

CHAPTER 7E

COASTAL ZONE MANAGEMENT

Authority

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

Source and Effective Date

R.1995 d.405, effective June 23, 1995.
See: 27 N.J.R. 417(a), 27 N.J.R. 2738(a).

Chapter Expiration Date

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

Chapter Historical Note

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

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

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1985 d.422, effective July 24, 1985. See: 17 N.J.R. 1465(a), 17 N.J.R. 1797(c), 17 N.J.R. 2021(a).

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

Subchapter 3A, Standards for Beach and Dune Activities, Subchapter 3B, Information Required in Wetland Mitigation Proposals, and Subchapter 3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, were adopted as New Rules by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994). See: 26 N.J.R. 943(a), 26 N.J.R. 1561(a), 26 N.J.R. 2990(a).

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1995 d.405, effective June 23, 1995. See: Source and Effective Date. See, also, section annotations.

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

Appendix to Chapter 7E: Figures 1 through 16 were adopted as a part of R.1994 d.380 and form the Appendix to N.J.A.C. 7:7E. The Figures are not reproduced in this chapter, but can be reviewed by contacting the Office of Administrative Law, Rules and Publications, PO Box 301, Trenton, NJ 08625-0301, or the Department of Environmental Protection.

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

The Executive Order No. 66 (1978) expiration date for Chapter 7E, Coastal Zone Management, was extended by gubernatorial directive from June 23, 2000 to March 31, 2001. See: 32 N.J.R. 2591(c).

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

Case Notes

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

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SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose

(a) This chapter presents the substantive rules of the Department of Environmental Protection regarding the use and development of coastal resources, to be used primarily by the Land Use Regulation Program in the Department in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B. The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases and licenses.

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey-CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy for public review as the New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final Environmental Impact Statement (EIS) for Federal approval, which was received in September 1978. In August 1978, the Governor submitted the revised New Jersey Coastal Management Program—Bay and Ocean Shore Segment and Final EIS for Federal approval, which was received in September 1978. In May 1980, the Department submitted further revisions, published as the Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement for federal approval, which was received in September 1980. The Rules on Coastal Zone Management (Rules) constitute the substantive core of the program. The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988, May 15, 1989, August 20, 1990, April 5, 1993, November 15, 1993, July 18, 1994, June 23, 1995, August 19, 1996, February 17, 1998, December 7, 1998 and February 7, 2000.

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Rules on Coastal Zone Management of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.

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

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

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

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

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

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

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

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

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

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

Case Notes

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

Sheridan, 209 N.J.Super. 267, 507 A.2d 304 (App.Div.1986), certification denied 104 N.J. 464, 517 A.2d 448 (1986).

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

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

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

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to five categories, as defined in N.J.A.C. 7:7E-1.3(c) through (g), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

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

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

1. The coastal area under the jurisdiction of the Coastal Area Facility Review Act (CAFRA);
2. Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west;
3. The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a);
4. All areas containing tidal wetlands; and
5. The Hackensack Meadowlands Development Commission District as defined by N.J.S.A. 13:17-4.

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

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

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

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

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

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

(g) DEP management activities: This chapter shall apply, to the extent statutorily permissible, to the following DEP management actions in or affecting the coastal zone in addition to those noted at N.J.A.C. 7:7E-1.1:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.).
2. Division of Water Quality:
 - i. Permits for point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.).
 - ii. Approval of wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6).
 - iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).
 - iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4).
 - v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44).
3. Land Use Regulation Program:
 - i. Permits for 50 or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23).
 - ii. Approval for Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).
 - iii. Permits to Perform Regulated Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.).
 - iv. Issuance of Permits pursuant to the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.).
4. Water Supply Regulation:
 - i. Permit to divert surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.).
 - ii. Approval of diversions for water supply (N.J.S.A. 58:1A et seq.).
 - iii. Permits to drill wells (N.J.S.A. 58:4A-14).
 - iv. Certifications to construct new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.).
 - v. Permits to install or maintain a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.).
5. Bureau of Stormwater Permitting: Permits for the discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.).
6. Air Quality Regulation Program:
 - i. Permit to construct, install, or alter control apparatus or equipment (N.J.S.A. 26:2C-9.2).
 - ii. Certificate to operate control apparatus or equipment (N.J.S.A. 26:2C-9.2).
 - iii. Approvals of variances to exceed air quality standards (N.J.S.A. 26:2C-9.2).
7. Division of Solid Waste Management: Certification of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.).
8. Green Acres and Division of Parks and Forestry:
 - i. Adoption of regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19).
 - ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.).
 - iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.).
 - iv. Inclusion of and adoption of regulations concerning river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).

9. Division of Fish, Game and Wildlife: Adoption of regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28).

10. Natural and Historic Resources, Engineering and Construction Section: Dam Permit (N.J.S.A. 58:4-1).

11. All Divisions: Management of State-owned lands by DEP.

(h) DEP planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.

1. Land Use Regulation Program:

i. Coastal zone management;

2. Natural and Historic Resources Program:

i. Navigational dredging; and

ii. Shore protection.

3. Land and Water Planning:

i. Areawide water quality management ("208");

ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.); and

iii. Allocation of Wastewater Treatment Construction Grants (P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.).

iv. Implementation and coordination of the Federal Coastal Zone Management Program.

4. Air Quality Regulation: Air quality planning.

5. Division of Solid Waste Management: Solid waste management.

6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.

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

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

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

Old section 2 Authority was repealed.

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

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

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

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

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

Case Notes

Coastal Zone Management Act's consistency review requirements were not triggered by power authority's submission to Coast Guard of

plan for barge shipments of irradiated fuel from nuclear power plant. State of N.J., Dept. of Environmental Protection and Energy v. Long Island Power Authority, C.A.3 (N.J.)1994, 30 F.3d 403.

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

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

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

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

7:7E-1.3 Severability

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

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

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

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

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

7:7E-1.5 Coastal decision-making process

(a) General: Decisions on uses of coastal resources shall be made using the three step process comprising the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to involve all Location Rules, Use Rules, and Resource Rules. Rather, the applicable rules

are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

(b) Principles: The Coastal Zone Management Rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management Rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable" and "maximum extent," as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Zone Management rules provides a mechanism for incorporating professional judgment by DEP officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

1. In the application of administrative discretion, DEP officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

- i. Protect and enhance the coastal ecosystem.
- ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.
- iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.
- iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.
- v. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.

vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.

vii. Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.

viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

(c) Definitions: The Rules on Coastal Zone Management are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged or prohibited. Some rules include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Rules on Coastal Zone Management and the principles defined in (b) above, the following words have the following meanings.

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

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

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

"Coastal permit" or "permit" means a permit issued by the Department under N.J.A.C. 7:7 pursuant to any of the following statutes: the Waterfront Development Law, N.J.S.A. 12:5-3, the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., or the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.

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

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

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

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

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

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

“Dwelling Unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home or any habitable struc-

ture of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined in section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37).

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

“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.

“Land area” means an area that is landward of the spring high water line.

“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 DEP, 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. (Note: 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 NJDEP 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, 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.

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

“Spring tide” means a tide that occurs at or near the time of new and full moon and which rises highest and falls lowest from the mean level. “Spring high water line” is the intersection of the land with the water surface at the elevation of spring high tide.

“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 racquet-ball 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.

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

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

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

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

Use of waterfront for water-dependent activities encouraged.

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

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

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

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

In (b)1vii, deleted “determined to be needed by the New Jersey State Energy Master Management Plan” following “facilities”; and in (c), inserted “Coastal permit” or “permit”, “Conservation restriction”, “Impervious cover”, “Land area” and “Linear development”, and rewrote “Development”, “Reconstruction” and “Site”.

Case Notes

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

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

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

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

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

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

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The Program will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the Basic Location Policies (N.J.A.C. 7:7E-1.5(b)1). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.48).

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

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

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

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

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

7:7E-1.7 Correspondence with the Department

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

Land Use Regulation Program
New Jersey Department of Environmental Protection
501 E. State Street
PO Box 439
Trenton, New Jersey 08625-0439

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

SUBCHAPTER 2. LOCATION, USE AND RESOURCE RULES

7:7E-2.1 Introduction

The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and built environment as well as different social and economic implications. Different rules are therefore required for different locations. This subchapter and subsequent subchapters defines the Location, Use and Resource Rules of the Coastal Program. This presentation of the rules is lengthy and detailed because the coast is large, varied, and complex. The method of applying the rules is, however, relatively simple.

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

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

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

7:7E-2.2 Classification of land and water types

(a) The Location rules classify all land and water locations into General Land Areas and General Water Areas and some into one or more Special Areas.

1. Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special rules in N.J.A.C. 7:7E-3. Special Areas are grouped under four broad classifications: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

2. General Areas are general types of locations which classify the whole coastal zone with the exception of certain Special Water's Edge areas, which are entirely Special Areas. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general rules in N.J.A.C. 7:7E-4 and 5. General Areas are grouped under two broad classifications: General Water Areas (N.J.A.C. 7:7E-4) and General Land Areas (N.J.A.C. 7:7E-5, 5A, and 5B).

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

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

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

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

In (a), changed N.J.A.C. references and substituted references to classifications for references to headings throughout, substituted a reference to General Land Areas and General Water Areas for a reference to General Areas in the introductory paragraph, substituted a

reference to Special Areas for a reference to Special Area types in 1, and substituted a reference to certain Special Water's Edge areas for a reference to the Special Water's Edge and substituted a reference to General Areas for a reference to General Area types in 2.

7:7E-2.3 (Reserved)

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

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

CLAM steps 7 and 8 described.

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 "Mapping and acceptability determination".

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:

Rules and Publications

Office of Administrative Law

Quakerbridge Plaza

Bldg. No. 9

PO Box 301

Trenton, New Jersey 08625-0301

7:7E-3.1 Introduction

(a) Special Areas are those 48 types of coastal areas which merit focused attention and special management rules. This subchapter divides Special Areas into Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).

1. Special Water Areas extend landward to the spring high water line or the level of normal flow in non-tidal waters.

2. The Special Water's Edge Areas can be found at N.J.A.C. 7:7E-3.16 through 3.32 and are divided into three subcategories, depending on their locations:

i. Oceanfront, and Raritan and Delaware Bayfronts (N.J.A.C. 7:7E-3.16 through 3.19);

ii. Barrier and Bay Islands (N.J.A.C. 7:7E-3.20 and 7:7E-3.21); and

iii. Coastwide Special Water's Edge Areas (N.J.A.C. 7:7E-3.22 through 3.32).

3. Special Water's Edge Areas in (a)2i and ii above are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.

4. Special Land Areas are landward of the Water's Edge.

5. Coastwide Special Areas may include Water, Water's Edge or Land Areas.

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

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

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

Coastal areas changed from 44 types to 45 types.

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

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

Coastal High Hazard Areas and Bay Islands added; water's edge areas regrouped geographically; References to Figley 1988 and 1989 fishing guides added.

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

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

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

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

Rewrote (b).

7:7E-3.2 Shellfish habitat

(a) Shellfish habitat is defined as an estuarine bay or river bottom which has a history of production for hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), eastern oysters (*Crassostrea virginica*), bay scallops (*Argopecten irradians*), or blue mussels (*Mytilus edulis*), or otherwise listed below in this section. A shellfish habitat area is defined as an area which meets one or more of the following criteria:

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;

2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (U.S. Department of the Interior, 1963), "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993);

3. The area is designated by the State of New Jersey as a shellfish culture area as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or

1. Encourage development in more compact, deliberately designed community patterns to minimize land conflicts and to accommodate growth that would otherwise occur elsewhere, encourage development that does not exceed the carrying capacity of natural or built systems and that maintains or enhances the character of existing communities, and maintain existing low-density and low-intensity development patterns that do not exceed the carrying capacity of natural systems and are consistent with the existing landscape;

2. Encourage rural economic activities, such as agriculture and recreation, and guide higher intensity activities to the centers;

3. Encourage transportation systems that link centers in the Coastal Fringe Planning Area to each other and to the Coastal Metropolitan and Coastal Suburban Planning Areas; and

4. Encourage infrastructure that supports development in centers.

(e) The Coastal Rural Planning Area generally contains most of the CAFRA area's remaining prime agricultural land, as well as large contiguous tracts of forested areas and other open lands. It is interspersed with centers and with scattered commercial, industrial, and low density residential development. It is served by rural road networks and on-site wastewater and water supply systems. The Coastal Rural Planning Area also supports rural economic activities such as recreation related business. The policy objectives for the Coastal Rural Planning Area are as follows:

1. Protect and enhance the rural character and agricultural viability of the Coastal Rural Planning Area by guiding growth into centers, maintain existing low-density and low-intensity development patterns that are supporting rather than conflicting with the rural landscape, encourage creative land use techniques to minimize the impact of new development on rural features, and ensure that development does not exceed the capacity of natural and built systems;

2. Encourage a transportation network that accommodates agriculture and access to markets;

3. Encourage economic activities in centers that complement and support rural and agricultural communities and that provide diversity in the rural economy, accommodate economic activities outside of centers in ways that maintain or enhance the rural environment, have minimal impact on agricultural resources, and minimize the need for infrastructure improvements; and

4. Protect and preserve large contiguous areas of farmland and open space, and protect the critical resources and environmentally sensitive features of the coastal ecosystem, including water resources and wildlife habitat, by maintaining development outside of centers at low densities, and minimize conflicts between develop-

ment, agricultural practices, resource based activities, and sensitive coastal resources.

(f) The Coastal Environmentally Sensitive Planning Area generally has large contiguous land and water areas with critical coastal ecosystems, wildlife habitats, geological features, and other valuable coastal resources. Some of these lands have remained rural and relatively undeveloped, while others have been dominated by development for many years, such as the coastal barrier islands and spits. The barrier islands represent a major public investment in infrastructure systems that should be maintained while protecting the economic and ecological value of adjacent coastal resources. Centers on the barrier islands are almost all served by public wastewater facilities whereas centers in other environmentally sensitive areas are not often. Centers are usually linked by rural roads and separated by open spaces, or linked to the mainland by State highways crossing coastal wetlands and waterways. Areas outside of centers in the Coastal Environmentally Sensitive Planning Area are by definition more vulnerable to disturbance from new development. Damage may include fragmentation of landscapes, degradation of aquifers and potable water supplies, habitat destruction, extinction of plant and animal species, and destruction of other irreplaceable resources that are vital to the preservation of the ecological integrity of the coastal area. The Coastal Environmentally Sensitive Planning Area also supports recreation and tourism industries, and resource based industries such as mining and forestry. The policy objectives for the Coastal Environmentally Sensitive Planning Area are as follows:

1. Protect environmentally sensitive features by guiding development into centers and maintaining low intensity development patterns elsewhere, carefully link the location, character and magnitude of development to the capacity of natural and built environments to support new growth, accommodate development at higher intensities in the Coastal Environmentally Sensitive Planning Area barrier island centers, compatible with development patterns in existing centers, and discourage the development of public infrastructure facilities outside of centers;

2. Encourage transportation systems that link centers and support the travel and tourism industry, recreational and natural resource-based activities, and address the special seasonal demands of travel and tourism to barrier islands;

3. Locate economic development opportunities in centers that serve the surrounding region and the travel and tourism industry and accommodate in other areas appropriate seasonal, recreational, and natural resource based activities that have a minimal impact on environmental resources; and

4. Protect sensitive natural resources critical to the maintenance of coastal ecosystems by maintaining large contiguous areas of undisturbed habitat, open space and undeveloped land, maintain the balance of ecological

systems and growth, and protect the areas outside of centers from the effects of development by maintaining it as open space.

New Rule, R.2001 d.81, effective March 5, 2001.

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

Former N.J.A.C. 7:7E-5B.2, Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers, recodified to N.J.A.C. 7:7E-5B.3.

7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Coastal centers

(a) The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999 are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA Cores and CAFRA nodes and shall be operative for the purposes of applying the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and this subchapter, unless the Department, in accordance with (b) and (c) below, accepts a State Planning Commission formally approved new or changed boundary, or unless the Department, in accordance with (b) and (e) below, rejects a State Planning Commission formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) Whenever the State Planning Commission formally approves (see (h) below) any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., and this chapter. The Department shall not reject or reject and revise a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq., or this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of N.J.A.C. 7:7E-5 and this subchapter.

(c) If the Department determines under (b) above to accept the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in Appendix 2 or Appendix 3, as applicable. CAFRA centers are listed for informational purposes in Appendix 4 of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix 4 by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable impervious cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C. 7:7E-5B.4(b).

(d) If the Department determines under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the boundary incorporated by reference under (a) above shall continue to be operative, except as provided under (e) below.

(e) The Department may determine under (b) above to reject the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary and to establish a revised Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary by promulgating an amendment to this chapter in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Until the Department promulgates such revised boundary, the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under (a) above shall continue to be operative.

(f) The CAFRA Planning Map, with all Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node boundaries operative under this section for purposes of N.J.A.C. 7:7E-5 and this subchapter, is available on the Department's Geographic Information System (GIS) and may be reviewed at the Department, 401 East State Street, Trenton, New Jersey 08625, (609) 292-1143.

(g) The boundaries delineated by the Department for coastal centers, as defined at N.J.A.C. 7:7E-5.2, are described in Appendices 2 and 3 of this chapter. The boundaries of the coastal centers in Appendix 2 shall expire on February 7, 2005. On and after February 7, 2005, the impervious cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the coastal centers in Appendix 3, shall be determined in accordance with N.J.A.C. 7:7E-5B.4(c), (e) or (f).

(h) For purposes of this section, a State Planning Commission formally approved new or changed boundary is one that the State Planning Commission has amended in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning rules, N.J.A.C. 17:32.

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the impervious cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

(j) Neither formal approval by the State Planning Commission of a new or changed boundary for a Planning Area, a new or changed community development boundary, or a new or changed core or node boundary, nor the incorporation by reference and acceptance or revision by the Department of such boundary as the Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node boundary under this section shall exempt any development from this subchapter or from any of the requirements in this chapter.

Public Notice: Atlantic Highlands Borough CAFRA center boundary acceptance.

See: 32 N.J.R. 2504(a).

Public Notice: Manasquan Borough CAFRA center boundary acceptance.

See: 32 N.J.R. 3182(a).

Recodified from N.J.A.C. 7:7E-5B.2 and amended by R.2001 d.81, effective March 5, 2001.

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

In (b), added the second sentence; rewrote (c); in (g), amended the N.J.A.C. reference. Former N.J.A.C. 7:7E-5B.3, Impervious cover limits for a site in the CAFRA area, recodified to N.J.A.C. 7:7E-5B.4.

Public Notice: Planning area boundary acceptance or rejection.

See: 33 N.J.R. 2347(a).

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 based on the Coastal Planning Area in which the site is located; 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 or 2 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; or

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

(d) 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 a 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 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 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.

(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)2, (d)2 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

Site Location	Impervious Cover Percentage
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).

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

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

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:
 - i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. 7:7E-5B.5(b);
 - ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. 7:7E-5.5; and
 - iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. 7:7E-5.3(d), by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and
 - iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7E-5.3(d), by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and
2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the impervious cover allowed under N.J.A.C. 7:7E-5B.4 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5B.4(c), (d), or (f), or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7E-5B.4(e), exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3(d), then trees shall be planted in the area (in acres) remaining after the acreage of impervious cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative requirements at N.J.A.C. 7:7E-5.4.

TABLE I
Tree Preservation and Planting Percentages
for Forested and Unforested Sites

Site Location	Tree preservation percentage for forested portion of site	Tree preservation and/or planting percentage for unforested portion of site
CAFRA urban center	10 percent	0 percent
CAFRA regional center		
Coastal regional center		
CAFRA core		
CAFRA node		
Military installation		
CAFRA town	25 percent	5 percent
Coastal town		
CAFRA village	30 percent	5 percent
Coastal village		
CAFRA hamlet	40 percent	5 percent
Coastal hamlet		
Coastal Metropolitan Planning Area	10 percent	0 percent
Coastal Suburban Planning Area, within a sewer service area*	35 percent	5 percent
Coastal Suburban Planning Area, outside a sewer service area*	70 percent	5 percent
Coastal Fringe Planning Area		
Coastal Rural Planning Area		
Coastal Environmentally Sensitive Planning Area		

* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and 5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.

Administrative correction.
See: 32 N.J.R. 1515(b).
Recodified from N.J.A.C. 7:7E-5B.4 and amended by R.2001 d.81, effective March 5, 2001.
See: 32 N.J.R. 352(a), 32 N.J.R. 682(a), 33 N.J.R. 843(a).
In (a) and (b), amended N.J.A.C. references.

SUBCHAPTER 6. GENERAL LOCATION RULES

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

(a) A linear development, as defined at N.J.A.C. 7:7E-1.5, 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).

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

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

In (a), rewrote the first sentence of the introductory paragraph.

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 affect the site and surrounding region.

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy the 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 and the CAFRA Planning Map as defined at N.J.A.C. 7:7E-5.2, 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, PO Box 301, Trenton, New Jersey 08625-0301.

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

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

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

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

Amended by R.2001 d.81, effective March 5, 2001.

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

In (a), substituted "affect" for "effect"; in (b)1, inserted "and the CAFRA Planning Map as defined at N.J.A.C. 7:7E-5.2" preceding "an assessment".

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

PO Box 301

Trenton, New Jersey 08625-0301

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-8.11). The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, except on bay islands where the requirements of the Bay 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) Standards relevant to the development of a single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8, and provided the single family home or duplex and accessory development are located landward of the mean high water line, are as follows: