

5. The required percentage of forest shall be preserved. If there is no forest on the site, the required percentage of trees shall be planted. The quantity of the tree plantings shall be based on staggered 10 feet on center spacings for the entire area to be planted or on an overall planting of one tree per 100 square feet. Two-thirds of the plantings shall be native or adaptive species that are canopy or dominant types. They shall have a minimum 1½ inches caliber at base and be balled, burlapped and staked with a one year guarantee. The remaining one-third of the plantings shall be native or adaptive species and shall consist of understory or subcanopy type trees. They shall be a minimum of four to five feet in height, and shall be balled, burlapped or in five gallon cans with a one year guarantee. The entire five percent of required tree plantings shall be mulched with three inch hardwood chips. A site may have both forested and unforested areas, in which case the acceptable maximum and minimum percentage requirements shall be met on each portion of the site.

6. Shrubs and herbs and understory trees shall be suitable to the substrate conditions. In the acid sandy soils common in the coastal area, this requirement excludes many species common in more inland areas.

(c) Moderate Intensity Development: At this level of development, 40 percent of a site can be developed in paving and structures. Typically, if analysis showed that most of a large area was acceptable for moderate intensity development, the landscape that would be produced would be suburban.

1. For forested parts of a site classified for Moderate Intensity of Development, the acceptable range of development is:

Moderate Intensity Development	Structures and Paving	Forest Preservation	Tree Planting
Maximum	40%	—	—
Minimum	—	25%	5%†

† Alternatively, this requirement can be satisfied by preserving an additional 5 percent of existing forest vegetation.

2. For unforested parts of a site classified for Moderate Intensity of Development, the acceptable range of development is:

Moderate Intensity Development	Structures and Paving	Tree Planting
Maximum	40%	—
Minimum	—	20%

3. The range allows, for example, development of residential subdivisions of up to approximately four dwelling units per acre.

4. A minimum 25 percent of forest is required to ensure that forest vegetation is preserved. Where the site has no existing forest, trees native to the area shall be planted. Saplings shall be at least six feet high and shall

be planted at a minimum density of one per 100 square feet.

5. The herbs and shrubs and understory trees shall be adapted to the environmental conditions of the site to reduce the adverse impacts associated with intensive liming, fertilization and irrigation. The acid sandy soils common in coastal areas exclude many species common in inland areas, including most lawn grasses.

(d) Low Intensity Development: At this level of development intensity, the existing conditions of the site are not to be disturbed, except for very low density development compatible with agriculture, forestry and rural residential uses, which meet the following intensity requirements:

1. For unforested parts of a site classified for Low Intensity of Development, the acceptable range of development is:

Low Intensity Development	Structures and Impervious Paving	Structures and Permeable Paving	Herb and Shrub	Tree Plantings
Maximum	3%	5%	95%	—
Minimum	—	—	—	5%

2. For forested parts of a site classified for Low Intensity of Development, the acceptable range of development is:

Low Intensity Development	Structures and Impervious Paving	Structures and Permeable Paving	Herb and Shrub	Forest Preservation
Maximum	3%	5%	65%	—
Minimum	—	—	—	30%

Amended by R.1983 d.27, effective February 7, 1983. See 14 N.J.R. 1129(b), 15 N.J.R. 142(a).

(d): conditions for allowable development clarified. Amended by R.1996 d.391, effective August 19, 1996. See: 28 N.J.R. 324(a), 28 N.J.R. 3924(a).

7:7E-5.7 Land Acceptability Tables

(a) Introduction: The Land Acceptability Tables, one for each of the three regional growth types, indicate the acceptable intensity of development of a site or parts of a site for each of the nine possible combinations of Environmental Sensitivity and Development Potential factors in each table. Since Development Potential applies to an entire site, each site can have a maximum of three different levels of acceptable intensity, if it has three areas with different levels of Environmental Sensitivity.

Land Acceptability Table: Development Region (Urban Areas, Northern Waterfront, Northern, Central Absecon-Somers Point Regions, and Delaware River)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X			X		
5		X			X		X		
6		X				X			
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Extension Region
(Southern, Western Ocean, and Barnegat Corridor Regions)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X			X		
2	X				X		X		
3	X					X		X	
4		X		X				X	
5		X			X			X	
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

Land Acceptability Table: Limited Growth Region
(Mullica-Southern Ocean, Great Egg Harbor River Basin, and Delaware Bayshore Regions)

Area Type Number	Development Potential			Environmental Sensitivity			Acceptable Development Intensity		
	High	Medium	Low	Low	Medium	High	High Intensity	Moderate Intensity	Low Intensity
1	X			X				X	
2	X				X			X	
3	X					X			X
4		X		X				X	
5		X			X				X
6		X				X			X
7			X	X					X
8			X		X				X
9			X			X			X

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

(c) Determination of location acceptability: The location acceptability of a coastal development proposed for a General Land Area is determined by comparing the site plan of the proposed development with the acceptable minimum and maximum percentages of the site for structures, paving, herb and shrub vegetation, and forest vegetation, as specified in the three levels of acceptable development intensity in the Land Acceptability Tables that apply to the site or parts of the site. The percentages of the proposed development's site plan shall conform with the percentages determined using the Land Acceptability Tables, to the maximum extent practicable.

Amended by R.1983 d.27, effective February 7, 1983. See: 14 N.J.R. 1129(b), 15 N.J.R. 142(a).

(b)3, Areas 1 and 2: last sentence added. Amended by R.1990 d.413, effective August 20, 1990. See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Table modified to change intensity level for a site with medium development potential and low environmental sensitivity from low to moderate.

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Only one of three basic growth categories in coastal area included areas where high-density residential development is permitted (citing former N.J.A.C. 7:7E-6.7). In *re Egg Harbor Associates*, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 464 A.2d 1115 (1983).

Permit for large scale intense development in an area suitable only for infill development was improper (citing former N.J.A.C. 7:7E-6.7). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div.1982) affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

SUBCHAPTER 6. GENERAL LOCATION RULES

7:7E-6.1 Rule on location of linear development

(a) A linear development, such as but not limited to a road, sewer line, public walkway or offshore pipeline, that must connect two points to function shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules, that alignment (perhaps not the least possible distance) may nonetheless be acceptable, provided the following conditions are met:

1. There is no prudent or feasible alternative alignment which would have less impact on sensitive areas;
2. There will be no permanent or long-term loss of unique or irreplaceable areas;
3. Appropriate measures will be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features; and
4. The alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994). See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

7:7E-6.2 Basic location rule

(a) A location may be acceptable for development under the specific location regulations in N.J.A.C. 7:7E-6.1, but the DEP may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. Promote the public health, safety, and welfare;
2. Protect public and private property, wildlife and marine fisheries; and
3. Preserve, protect and enhance the natural environment.

Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994). See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

7:7E-6.3 Secondary impacts

(a) Secondary impacts are the effects of additional development likely to be constructed as a result of the approval

of a particular proposal. Secondary impacts can also include traffic increases, increased recreational demand and any other offsite impacts generated by onsite activities which effect the site and surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the Rules on Coastal Zone Management. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

1. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable Rules on Coastal Zone Management.

2. Models for secondary impact analysis may be found in New Jersey Department of Community Affairs, Division of State and Regional Planning, Secondary Impacts of Regional Sewerage Systems (1975), and in USEPA, Manual for Evaluating Secondary Impacts of Wastewater Treatment Facilities (EPA-600/5-78-003, 1978).

(c) Rationale: This statement can be reviewed at the Office of Administrative Law, Rules and Publications, Quakerbridge Plaza, Bldg. 9, CN 301, Trenton, New Jersey 08625.

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

Added text to (a) "Secondary impacts can ... and surrounding region."

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

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

Case Notes

Permit condition requiring Department of Environmental Protection determination did not conflict with state and federal plans and was not beyond the department's authority. Matter of Cape May County Mun. Utilities Authority, 242 N.J.Super. 509, 577 A.2d 840 (A.D.1990).

SUBCHAPTER 7. USE RULES

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

Rules and Publications

Office of Administrative Law

Quakerbridge Plaza

Bldg. No. 9

CN 301

Trenton, New Jersey 08625

7:7E-7.1 Purpose

Many types of development seek locations in the coastal zone. The second stage in the screening process of the Rules on Coastal Zone Management spells out a set of rules for particular uses of coastal resources. Use rules are rules and conditions addressed to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, they introduce conditions which must be satisfied in addition to the Location rules (N.J.A.C. 7:7E-2 through 6), and the Resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

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

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

Case Notes

Construction permit application denied due to anticipated nitrate production; testing to challenge application denial found to not meet acceptable scientific standards. Andover Mobile Home Park v. Dept. of Environmental Protection, 4 N.J.A.R. 420 (1981).

7:7E-7.2 Housing Use rules

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in Water Areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

iii. New housing acceptable under this rule shall be consistent with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11), including provisions of fishing access as appropriate.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the Filled Water's Edge rule (N.J.A.C. 7:7E-3.23) and the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.13). The acceptable intensity of residential development shall be determined by applying the criteria of the General Land Area rule (N.J.A.C. 7:7E-5) except on bay islands where the requirements of the Bay Island Corridor rule (N.J.A.C. 7:7E-3.21) shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24) and the Filling rule (N.J.A.C. 7:7E-4.2(j)) are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

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

(c) Standards relevant to floating homes are as follows:

1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 days.

2. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

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

(d) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of

net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

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

(e) A single family home or duplex that is located upland of the mean high water line and is not part of a larger development must meet only the following:

1. All structures and on-site improvements shall comply with the coastal Rules for Beaches, Dunes, Wetlands, Wetland Buffers, Endangered or Threatened Wildlife or Vegetation Species Habitats and Coastal Bluffs, and shall comply with other Coastal Rules by meeting the following minimum standards. Compliance with the applicable rules may require changes in a building design and/or location.

i. On sites with shore protection structures, the residential structure shall be set back, a minimum of 25 feet, from oceanfront shore protection structures, and at a minimum of 15 feet from bulkheads elsewhere. This distance is measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of a revetment.

ii. For sites adjacent to surface water bodies or wetlands, a silt fence shall be erected along the limit of disturbance parallel to the shoreline or wetlands limits. This fence shall have a 10-foot return on each end, be erected prior to construction and remain in place until all construction and landscaping is completed.

iii. For sites partially or completely within the erosion hazard area or coastal high hazard area, only infill developments meeting the following criteria are acceptable. A development qualifies as infill for purposes of this section if:

(1) It is shown as buildable lot on municipal records prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located on each lot abutting the lot line, perpendicular to the shoreline, and within 100 feet of said lot line.

iv. In non-tidal areas, the lowest structural member must be at least one foot above the base flood elevation.

v. In tidal areas the following standards apply:

(1) For residential developments located within designated zones A1-30 on the community's Flood Insurance Rate Maps (FIRM), the lowest floor (including basement) must be elevated to or above the base flood elevation.

(2) For residential developments located within designated Zones V1-30 on the community's FIRM,

the building must be elevated on pilings so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings) is elevated to or above the base flood level.

(3) The house shall be constructed as close to the landward site boundary as possible, and shall not be constructed waterward of the adjacent developments.

vi. For wooded sites, site clearing shall be limited to an area no greater than 20 feet from the footprint of the dwelling and the area deemed necessary for driveway, septic and utility line installations.

vii. Indigenous coastal plants (as defined in Vegetation, N.J.A.C. 7:7E-8.8) are encouraged to be used in landscaping wherever feasible. No plastic liners shall be used in landscaped or gravel areas. All liners shall be made of filter cloth or other permeable material. The use of non-indigenous vegetation and/or lawns is discouraged.

viii. All driveways shall be covered with permeable materials or pitched to drain all runoff onto permeable areas of the site.

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

(f) The standards relevant to housing and transportation are as follows:

1. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

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

(h) Standards relevant to housing rehabilitation are as follows:

1. Residential development involving the demolition and redevelopment of existing structures is discouraged, unless rehabilitation of the existing structures is demonstrated to be impractical, infeasible, or contrary to the public interest.

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

(i) Standards relevant to large-scale multi-use development are as follows:

1. "Large-scale multi-use developments" are free standing, planned developments, such as planned unit developments, which combine at least 500 residential dwelling units with commercial, industrial, recreational, or other uses.

2. Large-scale multi-use developments are conditionally acceptable, provided that they carry out the basic coastal policy to concentrate the regional pattern of development, contribute to regional housing needs, do not cause significant adverse secondary impacts, and will not induce growth outside the site boundary which is inconsistent with coastal policies.

3. Large-scale multi-use developments need not meet the Land Area Policies, except in the high and moderate environmental sensitivity portions of Limited Growth Regions, where only the roads and sewage criteria will be used in determining if the Development Potential is High, Medium or Low (See N.J.A.C. 7:7E-5.5(b)). Large scale multi-use development in Limited Growth Regions must, however, incorporate a buffer along the perimeter of the site of sufficient size to preclude scattered peripheral development.

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

Correction: Subsection (e)—Inserted omission concerning affordable housing.

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

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

Section substantially amended.

Petition for Rulemaking: Petitioned for a departmental level "conceptual approval"; denied.

See: 21 N.J.R. 1912(a).

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

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

New housing policy replaced outmoded affordable housing use policy at (f).

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

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

Case Notes

Construction permits issued without sufficient findings of fact were invalid. *Crema v. Dept. of Environmental Protection*, 192 N.J.Super. 505, 471 A.2d 422 (App.Div.1984) certiorari denied 96 N.J. 306, 307, 475 A.2d 597 (1984).

Regulation noted as being responsive to both CAFRA directions and to the fair share housing constitutional mandate of the Mount Laurel I decision. *Southern Burlington Cty. N.A.A.C.P. v. Mount Laurel Twp.*, 92 N.J. 158, 456 A.2d 390, on remand 207 N.J.Super. 169, 504 A.2d 66 (1983).

Department of Environmental Protection to impose "fair share" housing conditions to provide for low and moderate income housing (citing former N.J.A.C. 7:7E-8.6 and 7:7E-8.11). In *re Egg Harbor Associates*, 185 N.J.Super. 507, 449 A.2d 1324 (App.Div.1982) affirmed 94 N.J. 358, 465 A.2d 1115 (1983).

Former rules for large scale residential development do not support conditional approval of construction permit for large scale development because of serious deficiencies in essential findings (citing former regulations and former N.J.A.C. 7:7E-8.11). *Crema v. Dept. of Environmental Protection*, 182 N.J.Super. 445, 442 A.2d 630 (App.Div. 1982), affirmed as modified 94 N.J. 286, 463 A.2d 910 (1983).

Activity fit within the "repair, replacement or renovation" exemption from requirement for Waterfront Development Permit. N.J.S.A. 12:5-3. *Ward v. Department of Environmental Protection*, 91 N.J.A.R.2d 1 (EPE).

7:7E-7.3 Resort/Recreational Use

(a) "Resort/recreation uses" include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging (see N.J.A.C. 7:7E-7.10 and N.J.A.C. 7:7E-5.5(d)).

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

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

(c) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recre-

ation resource supply and demand and municipal and county open space and recreation master plans.

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

(d) Standards relevant to marinas are as follows:

1. Marina means any dock, pier, bulkhead, mooring or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

- i. The marina includes the development of an appropriate mix of dry storage areas, public launching facilities, berthing spaces, repair and maintenance facilities, and boating and hardware supply facilities, depending upon site conditions.

- ii. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout stations shall be provided.

- iii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout or restroom facility for this use; and

- (1) Discharge to a municipal or regional treatment plant where practicable;

- (2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-4.2(t); or

- (3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

- iv. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11).

3. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

4. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

5. Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause minimum feasible interference with the commercial boating industry.

7. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

8. Construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2) and Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A to the maximum extent practicable.

10. In addition to complying with all other applicable portions of these rules, all new, expanded and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)10i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings and bulkheads and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with on-board septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. No pressure treated lumber or other lumber treated with any other substance shall be used in any portion of the project. This restriction applies only to bulkhead sheathing and planking, and dock planking, and does not apply to pilings. In addition, this restriction does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calendar days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calendar days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property owner shall allow Department personnel access to the property during day-light hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-4.11(b).

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

(e) Standards relevant to amusement piers, parks and boardwalks are as follows: