediation of the hazardous substances or pollutants that would involve less or no disturbance or destruction of Special Areas as defined at N.J.A.C. 7:7E-3;

2. Mitigation may be required in accordance with the Coastal Zone Management rules, N.J.A.C. 7:7E, for disturbance to Special Areas as defined at N.J.A.C. 7:7E-3; and

3. For coastal wetlands, mitigation shall be performed according to the procedures for mitigation at N.J.A.C. 7:7E-3.27 and 7:7E-3B. The mitigation plan may be incorporated as part of the document by which the Department approves the clean-up or it may be submitted as part of the coastal general permit application. The coastal general permit will not be issued until the mitigation plan is submitted and approved by the Program according to the standards at N.J.A.C. 7:7E-3.27 and 7:7E-3B.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at the site;

ii. The limits of all Special Areas as defined at N.J.A.C. 7:7E-3 within 150 feet of the proposed limits of disturbance on site and at the material disposal site;

iii. The proposed limits of disturbance and method of investigation, clean up, removal or remediation; and

iv. The restoration plan;

2. A Compliance Statement prepared in accordance with to N.J.A.C. 7:7-6, demonstrating how the proposed hazardous waste cleanup complies with (a) above, including supplemental documents as appropriate, such as maps or surveys;

3. Photographs of the site prior to the remediation; and

4. The Department's case control number.

New Rule, R.2000 d.428, effective October 16, 2000.

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

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

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

New Rule, R.2006 d.142, effective April 17, 2006.  
 See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(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 (a)6.

**7:7-7.28 (Reserved)**

**7:7-7.29 Coastal general permit for habitat creation, restoration, enhancement, and living shoreline activities**

(a) This coastal general permit authorizes habitat creation, restoration, enhancement, and living shoreline activities necessary to implement a plan for the restoration, creation, enhancement, or protection of the habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas, which is sponsored by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a "sponsor" shall endorse the activities in writing.

(b) The following habitat creation, restoration, enhancement, and living shoreline plans are acceptable provided they demonstrate compliance with (c) through (g) below:

1. A fish and/or wildlife management plan created or approved by the Department's Division of Fish and Wildlife;
2. A project plan approved under the Partners for Fish and Wildlife program, Coastal Program, or a similar program administered by the U.S. Fish and Wildlife Service;
3. A project plan created by the U.S. Department of Agriculture's Natural Resources Conservation Service under the Wetlands Reserve program, the Conservation Reserve program, the Conservation Reserve Enhancement program, the Wildlife Habitat Incentive program (WHIP), or a similar program, and approved by the local Soil Conservation District;
4. A plan approved by the Department's Office of Natural Resource Damages for the restoration, creation or enhancement of natural resources injured as the result of an oil spill or release of a hazardous substance;
5. A mitigation project required or approved by a government agency, such as the U.S. Army Corps of Engineers;
6. A habitat creation, restoration, or enhancement plan carried out by one of the Federal or State agencies at (b)1 through 5 above or by a government resource protection agency such as a parks commission;
7. A habitat creation, restoration, or enhancement plan carried out by a charitable conservancy, as defined at N.J.A.C. 7:7-1.3, provided that the plan is part of a program listed at (b)2 through 5 above;
8. A living shoreline plan designed and/or sponsored by the Department, the U.S. Fish and Wildlife Service, the

Natural Resource Conservation Services, the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the National Oceanic Atmospheric Administration's Restoration Center; or

9. A living shoreline plan implemented by a college or university for the purpose of research.

(c) Habitat creation, restoration, enhancement, and living shoreline activities that are authorized by this coastal general permit include, but are not limited to, the following:

1. Altering hydrology to restore or create wetlands conditions, such as by blocking, removing, or disabling a human-made drainage ditch or other drainage structure such as a tile, culvert or pipe;
2. Breaching a structure such as a dike or berm in order to allow water into an area;
3. Placing habitat improvement structures such as:
  - i. Nesting islands;
  - ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and
  - iii. Fish habitat enhancement devices or fish habitat improvement structures such as placed boulders, stream deflectors, or brush piles;
4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement;
5. Cutting, burning, or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora; or
6. Establishing a living shoreline to protect, restore, or enhance a habitat.

(d) To be eligible for authorization under this coastal general permit, an applicant shall demonstrate that the proposed project:

1. 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/or State open waters;
2. Is consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, the Coastal Area Facility Review Act, and the Coastal Zone Management rules;
3. Will improve or maintain the values and functions of the ecosystem; and
4. Will have a reasonable likelihood of success, or, if performed by a college or university, in accordance with (b)9 above, will advance the level of knowledge regarding living shorelines in the State.

(e) Activities under this coastal general permit except for living shoreline activities, which are subject to the requirements of (f) below, shall comply with the following:

1. If the proposed habitat creation, restoration, or enhancement activity is to take place in Special Areas, as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives that would involve less or no disturbance or destruction of Special Areas;

2. The activities shall disturb the minimum amount of Special Areas as defined at N.J.A.C. 7:7E-3 necessary to successfully implement the project plan;

3. The activities shall not decrease the total combined area of Special Areas on a site. However, the Department may approve a decrease if the Department determines that the activities causing the decrease are sufficiently environmentally beneficial to outweigh the negative environmental effects of the decrease. In addition, the Department may approve conversion of one Special Area to another Special Area if the Department determines that such conversion is environmentally beneficial; and

4. If the activities involve the removal of a dam, the activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's Dam Safety Section in the Division of Engineering and Construction.

(f) Living shoreline activities shall comply with the following:

1. The project area below the mean high water line is one acre in size or less, unless the applicant is a county, State, or Federal agency that demonstrates that a larger project size is necessary to satisfy the goals of the project;

2. The project shall disturb 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

3. Where the living shoreline is intended to restore an existing shoreline to a previous location, the living shoreline, including all associated fill, shall not exceed the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), except for a structural component of the project intended to reduce wave energy.

(g) 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.

(h) This coastal general permit does not authorize an activity unless the sole purpose of the activity is habitat creation, restoration, enhancement, or a living shoreline. For example, this coastal general permit does not authorize construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement.

(i) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:

i. The mean high and spring high tide lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands and wetlands buffers, beaches, dunes, and coastal bluff areas;

iii. Limits of all intertidal and subtidal shallows, submerged vegetation, and shellfish habitat areas;

iv. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkheads, other retaining structures, and culverts;

v. Existing roads and utilities immediately adjacent to the site; and

vi. The limits and depth of all proposed excavation, proposed grading, or fill;

2. If a living shoreline activity includes the placement of fill, the applicant shall identify the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978); and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed project complies with (a) through (h) above, including supplemental documents as appropriate, such as maps and survey.

New Rule, R.2006 d.142, effective April 17, 2006.

See: 37 N.J.R. 4108(a), 38 N.J.R. 1657(a).

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

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

Added new (f); and recodified former (f) and (g) as (g) and (h).

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 (f), 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).

Sections was "Coastal general permit for habitat creation and enhancement activities". Rewrote the section.

(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).

1. 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).

(c) In addition to the application and information required under N.J.A.C. 7:7E-7.3, the following information shall be submitted:

1. Five copies of a site(s) plan showing the following:
  - i. The mean high water lines of the tidal waters within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
  - ii. Existing features at the site including topography, structures, utilities, beach areas, dune areas, coastal bluffs, floodways, and limits of the areas identified on the Department's Large Scale Wind Turbine Siting Map and areas within one-quarter mile of mapped areas;
  - iii. The landward limits of wetlands, beaches, dunes and coastal bluffs within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
  - iv. The proposed location of each proposed wind turbine, including all limits of disturbance, grading, and existing and proposed clearing areas; and

v. The proposed lighting for each proposed wind turbine;

2. Five copies of an elevation plan of each proposed wind turbine;

3. The total height and rotor swept area for each proposed wind turbine;

4. Five copies of the post-construction monitoring methodology; and

5. Five copies of a Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed wind turbine(s) comply with (a) above, including supplemental documents as appropriate, such as maps or surveys.

New Rule, 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).

**7:7-7.32 Coastal general permit for the dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency**

(a) This coastal general permit authorizes the dredging of sand from a man-made lagoon that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 through 6 below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. The volume of sand to be dredged is limited to that which was deposited as a result of the storm event;

2. The area to be dredged is limited to that where the sand was deposited as a result of the storm event;

3. The sand removed by dredging is placed on an upland site, dewatered as necessary within a temporary dewatering area, and capped with a six-inch layer of clean fill and stabilized;

4. No wetlands are present within 25 feet of the area to be dredged. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged; and

5. Any debris contained within the dredged sand shall be removed and disposed of properly.

(b) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(d) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
  - iii. If available, pre- and post-storm bathymetry of the area to be dredged;
  - iv. The method of dredging;
  - v. The location of the dredged material disposal site; and
  - vi. The method of stabilization of dredged material;

2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, provides guidance on performing a grain size analysis; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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

**7:7-7.33 Coastal general permit for the dredging of material from a waterway at a residential or commercial development deposited as a result of the failure of a bulkhead as a consequence of a storm event for which the Governor declared a State of Emergency**

(a) This coastal general permit authorizes the dredging of material from a waterway at a residential or commercial lot that was deposited as a result of the failure of a legally existing bulkhead that was damaged as a result of a storm event for which the Governor declared a State of Emergency, provided:

1. The volume of the material to be dredged is limited to that which resulted from the failure of the bulkhead;
2. The area to be dredged is limited to that where the material was deposited as a result of the failure of the bulkhead;
3. The dredged material is placed on an upland portion of the lot, dewatered as necessary within a temporary dewatering area, and capped with a six-inch layer of clean fill and stabilized;

4. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged; and

5. Any debris contained within the dredged material shall be removed and disposed of properly.

(b) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(d) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands on site and on adjacent properties;
  - iii. The alignment of the bulkhead that failed;
  - iv. If available, the pre- and post-storm bathymetry of the area to be dredged;
  - v. The method of dredging;
  - vi. The location of the dredged material disposal site; and
  - vii. The method of stabilization of the dredged material; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.

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

**7:7-7.34 Coastal general permit for dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency**

(a) This coastal general permit authorizes the dredging and management of material from a marina that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 and 2 below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. The dredged material is sand; or

2. If the dredged material is not sand, the material is temporarily disposed of in an existing upland confined disposal facility located on the marina property until a final placement site is determined in accordance with (e) below.

(b) Dredging activities under this general permit shall comply with the following:

1. The depth in the area after the proposed dredging is completed shall not exceed the depth in that area prior to the storm event;

2. The area to be dredged is limited to the area in which material was deposited as a result of the storm event; and

3. A 25-foot buffer shall be provided from any wetlands to the nearest edge of the area to be dredged, unless the area to be dredged is within an existing maintained navigation channel or basin. In such cases, the area to be dredged shall be limited to the existing channel or basin.

(c) An application that meets the requirements of N.J.A.C. 7:7-7.3 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(d) Material determined to be sand shall be placed at either an on-site or off-site location that has been approved by the Department. The beneficial use of this dredged sand is encouraged.

(e) Material determined not to be sand shall be disposed of in an existing upland confined disposal facility located on the marina property, until beneficially used at an on- or off-site location. The dredged material shall remain within the confined disposal facility until a determination of an acceptable final placement site is issued by the Department. Additional testing of the material may be required as part of the Department's assessment of a final placement site. The upland confined disposal facility shall:

1. Be large enough to contain and dewater the dredged material, considering any bulking that occurs during dredging;

2. Not be located within wetlands or wetlands buffers; and

3. Be operated and maintained in a manner to minimize the discharge of dredged material into the adjacent surface waters and wetlands.

(f) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. 7:7E-4.6 at the same site.

(g) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands on site and on adjacent properties;

iii. If available, the pre- and post-storm bathymetry of the area to be dredged;

iv. The method of dredging;

v. The location and areal dimensions of the existing on-site disposal area, including inflow and weir discharge points; and

vi. Cross sections showing the heights of the berms of the existing on-site disposal area;

2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," October 1997, provides guidance on performing a grain size analysis;

3. Calculations demonstrating the available capacity of the upland confined disposal facility located on the marina site; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging and dredged material management activities comply with (a) through (e) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

#### **7:7-7.35 Coastal general permit for commercial shellfish aquaculture activities**

(a) This coastal general permit authorizes the construction and/or placement and maintenance of shellfish aquaculture equipment, including floating upwellers, shellfish rafts, racks and bags, lantern nets, and cages, provided:

1. The structures are located in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23;

2. The structures are not located within submerged infrastructure routes, N.J.A.C. 7:7E-3.12, shipwreck and artificial reef habitat, N.J.A.C. 7:7E-3.13, or wetlands, N.J.A.C. 7:7E-3.27;

3. The structures are not located within 50 feet of any designated navigation channel, unless it is demonstrated that the proposed structure will not hinder navigation. The placement of structures within designated navigation channels is prohibited;

4. The boundaries of the area where the structures are placed are clearly marked in accordance with US Coast

Guard requirements for regulatory and informational markers (US Coast Guard "U.S. Aids to Navigation System" <http://www.uscgboating.org/ATON/index.htm>). Specifically, the corners of the footprint of the area where the structures are placed must be marked with buoys or stakes;

5. The structures are constructed of non-polluting materials:

6. The structures are properly secured; and

7. No activity undertaken pursuant to this general permit shall prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner, pursuant to N.J.S.A. 50:1-33.

(b) Upon expiration or termination of the shellfish lease, or the cessation of shellfish aquaculture activities, whichever occurs first, within five days the permittee shall remove all structures placed within the lease area.

(c) Prior to the commencement of activities authorized by this general permit, the permittee shall notify the Department's Bureau of Shellfisheries in writing:

1. For Atlantic Coast Shellfish Leases:

Nacote Creek Shellfish Office  
PO Box 418  
Port Republic, NJ 08241

2. For Delaware Bay Shellfish Leases:

Delaware Bay Shellfish Office  
1672 East Buckshutem Road  
Millville, NJ 08332

(d) The notification under (c) above shall contain the following information:

1. A copy of the permit and associated plans;
2. The shellfish lease number;
3. The shellfish species to be cultured; and
4. The estimated date of commencement of activities.

(e) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:
  - i. The mean high, mean low, and spring high water lines of the tidal waters at the site, any wetlands, and navigation channels;
  - ii. The area covered by the shellfish lease;
  - iii. Existing waters depths in the area where the structures will be located; and

iv. The location of the proposed structures; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed commercial shellfish aquaculture equipment complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.

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

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

#### 7:7-7.36 Coastal general permit for the placement of shell within shellfish lease areas

(a) This coastal general permit authorizes the placement of shell in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23, provided:

1. The shell to be planted is comprised of processed oyster, surf clam, and/or ocean quahog shell or other shell material approved by the Department;

2. The height of the shell material placed on the bottom of the water body does not exceed six inches above the substrate;

3. The placement of shell does not pose a hazard to navigation; and

4. All shell is clean and free of contaminants.

(b) This coastal general permit does not authorize the stockpiling of shell or dredging activities.

(c) In addition to the application information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. One copy of a site(s) plan showing the following:

i. The mean high, mean low, and spring high water lines of the tidal waters at the site, any wetlands, and navigation channels;

ii. The area covered by the shellfish lease; and

iii. Existing waters depths in the area where the shell will be located;

2. The type and quantity of shell to be used, and the source of the shell; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed shell planting complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.

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

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