

5. Not enact or adopt ordinances or engage in activities in conflict with the Public Trust Doctrine, such as the placing of signs, structures, vegetation, parking restrictions or any other means, that limit access to or use of tidal waterways and their shores;

6. In addition to complying with (q)1 through 5 above, an applicant that is a municipality shall:

i. Prior to disbursement of Green Acres funding for a Green Acres project site, repeal any ordinance that limits access to and use of tidal waterways and their shores or is in conflict with the Public Trust Doctrine; and

ii. Prior to disbursement of Green Acres funding for a Green Acres project site, adopt the ordinance adopting the public access plan required at (q)1ii above and record the Public Access Instrument approved by the Department pursuant to (q)1 or 2 above, respectively;

7. In addition to complying with (q)1 through 5 above, prior to disbursement of Green Acres funding for a Green Acres project site, an applicant that is a county shall adopt an ordinance adopting the public access plan approved by the department pursuant to (q)1 and 2 above;

8. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide public access along the tidal waterway and its entire shore at the Green Acres project site;

9. Immediately upon disbursement of Green Acres funding for a Green Acres project site, provide at least one accessway to the tidal waterway, its shore and the project site across land held by the recipient of Green Acres funding. Additional accessways shall be provided as necessary given the size, location, and proposed use of the site;

10. Immediately upon disbursement of Green Acres funding for a Green Acres project site, install and maintain in perpetuity Department approved public access signs at each public accessway and/or public access area at the project site;

11. Immediately upon disbursement of Green Acres funding for a Green Acres project site, record a Department-approved conservation restriction maintaining the following areas for public access in perpetuity. All lands held by the municipality or county for recreation and conservation purposes also must be listed on the Recreation and Open Space Inventory for the municipality and county, respectively, as required by Green Acres as a condition of funding pursuant to N.J.A.C. 7:36.

i. The project site;

ii. The public accessways held by the municipality that lead to or provide access to tidal waterways and their shores and are not listed in the Public Access Instrument, including paths, trails, dune walkovers/walk-

ways, and piers and public accessways pursuant to (q)9 above; and

iii. All parking areas identified in (q)12 below;

12. Within 10 days of completion of a Green Acres funded development for a Green Acres project site or within 180 days of disbursement of Green Acres funding for acquisition for a Green Acres project site, provide public restrooms and parking for the project site as directed by the Department based on the proposed use of the project site and the nature and extent of public demand; and

13. Any Green Acres funding recipient for a Green Acres project site that, after December 17, 2007, undertakes any action that is determined by the Department to be in conflict with the Public Trust Doctrine, will be required to take corrective action within 30 days of notification by the Department of the conflict with the Public Trust Doctrine. If the Green Acres funding recipient for a Green Acres project site does not take corrective action, or if the corrective action taken is not adequate, then the Department may:

i. Withhold Green Acres funding;

ii. Terminate the Green Acres Project Agreement executed pursuant to N.J.A.C. 7:36; and/or

iii. Demand immediate repayment of all Green Acres funding that has been disbursed to funding recipient.

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

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

(b)3-7 added.

Amended by R.1988 d.338, effective August 15, 1988.

See: 20 N.J.R. 139(a), 20 N.J.R. 2058(b).

Deleted (b)7 and substituted new.

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

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

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), inserted a new 9, and recodified former 9 through 13 as 10 through 14.

Amended by R.2000 d.428, effective October 16, 2000.

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

In (b)11, substituted "restriction" for "easements".

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

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

Rewrote the section.

Repeal and New Rule, R.2007 d.374, effective December 17, 2007.

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

Section was "Public access to the waterfront".

Amended by R.2009 d.34, effective January 20, 2009.

See: 39 N.J.R. 5145(a), 41 N.J.R. 546(a).

Added (c); in (f)3, deleted "or" preceding "military facility", inserted " , or superhighway" and "at the site", and substituted " , public access shall be provided in accordance with (f)3i or ii below" for a colon and inserted the final sentence; in (f)6iii, deleted "or" from the end; in (f)7, substituted " ; or" for a period at the end; added (f)8; in the introductory paragraph of (j)1, substituted " , except as provided at (j)1i below:" for a

semicolon at the end; added (j)1i; and rewrote (p)2 through (p)5, (p)7 through (p)9, and (q).

Law Review and Journal Commentaries

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

Case Notes

New Jersey Department of Environmental Protection (DEP) rules that require a municipality to allow public access to tidal waterways and their shores "at all times" unless it obtains the DEP's permission to close the area and that require a municipality that seeks an appropriation from the Shore Protection Fund to enter into a State Aid Agreement that obligates the municipality to provide such additional parking spaces and restroom facilities in proximity to the oceanfront as the DEP may mandate are declared invalid. *Borough of Avalon v. New Jersey Dep't of Env'tl. Prot.*, 403 N.J. Super. 590, 959 A.2d 1215, 2008 N.J. Super. LEXIS 239 (App.Div. 2008).

Department of Environmental Protection (DEP) had jurisdiction under the Coastal Area Facility Review Act (CAFRA) to determine the appropriate fee that beach club could charge the public for use of its private beach; boardwalk extension over the dune leading to the beach and waterfront that was maintained by club qualified as development and triggered the DEP's jurisdiction over all related issues of use and public access. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Beach club's minimum fee for access to private beach, which required the minimum seasonal payment of \$700 for up to eight household members, discriminated against individuals and small families by forcing them to pay an amount bearing no rational relationship to the cost associated with individual use of the property, and thus, the fee was exclusionary and undermined the objectives of the public trust doctrine by limiting public access to the beach; fee should be limited to expenses actually incurred by the club for reasonable management services in addition to reimbursement for other costs incurred for the services provided. *Raleigh Ave. Beach Ass'n. v. Atlantis Beach Club, Inc.*, 851 A.2d 19.

Regulation requiring coastal development to permit access to the waterfront to the maximum extent practicable, including both visual and physical access, did not impose absolute prohibition against oceanfront development which interferes with the view of inland property owners. *Bubis v. Kassir*, 323 N.J. Super. 601, 733 A.2d 1232 (N.J. Super. A.D. 1999).

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

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

7:7E-8.12 Scenic Resources and Design

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

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

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and

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

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

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and
2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure. However, exceptions may be made for infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area.

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development as defined at N.J.A.C. 7:7E-1.8.

1. The development preserves the historic structure; and
2. The development will not detract from, damage, or destroy the value of the historic structure.

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

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

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted.

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

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

Enhancement of scenic resources required at (d).

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

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

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

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

In the introductory paragraph of (d), inserted "comply with the following, unless it meets the requirements at (e) below"; added new (e); and recodified former (e) as (f).

7:7E-8.13 Buffers and compatibility of uses

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

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

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case by case basis.

2. The standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

3. The following apply to buffer treatment:

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

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

iii. Buffer areas which are non-forested will require dense vegetative plantings with mixed evergreen and deciduous trees and shrubs. Evergreens must be at least eight feet tall at time of planting; deciduous trees must

be at least three inches caliper, balled and burlapped; shrubs must be at least three to four feet in height.

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

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

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

Deleted "policy" from (b).

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

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

Stylistic changes.

Administrative change to (b)1.

See: 23 N.J.R. 1662(b).

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

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

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

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

In (b)1, amended N.J.A.C. reference; in (b)2, substituted "standards for" "rule regarding" and "is" for "are".

Case Notes

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

7:7E-8.14 Traffic

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

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

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the

1. The coastal town boundary follows the municipal boundary of Mantoloking Borough, but does not include any bay islands.

K. Seaside Park coastal town

1. The coastal town boundary follows the municipal boundary of Seaside Park Borough, but does not include any bay islands.

L. Ship Bottom coastal town

1. The coastal town boundary follows the municipal boundary of Ship Bottom Borough, but does not include any bay islands.

M. Surf City coastal village

1. The coastal village boundary follows the municipal boundary of Surf City, but does not include any bay islands.

New Rule, R.2000 d.45, effective February 7, 2000.
 See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).
 Administrative change.
 See: 32 N.J.R. 1803(b).
 Administrative change.
 See: 36 N.J.R. 5674(a).
 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).
 Heading was "Boundaries of Coastal Centers in the CAFRA Area Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the introductory paragraph.
 Administrative change.
 See: 39 N.J.R. 2018(b).

APPENDIX 4

(RESERVED)

New Rule by R.2006 d.46, effective February 6, 2006.
 See: 37 N.J.R. 2351(a), 2985(a), 38 N.J.R. 928(c).
 Former N.J.A.C. 7:7E Appendix 4, CAFRA Centers, recodified as N.J.A.C. 7:7E Appendix 5.
 Administrative changes.
 See: 38 N.J.R. 1669(a).
 Amended by R.2006 d.363, effective October 2, 2006.
 See: 38 N.J.R. 1921(a), 38 N.J.R. 4214(a).
 Added the second paragraph; and inserted asterisks following multiple entries in the list of coastal centers with expired boundaries.
 Administrative change. (Administrative notice that Appendix 4 expired.)
 See: 39 N.J.R. 2018(b).

APPENDIX 5

CAFRA CENTERS

This non-regulatory appendix contains the list of CAFRA centers the boundaries of which have been accepted by the Department under N.J.A.C. 7:7E-5B.3(b), and which are incorporated into and shown on the CAFRA Planning Map. As required under N.J.A.C. 7:7E-5B.4(b), an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable impervious cover limits under this chapter.

The Department will update the list of CAFRA centers, in this Appendix by notice of administrative change as part of

the New Jersey Register notice required in N.J.A.C. 7:7E-5B.3(b). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers are listed alphabetically.

- I. Atlantic County CAFRA centers and CAFRA cores
 - A. Atlantic City
 - 1. Atlantic City CAFRA urban center
 - B. Galloway Township CAFRA centers and CAFRA cores
 - 1. Galloway Downtown CAFRA core
 - 2. Oceanville CAFRA village
 - 3. Smithville CAFRA core
 - 4. Smithville CAFRA town
 - 5. Wrangleboro CAFRA town
- II. Cape May County CAFRA centers
 - A. Avalon Borough
 - 1. Avalon Borough CAFRA town
 - B. Cape May City
 - 1. Cape May City CAFRA town
 - C. Cape May Point Borough
 - 1. Cape May Point CAFRA village
 - D. Stone Harbor Borough
 - 1. Stone Harbor Borough CAFRA town
 - E. Upper Township
 - 1. Seaville CAFRA Town
 - 2. Marmora CAFRA Town
 - 3. Petersburg CAFRA Village
 - 4. Tuckahoe CAFRA Village
 - F. Wildwood City/North Wildwood City/Wildwood Crest Borough/West Wildwood Borough
 - 1. The Wildwoods CAFRA regional center
- III. Cumberland County CAFRA centers
 - A. Bridgeton City
 - 1. Bridgeton CAFRA Regional Center
 - B. Commercial Township CAFRA centers
 - 1. Laurel Lake CAFRA village
 - 2. Mauricetown-Haleyville CAFRA village
 - 3. Port Norris CAFRA village

- C. Lawrence Township
 - 1. Cedarville CAFRA Village
- D. Maurice River Township
 - 1. Delmont CAFRA village
 - 2. Dorchester-Leesburg CAFRA village
 - 3. Heislerville CAFRA village
 - 4. Port Elizabeth Bricksboro CAFRA village
 - 5. Mauricetown Station CAFRA hamlet
- E. Millville City/Vineland City
 - 1. Millville-Vineland CAFRA regional center
- IV. Monmouth County CAFRA centers
 - A. Asbury Park City
 - 1. Asbury Park CAFRA urban center
 - B. Atlantic Highlands Borough
 - 1. Atlantic Highlands Borough CAFRA town
 - C. Long Branch City
 - 1. Long Branch CAFRA regional center
 - D. Manasquan Borough
 - 1. Manasquan Borough CAFRA town
 - E. Red Bank Borough
 - 1. Red Bank CAFRA regional center
- V. Ocean County CAFRA centers
 - A. Brick Township
 - 1. Brick CAFRA town
 - B. Little Egg Harbor Township
 - 1. Mystic Island CAFRA town
 - 2. Parkertown CAFRA village
 - C. Little Egg Harbor Township/Tuckerton Borough
 - 1. Tuckerton CAFRA town
 - D. Ocean Township
 - 1. Waretown CAFRA Town Center
 - E. Seaside Heights Borough
 - 1. Seaside Heights CAFRA Town
 - F. Stafford Township
 - 1. Stafford/Manahawkin CAFRA regional center
- VI. Salem County CAFRA centers and CAFRA nodes
 - A. Lower Alloways Township CAFRA centers

- 1. PSE & G Energy Facility node

B. Salem City

- 1. Salem City CAFRA regional center

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).

Administrative change.

See: 34 N.J.R. 1421(b).

Administrative change.

See: 34 N.J.R. 4196(a).

Administrative change.

See: 36 N.J.R. 5674(a).

Administrative change.

See: 37 N.J.R. 4435(a).

Recodified from N.J.A.C. 7:7E Appendix 4 by R.2006 d.46, effective February 6, 2006.

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

Administrative change (effective March 5, 2007 and operative April 4, 2007).

See: 39 N.J.R. 768(b).

Administrative correction.

See: 39 N.J.R. 2536(a).

Administrative change (effective March 3, 2008 and operative April 2, 2008).

See: 40 N.J.R. 1085(a), 1088(a).

Administrative correction.

See: 40 N.J.R. 4320(a).

APPENDIX 6

PUBLIC ACCESS REQUIREMENTS FOR MARINAS THROUGH DECEMBER 31, 2010

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

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

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

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

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