

(c) Coastal activities under the jurisdiction of the HMDC shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

(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), "The Division will ... other environmental resources."

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 to 3.47; text on Hackensack Meadowlands District recodified from 3.43.

7:7E-3.46 Wild and Scenic River Corridors

(a) "Wild and Scenic River Corridors" are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.

1. "Wild and Scenic River Corridors" shall also mean any river adopted into the National Wild and Scenic Rivers System or any rivers or segments thereof being studied for possible inclusion into that system pursuant to the Wild and Scenic River Act (16 U.S.C. §§ 1271-1278). River corridors established under the Federal Wild and Scenic River Act shall include the river and adjacent areas defined as the Wild and Scenic River Corridor by the River Management Plan. For rivers under study for possible inclusion into the National System, the river corridor shall include the river and adjacent area extending one-quarter mile on each side of the river from annual mean high water.

(b) Policy relevant to Wild and Scenic River Corridors is as follows:

1. Development may be permitted in designated river areas in accordance with N.J.A.C. 7:38-1, including special regulations for a particular river, or sections thereof, adopted upon designations to the New Jersey Wild and Scenic Rivers System.

2. Development which provides general public recreational use of and access to a designated river area, consistent with classification and flood plain regulations, is encouraged.

3. Development must be consistent with all other coastal policies, in particular the performance standards

found in the Flood Hazard Areas Resource Policy (7:7E-8.23) and Other Special Areas policies.

4. Development which would have an adverse effect on the values for which a river is being considered as a potential addition to the National Wild and Scenic Rivers System, including but not limited to the scenic, recreational, and fish and wildlife attributes of the river corridor, is prohibited.

5. Development shall conform to the standards set forth by the the locally adopted River Management Plan.

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

(d) River Corridors will be administered according to N.J.A.C. 7:38-1, according to four classifications:

1. "Wild", meaning a river or section thereof, that is free of impoundment, and generally inaccessible by trail, with watershed or shoreline essentially primitive and undeveloped and water unpolluted. Wild river areas are also consistent with Natural Areas;

2. "Scenic", meaning a river, or section thereof, that is free of impoundment, with watershed or shoreline still largely primitive and undeveloped, but accessible in places by road;

3. "Recreational", meaning a river, or section thereof, that is readily accessible, that may have some shoreline development, and that may have undergone some impoundment or diversion; and

4. "Developed recreational", meaning a river, or section thereof, that is readily accessible, that may have substantial shoreline development, that may have undergone substantial impoundment or diversion, but which remains suitable for a variety of recreational uses.

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.

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.

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 base flood elevation (the water surface elevation of a 100-year flood as defined by the Federal Emergency Management Agency).

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 Resource and Development Policies with particular attention given to N.J.A.C. 7:7E-3.38 Public open space, N.J.A.C. 7:7E-3.39 Special hazards areas, N.J.A.C. 7:7E-3.41 Special urban area, 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 Division 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 policies that regulate upland development. Developers proposing platform development that does not adhere to this section's requirements are encouraged to contact the Division for guidance when conceptual plans have been prepared.

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 per cent 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 per cent 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 conform with applicable Federal flood hazard reduction standards as found in 44 C.F.R. Part 60 and in the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(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 Division 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 policy 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 policy compliance.

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.

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.1 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting; maintenance of access ways; 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.

(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.

2. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

3. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with DEP and/or SCS standards. Fencing shall be in place within 30 days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

4. There shall be no disturbance to existing dune areas.

5. In areas of documented habitat for endangered nesting shorebirds (Piping Plovers and Least Terns), no sand transfers shall take place between April 1 and August 1. The Land Use Regulation Program, in coordination with the Division of Fish, Game and Wildlife, will determine affected areas.

6. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

7:7E-3A.2 Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceeding a five-year storm event.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile; the alongshore transfer of sand on a beach; the placement of concrete or rubble; and the placement of sand filled geotextile bags or tubes. The placement of sand filled geotextile bags or tubes is preferred to the placement of concrete, rubble or other material.