

(f) Standards relevant to stormwater management system maintenance are as follows:

1. The long-term maintenance of stormwater management systems is a critical factor in the ongoing functioning of these systems. In cases where these existing systems have failed, the most common cause is inadequate maintenance of the system. Therefore, the following maintenance requirements shall be included as part of all stormwater management plans; shall be specifically identified on the site plans and in a stormwater system maintenance report for any proposed project; and, if required by the Program, shall be recorded with the deed for the property in question:

i. All information regarding the long-term maintenance of proposed stormwater management systems shall be provided as part of the initial permit application submission;

ii. The party or parties responsible for long-term maintenance of the system shall be clearly designated, and documentation of the assumption of this responsibility shall be provided as part of the permit application submission;

iii. All maintenance records shall be written, maintained and provided to the Department upon request;

iv. Maintenance of detention basins shall include, but not be limited to, the following activities:

(1) Visual inspection of all components of the stormwater management system at least twice each year;

(2) Removal of silt, soil, litter and other debris from all catch basins, inlets and drainage pipes, on a twice-yearly basis;

(3) Maintenance, including grass cutting, and replacement (if necessary) of all landscape vegetation within the basins, at least once each year;

(4) Removal of silt from within the basins at least once each year, or more frequently if noticeable buildup occurs, for disposal in an acceptable location; and

(5) The basin bottoms shall be aerated at least once each year, and shall be scraped and replanted at least once every five years, to prevent the sealing of the basin bottom by silt deposits.

v. Maintenance of constructed wetlands shall include, but not be limited to, the following:

(1) Visual inspection of all components of the system at least once every six months;

(2) Removal of silt, litter and other debris from all catch basins, inlets and drainage pipes at least once every six months, or as required;

(3) Vegetation harvesting at least once each year; and

(4) The approval of a stormwater management system which involves newly constructed wetlands on an upland site will automatically include the issuance of a Freshwater Wetlands General Permit 1 for maintenance of the wetlands, which shall be renewed by the permittee every five years.

vi. Maintenance of wet ponds/retention basins shall include, but not be limited to, annual monitoring of water quality, dissolved oxygen, vegetative growth and fish population.

vii. Maintenance of infiltration facilities shall include, but not be limited to:

(1) Annual tilling operation to maintain infiltration capacity, with revegetation as necessary; and

(2) Sediment removal shall be followed by retilling, at a time when the facility is thoroughly dry.

viii. Maintenance of swales, including, but not limited to, removal of grass clippings and leaves, shall be performed so that the facilities remain in working order.

ix. Maintenance of underground perforated pipe infiltration systems shall include, but not be limited to:

(1) Visual inspection of all system components at least twice each year;

(2) Vacuuming of all storm sewer inlets once every six months (frequency of vacuuming may be adjusted if first year maintenance records indicate that sediment and debris accumulation is insignificant; and

(3) Reverse flushing and vacuuming shall be required if system inspections indicate significant accumulation of sediment in the pipes.

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

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

(c)-(h) added; old (c) now (i).
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text added at (c)li.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
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-8.8 Vegetation

(a) "Vegetation" is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate native coastal species, to the maximum extent practicable.

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

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

Section 8.8 was "Soil erosion and sedimentation". The section was repealed.

7:7E-8.9 (Reserved)

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

Deleted text in (a) "Definitions and maps ... Cape May County" and inserted "which identify these areas".

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

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

Stylistic changes.

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

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

Section was "Important Wildlife Habitat".

7:7E-8.10 Air Quality

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and to attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b)).

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

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

Substantially amended.

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

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

Text added at (b)1, 2 and (c) to require developments to monitor and mitigate impact.

7:7E-8.11 Public Access to the Waterfront

(a) Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. All development adjacent to water shall, to the maximum extent practicable, provide, within its site boundary, a linear waterfront strip accessible to the public. If there is a linear waterfront accessway on either side of the site and the continuation of which is not feasible within the boundaries of the site, a pathway around the site connecting to the adjacent parts, or potential parts of the waterfront path system in adjacent parcels shall be provided.

2. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection funding.

3. Public access must be clearly marked; provide parking where appropriate, be designed to encourage the public to take advantage of the waterfront setting, and must be barrier free where practicable.

4. A fee for access, including parking where appropriate, to or use of publicly owned waterfront facilities shall be no greater than that which is required to operate and maintain the facility and must not discriminate between residents and non-residents except that municipalities may set a fee schedule that charges up to twice as much to non-residents for use of marinas and boat launching facilities for which local funds provided 50 percent or more of the costs.

5. All establishments, including marinas and beach clubs, which control access to tidal waters shall comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

7. Development within the Hudson River Waterfront Special Area shall conform with the additional requirements of N.J.A.C. 7:7E-3.48.

8. Development along Raritan Bay within Monmouth County shall be consistent with the Bayshore Waterfront Access Plan (Monmouth County Planning Board and the Trust for Public Land for NJDEP, 1987).

9. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the Rules on Coastal Zone Management.

10. The Department may require some or all of the public access portion of a site to be dedicated for public use through measures such as conservation easements.

11. Development adjacent to coastal waters shall provide fishing access within the provision of public access wherever feasible and warranted.

12. Development adjacent to coastal waters shall provide barrier free access within the provisions of public access wherever feasible and warranted by the characteristics of the access area.

13. For developments which reduce existing on-street parking that is used by the public for access to the waterfront, mitigation for the loss of these public parking areas is required at a minimum of 1:1 within the proposed development site or other location within 250 feet of the proposed project site.

(c) At sites proposed for the construction of single family or duplex residential dwellings, which are not part of a larger development, public access to the waterfront is not required as a condition of the coastal permit.

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

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
(b)3-7 added.

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

Deleted (b)7 and substituted new.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Law Review and Journal Commentaries

Resolving State Title Claims to Tidelands: Practice and Procedure.
William E. Andersen, 168 N.J.Law. 8 (Mag.) (April 1995).

Case Notes

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

Shoreline development that limits public access and the diversity of shorefront experiences is discouraged (citing former N.J.A.C. 7:7E-9.12). *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

7:7E-8.12 Scenic Resources and Design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

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

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

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

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

7:7E-8.13 Buffers and Compatibility of Uses

(a) Buffers are natural or man-made areas, structures, or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas (N.J.A.C. 7:7E-3.1 through 3.48) or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

2. The rule regarding wetland buffers is found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

i. All buffer areas shall be planted with appropriate vegetative species, either through primary planting or supplemental planting. This landscaping shall include use of mixed, native vegetative species, with sufficient size and density to create a solid visual screen within five years from the date of planting.

ii. Buffer areas which are forested may require supplemental vegetative plantings to ensure that acceptable visual and physical separation is achieved.

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

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

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
Deleted "policy" from (b).
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Stylistic changes.
Administrative change to (b)1.
See: 23 N.J.R. 1662(b).
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Case Notes

Record established that it was proper to deny permits to allow construction of new bulk materials handling port, particularly in view of availability of suitable land and water area at at least one existing port. In Matter of Bridgeton Bulk Materials Handling Facility. 93 N.J.A.R.2d (EPE) 203.

7:7E-8.14 Traffic

(a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, the satisfaction of the New Jersey Department of Transportation and any regional agencies.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development shall provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the Parking Facility rule, where applicable.

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

Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Old 8.14 Solid Waste was repealed and section 8.16 was recodified here. Amendments to old 8.14 listed below.
Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
(c) added.
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

7:7E-8.15 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.
See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
Original 8.18 was "Neighborhoods and special communities", which was repealed.
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
Old section 8:15 on energy conservation repealed; text on fertile soils recodified from 8.18.
Repealed by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
Section was "Fertile Soils".

7:7E-8.16 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.
 See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
 (b): "policy" deleted; "shall" substituted for "must".
 Amended by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Section recodified from 8.20. Old section 8.16 Traffic recodified to 8.14.
 Repealed by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).
 See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).
 Section was "Noise Abatement".

7:7E-8.17 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.
 See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
 Substantially amended.
 Repealed by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Text on wet soils and high permeability moist soils deleted.

7:7E-8.18 (Reserved)

Repealed by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Old section Fertile soils recodified to 8.15.

7:7E-8.19 (Reserved)

Amended by R.1985 d.715, effective February 3, 1986.
 See: 17 N.J.R. 1466(a), 17 N.J.R. 1797(b), 17 N.J.R. 1797(c), 18 N.J.R. 314(a).
 Old (b)2.-5. deleted and (c)-(e) added; old (c) now (f).
 Repealed by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Old section was Flood prone areas.

7:7E-8.20 (Reserved)

Repealed by R.1990 d.413, effective August 20, 1990.
 See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).
 Text on noise abatement recodified to 8.16.

7:7E-8.21 Subsurface sewage disposal systems

(a) Subsurface sewage disposal system means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner

that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field.

(b) Acceptability conditions for subsurface sewage disposal systems are as follows:

1. Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

2. For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

3. Construction of subsurface sewage disposal systems must comply with all applicable standards of the National Flood Insurance Program Regulations (44 CFR 60) prepared by the Federal Emergency Management Agency (FEMA).

(c) Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety and environment, potable water supplies, and safeguard fish and aquatic life while preserving their ecological values. In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas (V-zones) is prohibited in accordance with the National Flood Insurance Program Regulations.

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