

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

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

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

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

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

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

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

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

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

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

“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide.

Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

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

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

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

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

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

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

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

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

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

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

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

“Watershed management area” means an aggregation of the 11-digit hydrologic unit codes designated by the Department as a watershed management area and shown on the map entitled “New Jersey’s Watersheds, Watershed Management Areas, and Water Regions,” dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department’s Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at www.state.nj.us/dep/gis.

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

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

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

7:7E-3.1 Purpose and scope

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

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

Section was "Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers"; in (c), changed Appendix 4 references to Appendix 5; rewrote (g).

Case Notes

Procedures of Department of Environmental Protection (DEP) for reviewing and incorporating new or changed boundaries established by State Planning Commission did not amount to rule-making and were not subject to notice and comment requirements of Administrative Procedures Act (APA). In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7E-5B.4 Impervious cover limits for a site in the CAFRA area

(a) The impervious cover limit for a site in the CAFRA Area shall be determined as follows:

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is determined under (c) below. Note that the impervious cover limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;

2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (d) below;

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is determined under (e) below; and

4. If a site is located on a military installation, the impervious cover limit is determined under (f) below.

(b) To determine the location of a site for the purposes of determining the applicable impervious cover limit:

1. Determine if the site is located in a CAFRA center, CAFRA core, or CAFRA node by referring to the CAFRA Planning Map;

2. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, determine if the site is located in a coastal center by referring to Appendix 2 and 3;

3. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in a coastal center, determine the Coastal Planning Area in which the site is located by referring to the CAFRA Planning Map; and

4. If the site is located on a military installation, see (f) below.

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is the limit at (c)1, 2 or 3 below, whichever is higher:

1. The acreage of the total land area on the site as determined under N.J.A.C. 7:7E-5.3(d)1, multiplied by the

impervious cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located;

2. For a site located in the Coastal Metropolitan Planning Area, the acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Metropolitan Planning Area; or

3. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(d) Subject to limitations regarding mainland coastal centers at N.J.A.C. 7:7E-5B.6(g), if a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the impervious cover limit is the limit at (d)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the type of coastal center in which the site is located; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the impervious cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for the Coastal Planning Area in which the site is located; or

2. The acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department, excluding any buildings, asphalt and/or concrete paving placed on a site in accordance with (e)3 below; or

3. For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing impervious cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal impervious cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings include, but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters office(s), and boat repair, maintenance and manufacturing.

(f) If a site is located on a military installation, the impervious cover limit is the limit at (f)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7E-5.3(d), multiplied by the impervious cover percentage in Table H below for a military installation; or

2. The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(g) For the purposes of determining impervious cover limits under (c) 3, (d)2, (e)3, and (f)2 above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1. The amount of impervious cover located on the site at the time the application is submitted to the Department;

2. The amount of impervious cover that appears on the applicable 95-97 imagery; or

3. The amount of impervious cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

TABLE H

Percentages For Calculating Impervious Cover
Limits Under N.J.A.C. 7:7E-5B.4

<u>Site Location</u>	<u>Impervious Cover Percentage</u>
CAFRA Urban center	90 percent
CAFRA regional center	80 percent
Coastal regional center	
CAFRA core	
CAFRA node	
CAFRA town	70 percent
Coastal town	
Military installation	
CAFRA village	60 percent
Coastal village	
CAFRA hamlet	50 percent
Coastal hamlet	
Coastal Metropolitan Planning Area	80 percent
Coastal Suburban Planning Area, within a sewer service area*	30 percent
Coastal Suburban Planning Area, outside a Sewer service area*	5 percent
Coastal Fringe Planning Area	5 percent
Coastal Rural Planning Area	3 percent
Coastal Environmentally Sensitive Planning Area	3 percent

* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and (c)5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be

reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

Recodified from N.J.A.C. 7:7E-5B.3 and amended by R.2001 d.81, effective March 5, 2001.

See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).

In Table H, amended the N.J.A.C. reference in the title. Former N.J.A.C. 7:7E-5B.4, Vegetative cover percentages for a site in the CAFRA area, recodified to N.J.A.C. 7:7E-5B.5.

Petition for Rulemaking.

See: 33 N.J.R. 1210(b), 33 N.J.R. 1475(b).

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

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

In (a)3, deleted "based on the Coastal Planning Area in which the site is located"; rewrote (c) and (e); in (g), substituted "(c)3" for "(c)2" and inserted "(e)3".

Amended by R.2006 d.46, effective February 6, 2006.

See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).

Rewrote beginning of introductory paragraph (d) as "Subject to limitations regarding mainland coastal centers at N.J.A.C. 7:7E-5B.6(g), if".

Case Notes

Numeric limitations on impervious cover established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity were supported by ample evidence. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. 7:7E-5B.5(b);

ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5; and

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the impervious cover allowed under N.J.A.C. 7:7E-5B.4 and the acreage of tree planting and/or