

CHAPTER 7E
COASTAL ZONE MANAGEMENT

Authority

N.J.S.A. 12:5-3, 13:1D-9 and 13:1D-29 et seq.,
13:9A-1 et seq., and 13:19-1 et seq.

Source and Effective Date

R.2003 d.60, effective January 7, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

Chapter Expiration Date

Chapter 7E, Coastal Zone Management, expires on January 7, 2008.

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).

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

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).

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.

Pursuant to Executive Order No. 66(1978), Chapter 7E, Coastal Zone Management, was readopted as R.1995 d.405, effective June 23, 1995. See: 27 N.J.R. 417(a), 27 N.J.R. 2738(a).

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

Subchapter 5A, Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area; Subchapter 5B, Impervious Cover Limits and Vegetative Cover Percentages in the CAFTA Area, were adopted as R. 2000 d.45, effective February 7, 2000. See: 31 N.J.R. 2042(a), 32 N.J.R. 503(a).

The 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).

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 7E, Coastal Zone Management, was readopted as R.2003 d.60, effective January 7, 2003. As part of R.2003 d.60, Subchapter 2, Location, Use and Resource Rules, is repealed. See: Source and Effective Date. See, also, section annotations.

Public Notice: Routine Program Change for Coastal Management Program.

See: 35 N.J.R. 4917(a).

Public Notice: Routine Program Change for Coastal Management Program.

See: 36 N.J.R. 3304(b).

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

See: 38 N.J.R. 1587(a).

Case Notes

Department of Environmental Protection (DEP) must make findings under the standards in the statute governing the issuance of permits for development in coastal zones, even if DEP finds that a Coastal Area Facility Review Act (CAFRA) permit application complies with its specific regulations. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) was required to amend its implementing rules with respect to Coastal Area Facility Review Act (CAFRA) to set forth requirement that it make findings under standards set forth in CAFRA prior to issuing permit for development thereunder. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

Department of Environmental Protection (DEP) did not invalidate Coastal Zone management (CZM) rules by giving regulatory effect to state development and redevelopment plan by presuming that boundaries established by state planning commission would function as boundaries pursuant to Coastal Area Facility Review Act (CAFRA), and then by using those boundaries to establish impervious cover limits in CZM rules. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. INTRODUCTION

- 7:7E-1.1 Purpose and scope
- 7:7E-1.2 Jurisdiction
- 7:7E-1.3 Severability
- 7:7E-1.4 Review, revision, and expiration
- 7:7E-1.5 Coastal decision-making process
- 7:7E-1.6 Mitigation
- 7:7E-1.7 Correspondence with the Department
- 7:7E-1.8 Definitions

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

- 7:7E-3.1 Purpose and scope
- 7:7E-3.2 Shellfish habitat
- 7:7E-3.3 Surf clam areas
- 7:7E-3.4 Prime fishing areas
- 7:7E-3.5 Finfish migratory pathways
- 7:7E-3.6 Submerged vegetation habitat
- 7:7E-3.7 Navigation channels
- 7:7E-3.8 Canals
- 7:7E-3.9 Inlets

- 7:7E-3.10 Marina moorings
- 7:7E-3.11 Ports
- 7:7E-3.12 Submerged infrastructure routes
- 7:7E-3.13 Shipwreck and artificial reef habitats
- 7:7E-3.14 Wet borrow pits
- 7:7E-3.15 Intertidal and subtidal shallows
- 7:7E-3.16 Dunes
- 7:7E-3.17 Overwash areas
- 7:7E-3.18 Coastal high hazard areas
- 7:7E-3.19 Erosion hazard areas
- 7:7E-3.20 Barrier island corridor
- 7:7E-3.21 Bay islands
- 7:7E-3.22 Beaches
- 7:7E-3.23 Filled water's edge
- 7:7E-3.24 Existing lagoon edges
- 7:7E-3.25 Flood hazard areas
- 7:7E-3.26 Riparian zones
- 7:7E-3.27 Wetlands
- 7:7E-3.28 Wetlands buffers
- 7:7E-3.29 through 7:7E-3.30 (Reserved)
- 7:7E-3.31 Coastal bluffs
- 7:7E-3.32 Intermittent stream corridors
- 7:7E-3.33 Farmland conservation areas
- 7:7E-3.34 Steep slopes
- 7:7E-3.35 Dry borrow pits
- 7:7E-3.36 Historic and archaeological resources
- 7:7E-3.37 Specimen trees
- 7:7E-3.38 Endangered or threatened wildlife or plant species habitats
- 7:7E-3.39 Critical wildlife habitats
- 7:7E-3.40 Public open space
- 7:7E-3.41 Special hazard areas
- 7:7E-3.42 Excluded Federal lands
- 7:7E-3.43 Special urban areas
- 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area
- 7:7E-3.45 Hackensack Meadowlands District
- 7:7E-3.46 Wild and scenic river corridors
- 7:7E-3.47 Geodetic control reference marks
- 7:7E-3.48 Hudson River Waterfront Area
- 7:7E-3.49 Atlantic City

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

- 7:7E-3A.1 Purpose and scope
- 7:7E-3A.2 Standards applicable to routine beach maintenance
- 7:7E-3A.3 Standards applicable to emergency post-storm beach restoration
- 7:7E-3A.4 Standards applicable to dune creation and maintenance
- 7:7E-3A.5 Standards applicable to the construction of boardwalks

SUBCHAPTER 3B. INFORMATION REQUIRED IN TIDAL WETLAND AND INTERTIDAL AND SUBTIDAL SHALLOWS MITIGATION PROPOSALS

- 7:7E-3B.1 Purpose and scope
- 7:7E-3B.2 Tidal wetland and intertidal and subtidal shallows mitigation proposal requirements
- 7:7E-3B.3 Financial assurance requirements
- 7:7E-3B.4 Department review of mitigation proposal
- 7:7E-3B.5 Post-construction monitoring of the mitigation site

SUBCHAPTER 3C. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION

- 7:7E-3C.1 Purpose and scope
- 7:7E-3C.2 Standards for conducting Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments
- 7:7E-3C.3 Standards for conducting Endangered or Threatened Wildlife Species Habitat Evaluations

- 7:7E-3C.4 Standards for reporting the results of impact assessments and habitat evaluations

SUBCHAPTER 4. GENERAL WATER AREAS

- 7:7E-4.1 Purpose and scope
- 7:7E-4.2 Aquaculture
- 7:7E-4.3 Boat ramps
- 7:7E-4.4 Docks and piers for cargo and commercial fisheries
- 7:7E-4.5 Recreational docks and piers
- 7:7E-4.6 Maintenance dredging
- 7:7E-4.7 New dredging
- 7:7E-4.8 Dredged material disposal
- 7:7E-4.9 Solid waste or sludge dumping
- 7:7E-4.10 Filling
- 7:7E-4.11 Mooring
- 7:7E-4.12 Sand and gravel mining
- 7:7E-4.13 Bridges
- 7:7E-4.14 Submerged pipelines
- 7:7E-4.15 Overhead transmission lines
- 7:7E-4.16 Dams and impoundments
- 7:7E-4.17 Outfalls and intakes
- 7:7E-4.18 Realignment of water areas
- 7:7E-4.19 Breakwaters
- 7:7E-4.20 Submerged cables
- 7:7E-4.21 Artificial reefs
- 7:7E-4.22 Miscellaneous uses

SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

- 7:7E-5.1 Purpose and scope
- 7:7E-5.2 Definitions
- 7:7E-5.3 Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas
- 7:7E-5.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas
- 7:7E-5.5 Determining if a site is forested or unforested

SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA

- 7:7E-5A.1 Purpose and scope
- 7:7E-5A.2 Upland waterfront development area regions and growth ratings
- 7:7E-5A.3 Environmental sensitivity
- 7:7E-5A.4 Development potential
- 7:7E-5A.5 Development potential for a residential or minor commercial development site
- 7:7E-5A.6 Development potential for a major commercial or industrial development site
- 7:7E-5A.7 Development potential for a campground development site
- 7:7E-5A.8 Development intensity
- 7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area
- 7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area

SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA

- 7:7E-5B.1 Purpose and scope
- 7:7E-5B.2 Coastal Planning Areas
- 7:7E-5B.3 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers
- 7:7E-5B.4 Impervious cover limits for a site in the CAFRA area
- 7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area
- 7:7E-5B.6 Mainland coastal centers

SUBCHAPTER 6. GENERAL LOCATION RULES

- 7:7E-6.1 Rule on location of linear development
- 7:7E-6.2 Basic location rule
- 7:7E-6.3 Secondary impacts

SUBCHAPTER 7. USE RULES

- 7:7E-7.1 Purpose and scope
- 7:7E-7.2 Housing use rules
- 7:7E-7.3 Resort/recreational use
- 7:7E-7.3A Marina development
- 7:7E-7.4 Energy facility use rule
- 7:7E-7.5 Transportation use rule
- 7:7E-7.6 Public facility use rule
- 7:7E-7.7 Industry use rule
- 7:7E-7.8 Mining use rule
- 7:7E-7.9 Port use rule
- 7:7E-7.10 Commercial facility use rule
- 7:7E-7.11 Coastal engineering
- 7:7E-7.12 Dredged material placement on land
- 7:7E-7.13 National defense facilities use rule
- 7:7E-7.14 High-rise structures

SUBCHAPTER 8. RESOURCE RULES

- 7:7E-8.1 Purpose and scope
- 7:7E-8.2 Marine fish and fisheries
- 7:7E-8.3 (Reserved)
- 7:7E-8.4 Water Quality
- 7:7E-8.5 Surface water use
- 7:7E-8.6 Groundwater Use
- 7:7E-8.7 Stormwater management
- 7:7E-8.8 Vegetation
- 7:7E-8.9 (Reserved)
- 7:7E-8.10 Air quality
- 7:7E-8.11 Public access to the waterfront
- 7:7E-8.12 Scenic Resources and Design
- 7:7E-8.13 Buffers and compatibility of uses
- 7:7E-8.14 Traffic
- 7:7E-8.15 through 7:7E-8.20 (Reserved)
- 7:7E-8.21 Subsurface sewage disposal systems
- 7:7E-8.22 Solid and hazardous waste

APPENDIX 1. DESIGN STANDARDS AND SPECIFICATIONS

APPENDIX 2. (RESERVED)

APPENDIX 3. BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA

APPENDIX 4. (RESERVED)

APPENDIX 5. CAFRA CENTERS

SUBCHAPTER 1. INTRODUCTION

7:7E-1.1 Purpose and scope

(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. 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 Coastal Zone Management rules constitute the substantive core of the program.

(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 Coastal Zone Management rules 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.

(d) 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. Decisions on uses of coastal resources shall be made using the three step process consisting of the location rules (N.J.A.C. 7:7E-2 through 6), the use rules (N.J.A.C. 7:7E-7), and the resource rules (N.J.A.C. 7:7E-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 Coastal Zone Management rules 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. The Department 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 New Jersey Meadowlands Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.

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

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

Added (d).

Case Notes

Numeric limitations on impervious cover established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity were appropriately coordinated with state plan, despite differing goals of Coastal Area Facility Review Act (CAFRA) and state plan. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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 six categories, as defined in N.J.A.C. 7:7E-1.2(c) through (h), 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. Department management actions affecting the coastal zone; and
6. Department 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 defined in the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.;
2. Coastal waters, which are any tidal waters of the State and all lands lying thereunder. Coastal waters of the State of New Jersey extend from the mean high water line out to the three geographical mile limit of the New Jersey territorial sea, and elsewhere to the interstate boundaries of the States of New York, and Delaware and the Commonwealth of Pennsylvania;

3. All lands outside of the coastal area as defined by CAFRA extending from the mean high water line of a tidal water body to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet from the mean high water line;

4. All areas containing tidal wetlands; and
5. The Hackensack Meadowlands 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. Tidal 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.).

1. In the application of administrative discretion, the Department 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.

(b) The Department shall issue a permit pursuant to the Coastal Area Facility Review Act (CAFRA) only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;

2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;

3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;

4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;

6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and

7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region.

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)lvii, 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".

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

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

Deleted former (a) and (c); recodified former (b) as (a).

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

Added (b).

Case Notes

Definition of "impervious cover" established by Department of Environmental Protection (DEP) in connection with subchapters of Coastal Zone Management (CZM) rules pertaining to development intensity was not arbitrary or otherwise impermissible, despite its inclusion in "impervious cover" of types of cover described in earlier rules as "permeable cover," where intervening rules removed distinction between impervious and permeable cover, establishing single permissible development intensity regardless of which form of cover was utilized, and where change in definition was supported by DEP's experience with permeable paving. In the Matter of the Protest of Coastal Permit Program Rules, 807 A.2d 198, 354 N.J.Super. 293.

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 or destroyed, that is, replacement in kind within the same watershed. The Department 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 coastal policies (N.J.A.C. 7:7E-1.5(a)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 3.49).

(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).

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

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

In (a), substituted "Department" for "Program" in the second sentence and substituted "3.9" for "3.48" in the third sentence.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (a), amended N.J.A.C. references.

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).

7:7E-1.8 Definitions

(a) The Coastal Zone Management rules 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 Coastal Zone Management rules and the principles defined in N.J.A.C. 7:7E-1.5(a), 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 Coastal Zone Management rules.

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

"Bulkhead" means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a "revetment" or a "gabion" as defined elsewhere in this section.

"CAFRA area" means the "coastal area" defined in the Coastal Area Facility Review Act at N.J.S.A. 13:19-4.

"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 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement 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. 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 structure 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).

“11-digit hydrologic unit code area” means an area within which water drains to a particular receiving surface water body, which area is identified by an 11-digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled “Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey.” The HUC codes of New Jersey can be downloaded from www.njgeodata.state.nj.us. The HUC 11 data is entitled “subwatersheds.” Software designed for use with Geographic Information Systems (GIS) will be required to view that downloaded data.

“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.

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

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

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

“Linear development” means a development with the basic function of connecting two points, such as a road, drive, pub-

lic walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line.

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

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

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

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

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

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

“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.

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

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

“Reconstruction” means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the area covered by buildings and/or asphalt or concrete pavement and does not result in a change in the use of the development. Reconstruction of docks and piers means repair or replacement in the same location and size of the preexisting structure. Reconstruction does not include repairs or maintenance, such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with

enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.1(c)4.

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

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

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

“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 racquetball courts.

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

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

New Rule, R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SPECIAL AREAS

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

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

7:7E-3.1 Purpose and scope

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

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

(2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.

(i) 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).

(a) deleted old text and inserted new; old (b) deleted; (b)1 now (b) and text "but may be ... N.J.A.C. 7:7E-4.4(i)" added; rest of section recodified.

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

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

Mitigation ratio, sites and exemptions specified at (b)1.

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).

Rewrote the section.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (b), amended N.J.A.C. references.

Case Notes

Property owners who sought permission to construct a bulkhead on property adjacent to bay failed to establish that water dependent use existed which would justify the inevitable destruction of the intertidal shallows. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Application for permit to construct dock was properly denied given adverse impact on shallow aquatic environment. *Mangel v. Njdep/LUR*, 95 N.J.A.R.2d (EPE) 133.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

7:7E-3.16 Dunes

(a) A dune is a wind or wave deposited or man-made formation of sand (mound or ridge), that lies generally parallel to, and landward of, the beach and the foot of the most inland dune slope. "Dune" includes the foredune, secondary or tertiary dune ridges and mounds, and all landward dune ridges and mounds, as well as man-made dunes, where they exist (see Appendix, Figure 1, incorporated herein by reference).

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse longterm impacts on the natural functioning of the

beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component of a Department approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7E-3A);

3. Limited stairs, walkways, pathways and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7E-3A;

5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7E-3A;

6. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7E7.11(e); and

7. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1).

(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year still-water flood elevation and seaward of the dune crest, is equal to or less than 1,100 square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

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

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

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

(b) deleted; new (b)-(f) added; (c) recodified to (h).

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on filled water's edge deleted.

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.428, effective October 16, 2000.

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

In (a), inserted "and mounds," following "tertiary dune ridges" in the introductory paragraph; and in (c), substituted "1,100" for "540" preceding "square feet" in the second sentence.

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

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

In (a), inserted "and all landward dune ridges and mounds," preceding "as well as man-made dunes," in the introductory paragraph; in (b)6, substituted "coastal engineering rule at" for "use conditions of" preceding the N.J.A.C. reference.

7:7E-3.17 Overwash areas

(a) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune (see Appendix, Figure 1).

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.
2. The landward limit of the overwash area is the inland limit of sediment transport.
3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

(b) Development is prohibited on overwash areas, except for development that has no prudent or feasible alternative in an area other than an overwash area, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. Examples of acceptable activities are:

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runoff;
4. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7E-7.11(e);
5. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
6. Removal of newly deposited overwash fans from public roads and or developed lots; and
7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards

should be included in all beach and dune management plans for oceanfront locations.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7E-3.16(c).

(d) A single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable provided that it meets the following conditions:

1. The site is located within an area currently used and zoned for beach related commercial use, and is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility meets all the requirements of the Flood Hazard Area Rule, N.J.A.C. 7:7E-3.25.

(e) Any development determined to be acceptable at (b) through (d) above 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 5B.

(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).

Substantially amended and recodified.

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on existing lagoon edges deleted.

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 (d), rewrote the introductory paragraph; inserted a new (e); and recodified former (e) as (f).

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)4, substituted "coastal engineering rule at" for "use conditions of" preceding the N.J.A.C. reference.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (d)4, deleted "flood proofing" preceding "requirements".

7:7E-3.18 Coastal high hazard areas

(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA), and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. (see Appendix, Figure 2 incorporated herein by reference). The Coastal High Hazard Area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.

(b) Residential development, including hotels and motels, is prohibited in coastal high hazard areas except for single family and duplex infill developments that meet the standards of N.J.A.C. 7:7E-7.2(e) or (f) or development in Atlantic City in accordance with (g) below.

(c) In general, commercial development is discouraged in coastal high hazard areas.

(d) Beach use related commercial development in coastal high hazard areas is conditionally acceptable within areas that are already densely developed, provided that:

1. The site is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility complies with all the requirements at N.J.A.C. 7:7E-3.25, Flood hazard areas.

(e) Any development determined to be acceptable at (c) and (d) above 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.

(f) All permanent structures shall be set back a minimum of 25 feet from oceanfront shore protection structures, typically including bulkheads, revetments and seawalls and occasionally jetties and groins if constructed at inlets. This condition is applicable only to shore protection structures that are of sufficient height and strength to provide resistance to storm waves. This condition does not apply to development in accordance with (g) below.

(g) The following development in Atlantic City is acceptable in Coastal High Hazard Areas provided it meets the standards of N.J.A.C. 7:7E-3.49:

1. Development on or over existing ocean piers;
2. Pilings necessary to support development proposed on or over existing ocean piers; and
3. Development on or over the Boardwalk.

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

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

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

Substantially amended.

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on natural water's edge floodplains deleted.

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.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

In (b), changed N.J.A.C. reference; and added (e).

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

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

Rewrote the section.

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), inserted "or (f)" following "N.J.A.C. 7:7E-7.2(e)".

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (d)4, deleted "flood proofing" preceding "requirements".

7:7E-3.19 Erosion hazard areas

(a) Erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms.

1. Erosion hazard areas may be identified by any one of the following characteristics:

- i. Lack of beaches;
- ii. Lack of beaches at high tide;
- iii. Narrow beaches;
- iv. High beach mobility;
- v. Foreshore extended under boardwalk;
- vi. Low dunes or no dunes;
- vii. Escarped foredune;
- viii. Steep beach slopes;
- ix. Clifed bluffs as adjacent to beach;
- x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;

- xi. High long-term erosion rates; or
- xii. Pronounced downdrift effects of groins (jetties).

2. Erosion hazard areas extend inland from the edge of a stabilized upland area to the limit of the area likely to be eroded in 30 years for one to four unit dwelling structures, and 60 years for all other structures, including developed and undeveloped areas. This distance is measured from the crest of a bluff for coastal bluff areas, the most seaward established dune crest for unvegetated dune areas, the first vegetation line from the water for established vegetated dune areas, and the landward edge of a beach or the eight foot North American Datum (NAD), 1983, contour line, whichever is farther inland, for non-dune areas.

i. An established, unvegetated dune is a dune that has been in place for at least two winter seasons, or has been constructed with the approval of the Department.

ii. An established vegetated dune is a dune with an existing vegetative cover which has been growing on site for at least two growing seasons.

3. The extent of an erosion hazard area is calculated by multiplying the projected annual erosion rate at a site by 30 for the development of one to four unit dwelling structures and by 60 for all other developments.

(b) Development is prohibited in erosion hazard areas, except for:

1. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);

2. Shore protection activities which meet the appropriate Coastal Engineering Use Rule (N.J.A.C. 7:7E-7.11);

3. Single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable provided that it meets the following conditions:

i. The site is located within an area currently used and zoned for beach related commercial use, and is landward of and adjacent to the boardwalk;

ii. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;

iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded;

iv. The facility meets all the requirements of the Flood Hazard Areas rule (N.J.A.C. 7:7E-3.25); and

v. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B;

4. Single family and duplex developments that meet the standards of N.J.A.C. 7:7E-7.2(e) or (f);

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A;

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A; and

7. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:

i. Development on or over existing ocean piers;

ii. Pilings necessary to support development proposed on or over existing ocean piers; and

iii. Development on or over the Boardwalk.

(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).

Old (b) deleted; (b)1.-2. recodified to (b)-(c); old (c) now (d).

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on alluvial flood margins deleted.

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.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

In (b)4, changed N.J.A.C. reference.

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), rewrote the introductory paragraph and added v in 3, and added 7.

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)4, inserted "or (f)" following "N.J.A.C. 7:7E-7.2(e)".

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (b)3iv, added N.J.A.C. reference.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (b)3iv, deleted "flood proofing" preceding "requirements".

7:7E-3.20 Barrier island corridor

(a) Barrier island corridors are the interior portions of oceanfront barrier islands, spits and peninsulas. Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.

1. The oceanfront barrier island corridor encompasses that portion of barrier islands, spits and peninsulas (narrow land areas surrounded by both bay and ocean waters and connected to the mainland) that lies upland of wetlands, beach and dune systems, filled water's edges, and existing lagoon edges. Barrier island corridor does not include the

headlands of northern Ocean County, Monmouth County, and the southern tip of Cape May County, which are part of the mainland.

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(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).

(b): Old text deleted and new text added; (b)1 through (c) recodified to (c)-(e).

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on beaches deleted.

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).

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

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

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities;

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A; and

9. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:

- i. Development on or over existing ocean piers;
- ii. Pilings necessary to support development proposed on or over existing ocean piers; and
- iii. Development on or over the Boardwalk.

(c) Public access and barrier free access to beaches and the water's edge is encouraged. Coastal development that unreasonably restricts public access is prohibited.

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

(Agency Note: N.J.A.C. 7:7E-3.16 through 3.32 are Special Water's Edge Areas. Within these sections, N.J.A.C. 7:7E-3.16 through 3.19 belong to the Oceanfront, and Raritan and Delaware Bayfronts subcategory.)

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).

Repeal and New Rule, R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on overwash fans deleted.

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).

Inserted (b)9.

Case Notes

Sand areas adjacent to bay were "beaches," albeit only minimal ones, that were subject to coastal permit program rules governing beaches, for purposes of property owners' application for permit to construct bulkhead. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Public Trust Doctrine requires that once a municipality permits swimming in an area of public beach, it cannot restrict the right of all who wish to swim from doing so; municipal ban on swimming in water adjoining beach owned by religious order whose members were permitted to swim is a violation of the equal protection and due process clauses. *Capano v. Boro. of Stone Harbor*, 530 F.Supp. 1254 (D.N.J. 1982).

7:7E-3.23 Filled water's edge

(a) Filled water's edge areas are existing filled areas lying between wetlands or water areas, and either the upland limit of fill, or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge (see Appendix, Figure 4, incorporated herein by reference).

(b) The "waterfront portion" is defined as a contiguous area at least equal in size to the area within 100 feet of navigable water, measured from the Mean High Water Line (MHWL). This contiguous area must be accessible to a public road and occupy at least 30 percent of its perimeter along the navigable water's edge.

(c) On filled water's edge sites with direct water access (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development shall comply with the following:

1. The waterfront portion of the site shall be:

i. Developed with a water dependent use, as defined at N.J.A.C. 7:7E-1.8;

ii. Developed with an at-grade deck provided:

(1) The deck is open to the general public;

(2) The use of the deck is water oriented;

(3) The deck is not enclosed; and

(4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or

iii. Left undeveloped for future water dependent uses;

2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

3. On large filled water's edge sites, of about 10 acres or more upland acres, where water-dependent and water-oriented uses can co-exist with other types of development, a greater mix of land uses may be acceptable or even desirable. In these cases, a reduced waterfront portion, that is, less than that provided by a 100 foot setback, may be acceptable provided that non-water related uses do not adversely affect either access to or use of the waterfront portion of the site.

(d) On filled water's edge sites without direct access to navigable water, the area to be devoted to water related uses will be determined on a case-by-case basis.

(e) On filled water's edge sites with an existing or pre-existing water dependent use, that is, one existing at any time since July of 1977, development must comply with the following additional conditions:

1. For sites with an existing or pre-existing marina, development that would reduce the area currently or recently devoted to the marina is acceptable if:

i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area (N.J.A.C. 7:7E-3.10) is increased by one and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

ii. Marina services are expanded in capacity and upgraded (that is, modernized) to the maximum extent practicable; and

iii. In-water or off site boat storage capability is demonstrated or upland storage is provided to accommodate at least 75 percent of the marina's boats, as determined by maximum slip capacity, 26 feet in length and longer, and 25 percent of the marina's boats less than 26 feet in length.

2. For sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

(f) In waterfront areas located outside of the CAFRA zone the water dependent use may be a public walkway, provided the upland walkway right-of-way is at least 30 feet wide, unless there are existing onsite physical constraints which cannot be removed or altered to meet this requirement.

(g) The 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.

(h) Along the Hudson River and in other portions of the Northern Waterfront and Delaware River Region, where water dependent uses are deemed infeasible, some part of the waterfront portion of the site may be acceptable for non-water dependent development under the following conditions:

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;

2. The developed land uses closest to the water's edge are water oriented;

3. Currently active maritime port and industrial land uses are preserved;

4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and

5. All other coastal rules are met.

(i) On all filled water's edge sites, development must comply with the Public Access to the Waterfront Rule (N.J.A.C. 7:7E-8.11). Public access to the waterfront will not be required at single family or duplex residential lots along the waterfront, which are not part of a larger development.

(j) 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).

(a)2 text deleted "if no shore ... erosion hazard area." (b) deleted; (b)1i.-ii. recodified to (b)1.-2.; (b)2 deleted.
Repeal and New Rule, R.1990 d.413, effective August 20, 1990.

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

Text on erosion hazard areas deleted.

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 (g).

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

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

In (c), substituted "development shall comply with the following:" for "development must comply with the following conditions:" in the introductory paragraph and rewrote 1.

Case Notes

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

7:7E-3.24 Existing lagoon edges

(a) Existing lagoon edges are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. Existing Lagoon Edges extend upland to the limit of fill, or the first paved public road or railroad generally parallel to the water area, whichever is less.

(b) Development of existing lagoon edges is acceptable provided:

1. The proposed development is compatible with existing adjacent land and water uses;

2. Existing retaining structures are adequate to protect the proposed development;

(c) The Department will review proposals on a case-by-case basis.

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

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

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

Text on special hazard areas recodified to 3.41; text on critical wildlife habitats recodified from 3.37.

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (a)3, deleted “, Game” following “Fish” throughout.

7:7E-3.40 Public open space

(a) Public open space constitutes land areas owned or maintained by State, Federal, county and municipal agencies or private groups (such as conservation organizations and homeowner’s associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Public open space also includes, but is not limited to, State Forests, State Parks, and State Fish and Wildlife Management Areas, lands held by the New Jersey Natural Lands Trust (N.J.S.A. 13:1B-15.119 et seq.), lands held by the New Jersey Water Supply Authority (N.J.S.A. 58:1B-1 et seq.) and designated Natural Areas (N.J.S.A. 13:1B-15.12a et seq.) within DEP-owned and managed lands.

(b) New or expanded public or private open space development is encouraged at locations compatible or supportive of adjacent and surrounding land uses.

(c) Development that adversely affects existing public open space is discouraged.

(d) Development within existing public open space is conditionally acceptable, provided that the development is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7E-3.49(e) through (j).

(f) Provision of barrier free access to public open space is encouraged.

(g) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13). The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

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

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

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

Text on excluded Federal lands recodified to 3.42; text on public open space recodified from 3.38.

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).

Inserted a new (e); and recodified former (e) through (g) as (f) through (h).

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

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

In (d), deleted “complies with the Rules on Coastal Zone Management and” preceding “is consistent with”.

7:7E-3.41 Special hazard areas

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11bk are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include appropriate mitigating measures to protect the public health and safety.

(c) Approvals from the Department’s Division of Solid and Hazardous Waste shall be obtained prior to the commencement of any hazardous substance investigations or cleanup activities at contaminated sites.

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

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

Added text in (b), “and areas where ... including adjacent areas.”

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

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

Text on special urban areas recodified to 3.43; text on special hazard areas recodified from 3.39, with reference to N.J.S.A. 58:10-23.11b-k added at (a) and (c) added.

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

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

In (c), substituted “Department’s Division of Solid and Hazardous Waste shall” for “DEP’s Division of Hazardous Waste management shall”.

7:7E-3.42 Excluded Federal lands

(a) Excluded Federal lands are those lands, the use of which is, by law, subject solely to the discretion of or held in

trust by the Federal Government, its officers or agents. These lands are excluded from the coastal zone as required by Section 304 of the Federal Coastal Zone Management Act.

1. The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.

(b) Federal actions on excluded Federal lands that affect any land or water use, or natural resource of the coastal zone shall be consistent with the Coastal Zone Management rules to the maximum extent practicable. The effects on the land or water use or natural resource maybe direct, indirect, cumulative, secondary or reasonably foreseeable effects.

(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).

Added text in (b), "They are listed ... at page 370."
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Pinelands National Reserve and Pinelands Protection Area recodified to 3.44; text on excluded Federal lands recodified from 3.42.
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.

7:7E-3.43 Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(b) Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged, when an alternative which is more beneficial to the special urban areas is feasible. Development that would be of economic and social benefit and that serves the needs of local residents and neighborhoods is encouraged.

(c) Housing, hotels, motels and mixed use development, which is consistent with the Public Access to the Waterfront rule (N.J.A.C. 7:7E-8.11) and the Hudson River Waterfront Area rule (N.J.A.C. 7:7E-3.48) where applicable, including those provisions relating to fishing access as appropriate are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;

2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or

3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

(d) Housing, hotels, motels and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the filled water's edge rule at N.J.A.C. 7:7E-3.23, and public access is provided for, as required by the public access to the waterfront rule at N.J.A.C. 7:7E-8.11.

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

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

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

Added text in (c) "and the Hudson River Waterfront Policy (7:7E-3.46) where applicable".
Amended by R.1990 d.413, effective August 20, 1990.
See: 22 N.J.R. 1188(a), 22 N.J.R. 2542(b).

Text on Hackensack Meadowlands District recodified to 3.45; text on special urban areas recodified from 3.41, with the addition of Commercial Twp., Gloucester City, Kearny, Paulsboro, Pennsauken, Penns Grove, Pleasantville, Salem and Woodbury.
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).

Rewrote (a); in (d), inserted "the public access to the waterfront rule at" preceding "N.J.A.C. 7:7E-8.11".

7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;

2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;

3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;

4. A single crossing is used where feasible;

5. There is no reduction of the total width and volume of the water body passing under the bridge;

6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and

7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;

2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and

3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

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

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

Text on Hudson River Waterfront Area recodified to 3.48; text on wild and scenic river corridors recodified from 3.44, expanded to include those corridors protected under the Federal Wild and Scenic River Act (16 U.S.C. §§ 1271-1278); development restricted by new (b)4 and 5.

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.

7:7E-3.47 Geodetic control reference marks

(a) Geodetic control reference marks are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, c.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb,

ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

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

New Rule 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 on geodetic control reference marks recodified from 3.45.

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

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

7:7E-3.48 Hudson River Waterfront Area

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level.

2. "The Hudson River Waterfront Area" extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee subject to the Waterfront Development Law.

3. "Landward end of pier" means the end of the pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.

5. "Pier deck level" means the lowest deck surface that is at or above the flood hazard area design flood elevation as defined at and determined in accordance with N.J.A.C. 7:13.

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.

(b) Non-industrial development within the Hudson River Waterfront Area shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing and public access. Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal Zone Management rules with particular attention given to N.J.A.C. 7:7E-3.40, Public open space, N.J.A.C. 7:7E-3.41, Special hazards areas, N.J.A.C. 7:7E-3.43, Special urban areas, N.J.A.C. 7:7E-7.14, High rise structures, N.J.A.C. 7:7E-8.11, Public access to the waterfront, N.J.A.C. 7:7E-8.12, Scenic resources and design, and N.J.A.C. 7:7E-8.4, Water quality.

(d) The following standards apply to all developments proposed on piers and will be used by the Department as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under rules that regulate upland development.

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of landward open space} = \frac{(ABH)^2}{40 \text{ feet}} - (2 \times ABH) + 60 \text{ feet}$$

Example:	Average Height	Minimum Landward Open Space Length
	80 feet	60 feet
	70 feet	42.5 feet
	60 feet	30 feet
	50 feet	22.5 feet
	40 feet	20 feet;

iii. The minimum length of distal public open space at the waterward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

iv. The minimum length of public open space at the waterward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of waterward open space} = \frac{(ABH)^2}{16 \text{ feet}} - (5 \times ABH) + 120 \text{ feet}$$

Example:	Average Height	Minimum Waterward Open Space Length
	80 feet	120 feet
	70 feet	76 feet
	60 feet	45 feet
	50 feet	26 feet
	40 feet	20 feet;

v. The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) Public open space at each pier end, that covers the full width of the pier, shall be at least 20 feet in length or 70 percent of the minimum length, as determined above at (d)1i through iv above, whichever is greater;

(2) The remaining area of public open space (up to 30 percent of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 percent of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;

vi. At least one public access walkway of at least 16 feet in width shall be provided along the entire length of a pier, from the waterward end to the landward end at the point at which it abuts the Hudson River Waterfront

Walkway. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;

vii. Where piers are less than 400 feet apart, the heights, as allowed by this section, shall be further reduced by 20 percent for each pier. No reduction of open space will be allowed as a result of this height reduction; and

viii. Development that reuses existing structures on piers shall comply with the above criteria to the maximum practical extent; and

ix. All pier structures shall meet the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(e) All waterfront development along the Hudson River shall develop, maintain and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation easement in favor of the Department. The conservation easement shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. With the exception of water dependent industrial uses, all Hudson River pier development shall provide unrestricted, landscaped public access as required by (d) above. Public access on piers shall be on a 24-hour basis, but the Department will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.

2. Water dependent industrial piers shall provide linear public access and/or public access observation nodes as feasible, consistent with public safety.

3. Within all public access corridors and public open space areas on piers, pedestrians shall have a declared right of way over vehicles. Public access corridors may be used for emergency vehicular access, but shall not serve as service or general vehicular roadways. All instances of vehicular/pedestrian crossing shall be designated to assure motorists are aware they are crossing a pedestrian right of way. Stop signs, speed bumps and similar design techniques shall be used as necessary.

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict

compliance with this rule. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

New Rule, 1988 d.338, effective August 15, 1988.

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

Amended by R.1989 d.271, effective May 15, 1989.

See: 20 N.J.R. 1982(a), 21 N.J.R. 1332(b).

Change at (d) from all walkways being 15 feet in width to providing at least one of at least 16 feet in width.

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

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

Text on Hudson River Waterfront Area recodified from 3.46; requirement for easement to DEP added at (e) design standards and guideline references updated.

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

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

In (e), substituted "restriction" for "easement" throughout introductory paragraph.

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

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

In (c), substituted "Zone Management rules" for "Resource and Development Policies"; in (d), substituted "Department" for "Division" and "rules" for "policies" and deleted the last sentence in the introductory paragraph; in (e)1, substituted "Department" for "Division"; rewrote (f).

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(a).

In (c), amended N.J.A.C. references.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Rewrote (a)5 and (d)1ix.

Law Review and Journal Commentaries

Environmental Law. On the Waterfront. Lewis Goldshore and Marsha Wolf, 157 N.J.L.J. 1180.

7:7E-3.49 Atlantic City

(a) Atlantic City is those lands within the municipal boundary of the City of Atlantic City.

(b) "Casino hotels" are hotels with casinos as provided for in the Casino Control Act (P.L. 1977, c.100, as amended).

1. Casino hotel development in Atlantic City shall be located in the city's traditional resort area (along the Boardwalk), and in the State Marina area to the maximum extent practicable. For the purpose of this section, the State Marina area is the area bounded by Clam Creek, Absecon Inlet, Clam Thorofare, Penrose Canal, Absecon Boulevard, Huron Avenue, and Maryland Avenue to Magellan Avenue, across Delta Basin.

i. Casino hotel development is discouraged in existing residential areas and in areas where access by public transportation between the proposed hotel-casino and the Boardwalk is limited.

ii. Casino hotel development is discouraged along the access highways to Atlantic City that is, along the entire Atlantic City Expressway, Route 40 north and west of Beach Thorofare and Route 30 northwest of Penrose Canal.

iii. Casino development is encouraged in Atlantic City to ensure that the objectives of the 1976 constitutional referendum on casino gambling, including the stimulation of new construction and the revitalization of Atlantic City and its region, are achieved.

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

- i. Garden Pier;
- ii. Steel Pier;
- iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;
- iv. Central Pier; and
- v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by the Federal Emergency Management Agency for a hotel to be located over the water.

3. The development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management.

4. A minimum of 50 percent of the total floor area of any building constructed on the pier shall be devoted to publicly accessible, non-casino entertainment and recreation.

5. The height of the structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk,

except for decorative architectural elements and amusement rides which shall not exceed 200 feet. There shall be no occupancy above the 100 foot elevation.

6. The height of the structures on the pier shall not exceed 50 feet above the deck surface of the Boardwalk within 100 feet of the property line in common with the Boardwalk.

7. A building setback of 50 feet shall be maintained from the seaward end of the pier. If a building is 50 feet or more in height, an additional 20 feet setback from the seaward end of the pier is required.

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude such passage;

ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach on the southwesterly side of the pier, where the pier intersects the Boardwalk and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk;

iii. Publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas, shall be provided at the seaward end of the pier at the level of the deck surface of the Boardwalk. The publicly accessible open space shall occupy the entire width of the pier (parallel to the ocean shoreline in a northeast-southwest direction) for a distance of 50 feet landward from the end of the pier. The area between 30 and 50 feet inland from the end of the pier may be occupied by outdoor dining and food concessions and be partially enclosed, through the use of awnings, canopies, and windbreaks. No other structures shall be placed in this area;

(j) Mitigation shall be provided for development within the right-of-way of a street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue, except for those developments listed in (i) above, in accordance with the following:

1. The amount to be paid in mitigation shall be calculated as follows:

i. For development within a street right-of-way at grade, or below a height of 14 feet six inches above grade, the amount of mitigation is five times the property tax on the assessed value of the right-of-way area to be developed. The assessed value is an average of the value of the land on both sides of the area to be developed; and

ii. For development within a street right-of-way at a height of 14 feet six inches or greater above grade, the amount of mitigation is three times the Atlantic City tax on the assessed value of the right-of-way area to be covered by development. The assessed value is an average of the value of the land on both sides of the right-of-way area to be covered by development;

2. Mitigation monies shall be paid in full to the Casino Reinvestment and Development Authority prior to the commencement of construction; and

3. Mitigation monies paid to the Casino Reinvestment and Development Authority in accordance with (j)1 and 2 above, shall be designated only for acquisition and/or improvement of lands for public access and public parks along the oceanfront and inlet. If the money is used for these improvements within a street-end, the money shall be used only in a street-end listed in (f) above.

(k) Standards relevant to intercept parking are as follows:

1. Each hotel-casino facility located in Atlantic City shall provide one of every five non-Absecon Island and non-Brigantine Island resident hotel-casino employees commuting during the daily peak hour with an intercept space. Absecon Island residents are residents of Atlantic City, Margate, Ventnor and Longport. Brigantine Island residents are residents of the City of Brigantine. Nobsecon Island and non-Brigantine Island resident employees commuting during the daily peak hour is the sum of the number of non-Absecon Island and non-Brigantine Island resident employees of the shift with the largest number of employees plus the number of non-Absecon Island and non-Brigantine Island resident employees of the next largest adjoining shift. This intercept parking space shall be located off Absecon and Brigantine Islands, specifically outside of the municipal boundary of the five municipalities identified above. If off-island sites are not available, temporary use of other sites is conditionally acceptable if an applicant can demonstrate that it will be moved to an off-island site within one year.

2. Alternatives that would reduce vehicle miles traveled and peak hour employee travel demand may be

substituted for the employee intercept parking space requirements for casino facilities. The Department will review proposed alternatives in consultation with the Department of Transportation. The Department will approve alternatives, which it determines will reduce vehicle miles traveled and peak-hour employee travel by at least as much as would result from furnishing intercept parking as described above. Acceptable alternatives include, but are not limited to, employee subsidies for bus, rail transit, van pools, and/or bicycle programs.

3. Alternative scheme proposals must include documentation indicating the existing travel pattern and mode of travel characteristics of non-Absecon and non-Brigantine Island resident employees. This information shall be provided to the Department along with the necessary data used to establish the vehicle miles traveled and peak hour employee travel demand with and without the proposed peak hour traffic reduction program. All proposals shall include a monitoring program to be submitted to the Department to verify the success of the proposed traffic reduction program, update the employee travel characteristics pattern, and serve as a basis for future adjustments if necessary.

(l) Development in Atlantic City shall be constructed in conformance with this section and with all other applicable provisions in this chapter.

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

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Purpose and scope

(a) This subchapter sets forth the standards applicable to routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks. These standards are referenced at N.J.A.C. 7:7E-3.16, Dunes; N.J.A.C. 7:7E-3.17, Overwash areas; N.J.A.C. 7:7E-3.19, Erosion hazard areas; N.J.A.C. 7:7E-3.22, Beaches; and N.J.A.C. 7:7E-7.11, Coastal engineering. In addition, N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 are the standards for the coastal general permit for beach and dune maintenance activities, N.J.A.C. 7:7-7.6.

1. The standards applicable to routine beach maintenance, including debris removal and clean-up; mechanical sifting and raking; maintenance of access ways; removal of sand from street ends; boardwalk promenades and residential properties; repairs or reconstruction of existing gazebos and dune walkover structures, and limited sand transfers from the lower beach to the upper beach or alongshore are found at N.J.A.C. 7:7E-3A.2;

2. The standards that apply to the restoration of all beaches that are impacted by coastal storms with a recurrence interval to or exceeding a five-year storm event are found at N.J.A.C. 7:7E-3A.3;

3. The standards for dune creation and maintenance including the placement and/or repair of sand fencing, the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width; and the construction or repair of approved dune walkover structures are found at N.J.A.C. 7:7E-3A.4; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. 7:7E-3A.5.

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

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

Former N.J.A.C. 7:7E-3A.1, Standards applicable to routine beach maintenance, recodified to N.J.A.C. 7:7E-3A.2.

7:7E-3A.2 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand from street ends, boardwalks/promenades and residential properties; the repair or reconstruction of existing boardwalks, gazebos and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance.

1. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the DEP, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

2. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Land Use Regulation Program is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

3. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*) and Least Terns (*Sterna albifrons*), no beach raking or other mechanical manipulation of the beach shall take place between April 1 and August 15.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting season. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and be available upon request from the Department's Land Use Regulation Program at PO Box 439, Trenton, New Jersey 08625-0439 (609) 292-0060. The updated list shall be provided by the Department to each permittee prior to April 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (a)3i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no beach raking or other mechanical manipulation of the beach shall take place between April 1 and August 15 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (a)3i above, but is subsequently found to contain a nest of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no beach raking or mechanical manipulation of the beach shall take place between April 1 and August 15 in those areas.

iv. The restrictions contained in (a)3 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Land Use Regulation Program, PO Box 439, Trenton, New Jersey, 08625-0439; and

4. Mechanical sifting and beach raking shall be limited to recreational beach areas only. For the purposes of this subsection, "recreational beach area" means all areas within 100 yards of a staffed lifeguard stand.

(b) Projects involving the mechanical redistribution of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

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:

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

7:7E-7.1 Purpose and scope

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules 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).

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.

Amended by R.2004 d.43, effective January 20, 2004.

See: 35 N.J.R. 2801(a), 36 N.J.R. 442(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-4.10) 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:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (e)2i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach

nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the Dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)10i below, unless the development meets either (e)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located

landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

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

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

6. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

7. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

8. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25;

9. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

10. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot

setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)10i above;

11. The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(f);

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

(f) Standards relevant to the expansion, or reconstruction (with or without expansion), of a legally constructed habitable 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:

1. Development shall comply with N.J.A.C. 7:7E-3.22, Beaches, 7:7E-3.27, Wetlands, 7:7E-3.28, Wetland buffers, and 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (f)2i through iv below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at

(f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal flood insurance rate map;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The single family home or duplex legally existed on July 19, 1993;

(2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;

(3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;

(4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single

family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the Dunes rule, N.J.A.C. 7:7E-3.16, if the development meets the following criteria:

(1) The development is the enclosure of a deck, patio, or porch;

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single family home or duplex, as defined at N.J.A.C. 7:7-1.3;

(3) The deck, patio, or porch legally existed on July 19, 1993;

(4) The deck, patio, or porch abuts the dwelling;

(5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;

(6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;

(7) The dune area waterward of the single family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

3. Development shall comply with N.J.A.C. 7:7E-3.31, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7E-3.31(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)10i below, unless the development meets either (f)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of

existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the Coastal High Hazard Areas rule, N.J.A.C. 7:7E-3.18, or Erosion Hazard Areas rule at N.J.A.C. 7:7E-3.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

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

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

6. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

7. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

8. The development shall comply with the requirements of the Flood hazard areas rule at N.J.A.C. 7:7E-3.25.

9. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

10. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction in a form approved by the Department is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)10i above;

11. The standards for the development of a single family home or duplex are found at N.J.A.C. 7:7E-7.2(e);

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

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

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

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

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and inter-

sections, shade trees, and pedestrian controlled traffic lights.

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

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

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

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

Section substantially amended.

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

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

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

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

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

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

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

Public Notice: Notice of Receipt of and Action on a Petition for Rulemaking.

See: 29 N.J.R. 5333(b); 30 N.J.R. 494(a).

Administrative correction.

See: 30 N.J.R. 217(a).

Petition for Rulemaking.

See: 30 N.J.R. 2525(a), 30 N.J.R. 4077(a).

Amended by R.1998 d.571, effective December 7, 1998.

See: 30 N.J.R. 1679(a), 30 N.J.R. 4210(b).

Rewrote (e)1iii(3).

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)3, rewrote the second sentence.

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

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

Deleted former (e), inserted new (e) and (f), and recodified former (f) as (g).

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.

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (e)8 and (f)8, deleted "elevation and flood proofing" preceding "requirements" and substituted "Flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "National Flood Insurance Program regulations at 44 CFR Chapter 1".

Case Notes

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

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

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

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

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

7:7E-7.3 Resort/recreational use

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

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

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

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

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

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

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

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

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

(d) Standards relevant to marinas are as follows:

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

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

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

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

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

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

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. 7:7E-8.21; or

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

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

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

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

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

6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause

minimum feasible interference with the commercial boating industry.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. For the purposes of this subsection, "amusement pier" means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, "amusements" includes rides, games of skill or chance for prizes other than cash payoffs, vendors of toys and/or other merchandise. "Amusements" do not include games for cash payoffs, or bars or restaurants;

2. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;

ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;

iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;

iv. The pier expansion is constructed on pilings at the same elevation as the existing pier; and

v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion.

3. The expansion of a pier qualifying for a General Permit under N.J.A.C. 7:7-7 is acceptable.

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

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

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

Marina redefined; pump out requirements specified further.
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), deleted N.J.A.C. reference; and in (e), inserted a new I, and recodified former I through 3 as 2 through 4.

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

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

In (d)2iii(2), amended the N.J.A.C. reference.

Case Notes

CAFRA definition of "facilities" includes cabanas. *State, Dept. of Environmental Protection v. Stavola*, 206 N.J.Super. 213, 502 A.2d 63 (App.Div.1985) reversed 103 N.J. 425, 511 A.2d 622 (1986).

Resort-recreation uses have priority over all other uses with highest priority reserved for those uses that serve a greater rather than a lesser number of people; rationale (citing former N.J.A.C. 7:7E-8.13). *Lusardi v. Curtis Point Property Owners Assn.*, 86 N.J. 217, 430 A.2d 881 (1981).

Permit to install septic systems by filling in area back of bay was not issuable absent satisfaction of waterfront development criteria. *Myles v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 232.

7:7E-7.3A Marina development

(a) The following pertains to marina project design:

1. The following should be followed to promote water quality in the marina basin:

i. Basin depths must never exceed the depths of access channels nor the open water to which the basin is connected.

ii. Deep-draft slips shall be constructed in naturally deep portions of the site in order to minimize the need for dredging.

iii. Floating breakwaters are preferred in low-energy areas (where wavelengths are less than twice the width of the breakwater).

iv. Sharp angles are to be avoided; corners should be gently rounded, never square.

v. Basin depths should uniformly deepen toward the exit and waterway outside the basin.

vi. Entrance channels should not be located on corners.

vii. Where possible, entrance channels should be oriented in the direction of the prevailing winds to promote wind-driven circulation.

viii. Enclosed basins should include openings at opposite ends to promote circulation.

ix. Slips should be oriented parallel to currents, never broadside; this promotes circulation and reduces the load on the pier structure.

x. Fuel pumps shall include back pressure cut-off valves. Main cut-off valves shall be available both at the dock and in the upland area of the marina.

xi. Fuel docks should be sturdy using a floating design wherever possible in order to withstand significant storm affected tidal ranges.

xii. To control stormwater runoff, upland portions of the site should include water quality features such as detention basins and limit pollutants from entering the waterway.

2. Sloping rip-rap bulkheads are preferred over solid vertical structures; they better dissipate wave energy and provide a more diverse habitat for marine organisms.

3. To avoid standing waves, bulkheads should never be parallel to one another.

4. To minimize the impact on the photic zone, dock and pier widths should be minimized. In addition, the structures should stand as high above mean high water as possible and should be oriented north-south to the maximum extent practicable.

5. The distance from a parked car to a slip should never exceed 180 meters.

6. Septic systems shall be installed with a minimum setback of 100 feet and in soils with a minimum depth to the seasonal high water table of four feet or more.

7. For safety, the usable width of the entrance channel should be at least four times the beam of the widest expected vessel, or a minimum of 19 meters.

8. The marina shall provide pumpout station(s) (fixed or portable). Marinas which allow occupation of berthed vessels for a period of 72 hours or more shall provide slipside pumpout facilities.

9. The marina shall provide abundant trash receptacles along with adequate fish cleaning areas, including separate and well-marked dispensers for organic refuse.

10. Ample parking facilities shall be provided, with a minimum of 0.6 spaces per slip (the number will range from 0.6 to 2.5 spaces per slip, depending on the nature of the marina).

11. The design should include an aesthetically pleasing landscape design.

12. Maintenance areas shall be screened by proper landscaping and shall include techniques which will prevent materials from entering the water.

13. The fueling facility shall be designed to accommodate four of the largest expected vessels.

14. For safety, the turning area of the basin should be at least 2.25 times the length of the longest expected vessel.

15. Marinas shall provide restroom facilities according to the following schedule:

i. For a small marina (up to 40 boats):

(1) Men: One toilet stall, one urinal, and one washbasin.

(2) Women: Two toilet stalls and one washbasin.

ii. For a small "quality" or medium marina (40 to 80 boats):

(1) Men: One urinal, one toilet stall, one shower stall, and one washbasin.

(2) Women: Two toilet stalls, one washbasin, and one shower stall.

iii. For a large marina (over 80 boats):

(1) Add:

(A) One urinal per 30 boats (men);

(B) One toilet stall per 60 boats (men);

(C) One toilet stall per 30 boats (women);

(D) One washbasin per 30 boats (men and women);

(E) One shower stall per 60 boats (men and women).

16. For safety, comfort, and to avoid interference with commercial boating activity, marinas will be designed such that wave heights do not exceed two to four feet in the entrance channel and one to 1.5 feet in the berthing area. Such a design will assume four foot external wave conditions.

17. The marina shall develop and implement a recycling plan for solid waste as appropriate to county requirements.

(b) The following pertains to marina construction:

1. Only high-grade, slow leaching wood preservatives shall be used on pilings and other dock/pier woods.

2. If dredging is necessary, it shall be scheduled around critical life stages of marine organisms.

3. Dredging shall take place during the colder months when the dissolved oxygen levels are naturally high.

4. Erosion and sediment controls shall be in place prior to construction.

5. Where appropriate (currents under 1.5 knots), sediment curtains shall be used during dredging.

6. Clean dredged material with adequate grain size shall be used for beach nourishment.

(c) The following pertains to marina operation:

1. The marina must have available adequate floating containment booms and absorbent materials in the event of hydrocarbon spills. Employees shall be trained in the deployment and proper usage of such equipment.

2. Operators shall immediately notify the Department and the Coast Guard of all significant hydrocarbon spills.

3. Operators shall take immediate action in the event of a spill, including boom deployment and spreading of absorbent materials.

4. Waste receptacles shall be emptied daily.

5. Boat maintenance shall be undertaken as far from the water as possible.

6. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well-ventilated condition.

7. No-discharge signs shall be posted through-out the marina basin.

New Rule, R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

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

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)6. substituted "dredged material" for "dredge spoil"; in (c)2, substituted "the Department" for "DEP".

7:7E-7.4 Energy facility use rule

(a) Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in Special Areas as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

i. The CAFRA area; and

ii. The Western Ocean, Southern, Mullica Southern Ocean, Great Egg Harbor River and Delaware Estuary regions, as defined at N.J.A.C. 7:7E-5A.2(d);

3. Public access to and use of the waterfront and tidal waters shall be maintained and, where feasible, enhanced in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.11; and

4. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.12.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

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

(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is discouraged, as long as there are other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, which have not been fully explored. Should exploration occur and commercially recoverable amounts of oil or natural gas be found, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

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

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including, but not limited to, facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in the Urban Area, Delaware River and Northern Waterfront regions and discouraged in the CAFRA area.

i. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry.

ii. Small facilities for storing oil spill containment and cleanup equipment for offshore operations, and emergency crew transport facilities, including crew boat operations, will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location would facilitate and expedite offshore emergency operations.

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

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in the Urban Area, Delaware River and Northern Waterfront regions, which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

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

(g) Standards relevant to repair and maintenance facilities are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Urban Area, Delaware River and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area as defined at N.J.A.C. 7:7E-1.8, but not on a continual, longterm basis.

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

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged in the CAFRA area and encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia.

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

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by interested Federal, State and local agencies, affected industries, and the general public;

ii. The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rightsofway, to the maximum extent practicable;

iii. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries, will be evaluated in terms of the entire pipeline corridor through the State of New Jersey and its coastal waters;

iv. Pipeline corridors through the State coastal waters shall, to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats;

v. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations;

2. New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines, not specifically identified in this section, are discouraged in the CAFRA area and coastal waters;

3. Oil and gas pipeline related facilities shall provide adequate visual, sound, and vegetative buffers; and

4. Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

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

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. For the purposes of this subsection, the following terms have the following meanings:

i. "Separation" means the removal of free liquids from a gas stream. Free liquids may be either hydrocarbon liquids (which may be processed into fuels such as ethane, butane (and propane) or free water.

ii. "Dehydration" means the removal of water vapor from the gas stream after separation of the liquid from the gas.

2. Separation and dehydration facilities are discouraged in the CAFRA area and coastal waters.

3. Separation and dehydration facilities shall:

i. Provide adequate visual, sound, and vegetative buffers; and

ii. Be reviewed as part of the overall proposed gas transportation system.

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

(k) Standards relevant to gas compressor stations are as follows:

1. "Compressor stations" are facilities located along natural gas pipelines which raise the pressure of the gas in order to transport the resource more efficiently and economically.

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged in the CAFRA area and coastal waters.

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

(l) Standards relevant to gas pigging facility are as follows:

1. A "pig" is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an onshore location called a "pigging facility."

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the CAFRA area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

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

(m) Standards relevant to gas processing plants are as follows:

1. A "gas processing plant" is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the CAFRA area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system.

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

(n) Standards relevant to other gas related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the CAFRA area if adequate visual, sound, and vegetative buffer areas are provided.

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

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the CAFRA area provided they are consistent with all applicable location and resource rules.

2. New oil refineries and petrochemical facilities outside the CAFRA area are encouraged to locate in established industrial areas accessible to their potential labor force and existing infrastructure.

3. New oil refineries and petrochemical facilities are prohibited in the CAFRA area.

4. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the CAFRA area, will be acceptable if such expansion does not violate applicable State air and water quality standards.

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

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the CAFRA area.

2. The storage of crude oil, gases and other potentially hazardous liquid substances is conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

4. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable along the water's edge unless the storage facility is supplied by ship, in which case it is acceptable on the filled water's edge provided the storage facility complies with (p)1, 2 and 3 above.

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

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities are acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multicompany use of existing and new tanker terminals is encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

2. New tanker terminals are discouraged in areas not identified in (q)1 above.

3. Offshore tanker terminals and deepwater ports are discouraged.

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

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable provided:

i. The proposed location and site design of the electric generating facility is the alternative which has the least practicable impacts to the coastal zone, based on a comparative evaluation of alternative sites within the coastal zone and inland.

ii. Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes.

iii. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, the nuclear generating facility shall be located in an area where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

iv. The construction and operation of a nuclear generating station shall not be approved unless the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:1911) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App. Div., certif. den., 75 N.J. 538 (1977)) and Federal law.

v. The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is encouraged in the coastal zone provided that the facilities do not significantly detract from scenic or recreational values. The cogeneration of electricity and process steam for industrial, community and commercial use is also encouraged.

2. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest is conditionally acceptable provided it meets applicable State and Federal laws and standards.

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

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:1910f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. §§ 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including, but not limited to:

(1) The risks inherent in tankering LNG along New Jersey's waterways;

(2) The risks inherent in transferring LNG onshore; and

(3) The compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

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

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

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

NJDOE changed to BPU.

Amended by R.1993 d.549, effective November 15, 1993.
 See: 25 N.J.R. 5(a), 25 N.J.R. 5146(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).
 Rewrote the section.

7:7E-7.5 Transportation use rule

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the rule on location of linear development at N.J.A.C. 7:7E-6.1, and shall be limited to situations where:

i. A clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need;

ii. Provision is made to include construction of bicycle and foot paths, except where these would not be feasible;

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby waterbodies.

iv. Provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible;

v. Visual and physical access to the coastal waters is maintained, to the maximum extent practicable; and

vi. Induced development in conflict with coastal rules would not be expected to result.

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

(b) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.

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

(c) Standards relevant to bicycle and foot paths are as follows:

1. The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb Special Areas, excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26), or subject the user to danger.

3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.

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

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront Development Act (N.J.S.A. 12:5-1 et seq.);

ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or

2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.

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

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

Substantially amended and recodified.

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

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

Intercept parking facilities encouraged/required at (d)3.

Amended by R.1993 d.140, effective April 5, 1993.

See: 24 N.J.R. 1986(a), 25 N.J.R. 1549(a).

Amended to allow alternative traffic reduction programs to be used in place of the employee intercept lot requirement for casinos located in Atlantic City.

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 (d), deleted a former 3 and recodified former 4 as 3.

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

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

In (a)1, substituted "rule on location of linear development at N.J.A.C. 7:7E-6.1," for "Rule on Location of Linear Development".

Amended by R.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

In (c)2, inserted "excluding flood hazard areas (N.J.A.C. 7:7E-3.25) and riparian zones (N.J.A.C. 7:7E-3.26)."

7:7E-7.6 Public facility use rule

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water,

sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(b) Solid waste facility means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. Solid waste facilities are conditionally acceptable provided:

- i. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction are explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable;
- ii. The solid waste facility is not located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b); and
- iii. The solid waste facility complies with the Solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

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

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. The wastewater treatment facility, including sewer lines, is consistent with an approved Water Quality Management (208) Plan;
2. The secondary impacts associated with the facility are consistent with the Coastal Zone Management rules; and
3. The facility shall provide for multiple use of the site, including open space and recreation use, to the maximum extent feasible.
4. Rationale: See the OAL Note at the beginning of this subchapter.

(d) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;
2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and
3. The public facility would not generate significant secondary impacts inconsistent with the Coastal Zone Management rules.

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

Substantially amended and recodified.
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).
Amended by R.2003 d., effective February 3, 2003.

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

7:7E-7.7 Industry use rule

(a) Industry uses are uses that involve industrial processing, manufacturing, storage or distribution activities. These uses include, but are not limited to, electric power production, food and food byproduct processing, paper production, agricultural production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore, subject to the standards of N.J.A.C. 7:7E-7.4.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7E-3.16 and 7:7E-3.32) to the buffers and compatibility of uses rule, N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the public access to the waterfront rule, N.J.A.C. 7:7E-8.11, which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(e) Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(f) The cogeneration of electricity with process steam is encouraged.

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

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

(a)8 added.
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).

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).
Rewrote (a) and (b).

7:7E-7.8 Mining use rule

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the General Land Areas rule, but shall comply with the Special Areas, and General Water Area rules):

1. The location of mining operations, such as pits, plants, pipelines, and access roads, causes minimal practicable disturbance to significant wildlife habitats, such as wetlands and stands of mature vegetation;

2. The location of new or expanded mining operations is generally contiguous with or adjacent to sites of existing mining operations, or probable locations of mineral resources on nearby sites, in order to concentrate and not scatter the location of mineral extraction areas within a region, recognizing that mineral resources occur only in certain limited areas;

3. Buffer areas are provided in accordance with N.J.A.C. 7:7E-8.13, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes and recreation areas. The Buffers and Compatibility of Uses rule (N.J.A.C. 7:7E-8.13) provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development;

4. The mine development and reclamation plan, including the timetable, phasing, and activities of the new or expanded mining operations, has been designed with explicit and adequate consideration of the ultimate reclamation, restoration, and reuse of the site and use of its surrounding region, once the mineral resource is depleted;

5. The mineral extraction areas shall be reclaimed, contoured and replanted to ensure slope stability, control erosion, afford adequate drainage, provide as natural an appearance as possible, and increase the recreation potential of the restored site within two years of the termination of mining operations;

6. The mining operations control and minimize to the maximum extent practicable adverse impacts from noise and dust, surface and groundwater pollution, and disposal of spoils and waste materials and conform to all applicable Federal, State, and local regulations and standards;

7. The mineral extraction operation will not have a substantial or longlasting adverse impact on coastal resources, including local economies, after the initial adverse impact of removal of vegetation, habitat, and soils, and not includ-

ing the long-term irretrievable impact of use of the non-renewable mineral resource; and

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with all other coastal rules.

(b) The proposed mining, extension of existing mining or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the flood hazard areas rule at N.J.A.C. 7:7E-3.25.

(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).

(a)8 added.

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

Disruption of agricultural activities permitted under certain circumstances.

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.2007 d.340, effective November 5, 2007.

See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Section was "Mining Use rule". In (b), substituted "flood hazard areas rule at N.J.A.C. 7:7E-3.25" for "Flood Hazard Control Act (N.J.S.A. 58:16A-50 et seq.)".

7:7E-7.9 Port use rule

(a) Port uses are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Port-related development and marine commerce is encouraged in and adjacent to established port areas. Water-dependent development shall not be preempted by non-water dependent development in these areas.

(c) New port uses outside of existing ports as defined at N.J.A.C. 7:7E-3.11(a) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or expanded ports must also

not interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.

(e) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access, with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(f) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill cleanup storage, is acceptable at the small commercial harbors in the coastal zone.

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

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

Old (b) deleted; (b)1.-5. now (c)-(f); (c) now (g).
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).
Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), amended N.J.A.C. reference.

Law Review and Journal Commentaries

Environmental Law—Waterfront Development. P.R. Chenoweth, 137 N.J.L.J. No. 10, 66 (1994).

Case Notes

Compatibility test is consistent with Waterfront Development Act. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy*, Div. of Coastal Resources, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Developer failed to demonstrate need for new port facility. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy*, Div. of Coastal Resources, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

Evidence supported denial of port development application. *Distributec, Inc. v. New Jersey Dept. of Environmental Protection and Energy*, Div. of Coastal Resources, 274 N.J.Super. 1, 643 A.2d 11 (A.D.1994), certification granted 138 N.J. 266, 649 A.2d 1286, affirmed 139 N.J. 431, 655 A.2d 437.

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

Waterfront development permit sought for containerized freight facility; failure to satisfy requirements for "new port". *Distributec Inc. v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 198.

7:7E-7.10 Commercial facility use rule

(a) Standards relevant to hotels and motels are as follows:

1. Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded or improved hotels and motels are conditionally acceptable provided that the development complies with all Location and Resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

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

(b) Standards relevant to retail trade and services are as follows:

1. Retail and trade service is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rule on Filled Water's Edge (N.J.A.C. 7:7E-3.23) and Special Urban Areas (N.J.A.C. 7:7E-3.43), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

- i. Complies with all applicable Location and Resource rules;
- ii. Is compatible in scale, site design, and architecture with surrounding development; and

iii. Where appropriate, utilizes the water area as the central focus of the development.

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

(c) Standards relevant to convention centers and arenas are as follows:

1. "Convention centers" are facilities designed primarily for holding conventions. "Arenas" are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

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

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

Substantially amended and recodified.

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

References specified in (b)2iii.

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).

Deleted a former (b); and recodified former (c) and (d) as (b) and (c).

7:7E-7.11 Coastal engineering

(a) Coastal engineering includes a variety of structural and nonstructural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, gabions, revetments and seawalls are all examples of coastal engineering.

1. The standards relevant to shore protection priorities in (b) below do not apply to water dependent uses within existing ports.

(b) Standards relevant to shore protection priorities are as follows:

1. Non-structural solutions to shoreline erosion problems are preferred over structural solutions. Vegetative shore protection measures have been proven effective,

and are preferred at shoreline sites in which they are feasible. Feasibility is dependent on the following factors: shoreline geometry; shoreline slope; sediment type; boat traffic; and wind and extent of exposed land/water surface (fetch). The infeasibility and impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable.

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

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as nonstructural shore protection measures, including sand fencing, revegetation, additions of nontoxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged. These projects shall comply with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

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

(d) Standards relevant to beach nourishment are as follows:

1. Beach nourishment projects, such as non-structural shore protection measures, are encouraged, provided that:

i. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;

ii. The elevation, width, slope and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;

iii. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels; and

iv. Public access to the nourished beach is provided in cases where public funds are used to complete the project.

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

(e) Standards relevant to structural shore protection are as follows:

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material is acceptable only if it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the Coastal Zone Management rules;

ii. The structure will not cause significant adverse impacts on local shoreline sand supply;

iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;

iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

v. The structure is consistent with the State's Shore Protection Master Plan;

vi. If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for filling (N.J.A.C. 7:7E-4.10) and all other relevant coastal rules.

2. Maintenance or construction of an existing bulkhead is conditionally acceptable provided that it meets (e)2i, ii or iii below. All measurements shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (e)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead which does not meet (e)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (e)2i or ii above. In such case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

3. Stone rip-rap and sloped concrete and gabion revetments which allow for growth of vegetation are the preferred form of retaining structures.

4. Public access, including parking where appropriate, must be provided to publicly funded shore protection structures and to waterfront land created by public projects, unless public access would create a safety hazard to users. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure are prohibited.

5. The construction of bulkheads subject to wave run-up forces (V-Zones) must be designed and certified by a professional engineer to withstand the forces of wave runoff, and must include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, appropriate subbase and filter cloth must be incorporated into the design. A provision for the use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis, as a means to limit the scour potential.

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

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

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

Section substantially amended and recodified.

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

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

Expansion or fortification of structures included at (e).

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).

Rewrote the section.

Case Notes

Property owners' application for permit to construct a bulkhead on property adjacent to bay failed to satisfy coastal engineering rule establishing standards applicable to structural shore protection, where there was no evidence that approval of construction of bulkhead was essential to protect existing structures. *Muir v. NJ Dept. of Env Protection*, 1999 WL 728289, N.J. Adm., Aug 26, 1999, (No. ESA 02956-98S).

Permit to install septic systems by filling in area back of bay was not issuable absent satisfaction of waterfront development criteria. *Myles v. Department of Environmental Protection*, 95 N.J.A.R.2d (EPE) 232.

Issuance of waterfront development permit did not endanger navigation to adjoining bulkhead and dock. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead and dock permit allowed. *Misiak v. Walker*, 95 N.J.A.R.2d (EPE) 14.

Bulkhead constructed in violation of regulations; removal ordered. *Walker v. New Jersey Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 69.

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-7.12 Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not

limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in Water Areas are found at N.J.A.C. 7:7E-4.8.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportational services, in accordance with the traffic rule, N.J.A.C. 7:7E-8.14.

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

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

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

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

Amended by R.2003 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

In (c), substituted "in accordance with the traffic rule, N.J.A.C. 7:7E-8.14" for "as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b))".

7:7E-8.11 Public access to the waterfront

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

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

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

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

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

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

facilities for which local funds provided 50 percent or more of the costs.

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

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

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

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

9. Development within the Atlantic City Special Area shall comply with the additional requirements of the Atlantic City rule at N.J.A.C. 7:7E-3.49.

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

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

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

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

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

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

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

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

(b)3-7 added.

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

Deleted (b)7 and substituted new.

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

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

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.

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

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. Kassin*, 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:

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

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

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

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

Original 8.12 "Public services" was repealed. This new section was recodified from 8.14 and old text was deleted and new text substituted. Amended by R.1990 d.413, effective August 20, 1990.

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

Enhancement of scenic resources required at (d).
Amended by R.1994 d.380, effective July 18, 1994 (operative July 19, 1994).

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

7:7E-8.13 Buffers and compatibility of uses

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

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

1. Development that is likely to adversely affect adjacent areas, particularly Special Areas N.J.A.C. 7:7E-3, 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.

Amended by R.2007 d.340, effective November 5, 2007.
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).
Rewrote (b)3.

7:7E-8.22 Solid and hazardous waste

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;

ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26; and

iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year.

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

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

New Rule, R.2002 d.60, effective February 3, 2003.
See: 34 N.J.R. 74(a), 35 N.J.R. 632(a).

APPENDIX 1

DESIGN STANDARDS AND SPECIFICATIONS

(OAL NOTE: None of the figures comprising N.J.A.C. 7:7E Appendix 1 are reproducible in the New Jersey Administrative Code, but may be reviewed or a copy obtained by contacting the Office of Administrative Law, PO Box 049, Trenton, NJ 08625-0049.)

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

Amended by R.2007 d.340, effective November 5, 2007.
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).
Repealed Figure 6.

APPENDIX 2

(RESERVED)

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: 32 N.J.R. 3828(a).
Petition for Rulemaking.
See: 33 N.J.R. 329(b), 33 N.J.R. 590(b).
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).
Rewrote the section.
Amended by R.2001 d.152, effective May 7, 2001.
See: 33 N.J.R. 156(a), 33 N.J.R. 1371(a).
Rewrote the section.
Petition for Rulemaking.
See: 33 N.J.R. 1475(a).
Administrative change.
See: 34 N.J.R. 1421(b).
Administrative change.
See: 34 N.J.R. 4196(a).
Petition for Rulemaking.
See: 35 N.J.R. 3720(a), 4786(a).
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 Not Located on Barrier Islands, Oceanfront Spits, or Peninsulas"; rewrote the section.
Administrative changes.
See: 38 N.J.R. 1669(a).
Administrative change (effective March 5, 2007 and operative April 4, 2007).
See: 39 N.J.R. 768(b).
Administrative change. (Administrative notice that Appendix 2 expired.)
See: 39 N.J.R. 2018(b).

APPENDIX 3

BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA

For purposes of N.J.A.C. 7:7E-5 and 5B, this appendix sets forth the boundaries of the non-mainland coastal centers in the CAFRA area.

In accordance with N.J.A.C. 7:7E-5.3(c), the impervious cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7E-5.3(d). The placement of impervious cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the Special Area rules at N.J.A.C. 7:7E-3.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. Atlantic County coastal centers on barrier islands, spits, and peninsulas

A. Brigantine coastal town

1. The coastal town boundary follows the municipal boundary of the City of Brigantine, but does not include any bay islands or the Absecon Wildlife Management Area.

II. Cape May County coastal centers on barrier islands, spits and peninsulas

A. Lower Township coastal centers

1. Diamond Beach coastal town

a. The coastal town boundary extends from the intersection of the Wildwood Crest/Lower Township municipal boundary and Park Boulevard thence southwest on Park Boulevard to North Station Avenue, thence southeast on North Station Avenue to Ocean Drive (County route 621), thence southwest on Ocean Drive (County route 621) to Madison Avenue, thence southeast on Madison Avenue to its end, thence southeast on the same bearing to the water's edge, thence northeast along the water's edge to the municipal boundary, and thence northwest along the municipal boundary to Park Boulevard.

B. Ocean City coastal regional center

1. The coastal regional center boundary follows the municipal boundary of Ocean City, but does not include any bay islands or Corson's Inlet State Park.

C. Sea Isle City coastal town

1. The coastal town boundary follows the municipal boundary of Sea Isle City, but does not include the area north of a line that extends along 22nd Street and along the same bearing from either end of 22nd Street to the mean high water line.

III. Monmouth County coastal centers on barrier islands, spits and peninsulas

A. Monmouth Beach coastal town

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

B. Sea Bright coastal town

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

IV. Ocean County coastal centers on barrier islands, spits and peninsulas

A. Barnegat Light coastal village

1. The coastal village boundary follows the municipal boundary of Barnegat Light Borough, but does not include any bay islands or Barnegat Light State Park.

B. Bay Head coastal town

1. The coastal town boundary follows the municipal boundary of Bay Head Borough.

C. Beach Haven Borough coastal town

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

D. Berkeley Township coastal town

1. The coastal town boundary circumscribes that part of Berkeley Township that is east of Barnegat Bay, north of Island Beach State Park and south of Seaside Park Borough.

E. Brick Township coastal centers

1. South Mantoloking coastal village

a. The coastal village boundary circumscribes that part of Brick Township that is east of Barnegat Bay, north of Toms River Township, and south of Mantoloking Borough, but does not include any bay islands.

F. Toms River Township coastal centers

1. Normandy Beach/Chadwick coastal town

a. The coastal town boundary circumscribes that part of Toms River Township that is east of Barnegat Bay, north of Lavallette Borough and south of Brick Township, but does not include any bay islands.

2. Ortleigh Beach coastal town

a. The coastal town boundary circumscribes that part of Toms River Township that is east of Barnegat Bay, north of Seaside Heights Borough, and south of Lavallette Borough, but does not include any bay islands.

G. Harvey Cedars coastal town

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

H. Lavallette coastal town

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

I. Long Beach coastal town

1. The coastal town boundary circumscribes those non-contiguous parts of Long Beach Township that are east of Barnegat Bay, but does not include any bay islands or the Holgate Unit of the Edwin B. Forsythe National Wildlife Refuge.

J. Mantoloking coastal village