

Routine Program Change - Summary of Rule Changes and Significance of Change
Coastal Zone Management rules -Subchapter 1
Introduction
February 6, 2006

The rule changes described in detail below do not change the program approvability areas of special management areas and boundaries. While the rule changes may affect the program approvability areas of uses subject to management, authorities and organization or consideration of the national interest, these changes are not substantial for the reasons set forth below.

Rule Citation	Rule Change	Significance of Change
7:7E-1.1 Purpose and scope	➤Added new paragraph explaining how these rules are used in coastal decision-making process	The changes to this rule do not substantially change the uses subject to management or consideration of the national interest as this is a technical change because it is a recodification of existing approved language. (recodified N.J.A.C. 7:7E-1.5(a) as 7:7E-1.1(d) with no changes in text)
7:7E-1.2 Jurisdiction	<p>➤Amended description of extent of NJ coastal zone to replace "jurisdiction" with "area defined under" CAFRA and Waterfront Development Law</p> <p>➤Added detailed description of seaward coastal zone boundary</p> <p>➤Clarified that Department management action include permit decisions, approvals, certifications and conveyances</p> <p>➤Updated program listings</p>	<p>The changes to this rule do not substantially change the uses subject to management and do not change the New Jersey Coastal zone boundary. The term "jurisdiction" was replaced because it implied that if a proposed development on a site is not under the jurisdiction of either CAFRA or the Waterfront Development Law, then it was not in NJ's coastal zone. Amendments also clarified geographical extent of NJ's seaward boundary. Specifically, the amendments clarified that New Jersey's seaward boundary extends from the mean high water line to the 3 geographical mile limit of New Jersey's territorial sea, and elsewhere to the interstate boundaries of the states of New York and Delaware. This amendment is for the purposes of clarity only and does not change New Jersey's approved coastal zone boundary.</p> <p>The changes to this rule do not substantially change the uses subject to management, authorities and organization or consideration of the national interest. These changes were necessary because the rule language implied that affirmative decisions were always made on listed actions. The listed actions remain the same, however the phrasing of the action has been modified. The management actions listed in this rule are categorized by responsible Department program. The Department programs listed were updated to reflect the current organizational structure of the Department.</p>
7:7E-1.5 Coastal decision-making process	<p>➤Recodified explanation of how rules are used in coastal decision-making process</p> <p>➤Recodified definitions section as N.J.A.C. 7:7E-1.8</p> <p>➤Added list of statutory findings the Department is required to make prior to issuance of a CAFRA permit pursuant to N.J.S.A. 13:19-10</p>	<p>The changes to this rule do not substantially change the uses subject to management, authorities and organization or consideration of the national interest. The explanation of how the CZM rules are used was recodified as N.J.A.C. 7:7E-1.1(d) with no changes to text. This text was recodified because it was more appropriately located in the purpose and scope of the rules rather than in the coastal decision-making process. The definitions were recodified as separate subsection, N.J.A.C. 7:7E-1.8.</p> <p>The addition of the statutory findings of CAFRA at N.J.S.A. 13:19-10 does not substantially change the uses subject to management or authorities and organization. The required findings have been a part of the Act since its adoption in 1973. The Department has always reviewed CAFRA permit applications using these findings. The codification of these findings in the CZM rules is in response to an Appellate Division of Superior Court decision in <i>In the Matter of the Protest of the Coastal Permit Program Rules, 354 N.J. Super.293</i> (App. Div. 2002). In this decision the court held that the Department was required to amend the Coastal Permit Program rules to set forth the requirement that the Department cannot issue a CAFRA permit unless it first makes the findings required by Section 10 of the Act. The Department added reference to these findings in the CZM rules because these rules are the substantive standards for the use and development of resources in New Jersey's coastal zone and for implementing CAFRA.</p>
7:7E-1.6 Mitigation	➤Changes to cross references and terminology	Changes to update cross-references and terminology are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.

Rule Citation	Rule Change	Significance of Change
7:7E-1.7 Correspondence with Department (NEW)	➤ Added reference to where correspondence on chapter should be directed	The addition of this rule does not substantially change the 5 program approvability areas as it simply adds an address for the purposes of submitting correspondence.
7:7E-1.8 Definitions (NEW)	<p>➤ Recodified from N.J.A.C. 7:7E-1.5(c)</p> <p>➤ Added new definitions for: Coastal permit, conservation restriction, impervious cover, land area, linear development, 11-didgit hydrologic unit code area, bulkhead, CAFRA area, gabion, revetment and watershed management</p> <p>➤ Amended definitions of: development, reconstruction, site and spring tide</p>	<p>Changes to the definition section do not substantially change the uses subject to management, authorities and organization or consideration of the national interest. The changes clarify existing language and provide for consistency in terminology through the Chapter and therefore are not considered a substantial change as described below. The section was recodified from N.J.A.C. 7:7E-1.5(c) for clarity. Several new definitions have been added to this section.</p> <p>A definition of “coastal permit”, identical to that of the Coastal Permit Program rules was added to make it clear which permits are subject to the standards of the CZM rules.</p> <p>A definition of “conservation restriction” was added and encompasses all means of restricting development on a property. For the purposes of consistency throughout the Chapter, this term replaces terms such as deed restriction, restriction in the deed, and conservation easement.</p> <p>The term “impervious cover” has been added and replaces terms such as Impervious coverage and impervious surface which are currently undefined.</p> <p>A definition of “land area” has been added to make explicit the meaning of the term as it is applied under this chapter.</p> <p>The definition of “linear development” has been recodified from N.J.A.C. 7:7E-6.1(a) and augmented to include additional examples of this type of development.</p> <p>Definitions of “11-didgit hydrologic unit code area” and “watershed management” were added as they pertain to the mitigation requirements for intertidal and subtidal shallows, described in Subchapter 3. Terms of “bulkhead, gabion and revetment” are used throughout the Chapter but not defined. These structures are defined based on the materials and the manner in which they are constructed.</p> <p>Term “CAFRA area” added to reference the area described under the Coastal Area Facility Review Act.</p> <p>The definition of “development” has been amended to replace reference to “expansions” with “enlargement” for consistency in terminology with the CAFRA statute. The definition was further amended to clarify that development does not include repairs or maintenance such as replacing siding, windows, or roofs under the Waterfront Development Law, unless associated with enlargements. The Department has never regulated the above activities under the Waterfront Development Law. Further, the interpretive language of the definition was deleted since it is currently located in the Coastal Permit Program rules at N.J.A.C. 7:7-2.1(c)3 with other CAFRA exemptions. The deletion of this language will have no effect on CAFRA permitting requirements. Further, the definition has been amended to clarify that development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.</p>

Rule Citation	Rule Change	Significance of change
N.J.A.C. 7:7E-1.8 Definitions (continued)		<p>The definition of "reconstruction" was amended to replace "area of impervious coverage associated with the development" with the phrase "area covered by buildings and/or asphalt or concrete pavement." This change clarifies the existing definition and avoids confusion with the newly defined term "impervious cover." Language has also been added to clarify that reconstruction of docks and piers means repair or replacement in the same location and size of the pre-existing structure, thus reflecting the Department's interpretation. Language was added to specify that reconstruction does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with an enlargement.</p> <p>The definition of "site" was amended and simplified to better reflect how the term is used throughout the chapter.</p> <p>The existing definition of "spring tide" currently contains two definitions: "spring tide" and "spring high water line." For the purposes of clarity, this definition was broken into two distinct definitions, with no changes in meaning</p>

Rule text - Subchapter 1 (3-22-05)

Changes to existing rule text approved by OCRM are shown as follows:
Additions indicated in **boldface**; and
Deletions indicated in ~~[bracketed strikethrough]~~.

7:7E-1.1 Purpose **and scope**

Changes to existing text approved by OCRM

(a) (No change.)

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

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the ~~[Rules on]~~ Coastal Zone Management **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 (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The 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.

New rule text subject to RPC

(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 (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 (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The 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.

7:7E-1.2 Jurisdiction

Change to existing text approved by OCRM

(a) General: This chapter shall apply to ~~[five]~~ **six** categories, as defined in N.J.A.C. 7:7E-~~[1-3]~~**1.2**(c) through (~~[g]~~ **h**), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

1. - 4. (No change.)
5. ~~[DEP]~~ **Department** management actions affecting the coastal zone; and
6. ~~[DEP]~~ **Department** planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey ~~[Coastal Zone]~~ **coastal zone**: This chapter shall apply geographically to the New Jersey ~~[Coastal Zone]~~ **coastal zone**, which is defined as:

1. The coastal area ~~[under the jurisdiction of]~~ **defined in** the Coastal Area Facility Review Act (CAFRA), **N.J.S.A. 13:19-1 et seq.**;
2. ~~[Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west]~~ **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. ~~[The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a)]~~ **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. (No change.)
5. The Hackensack Meadowlands ~~[Development Commission]~~ District as defined by N.J.S.A. 13:17-4.

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

1. (No change.)

2. ~~Tidal [Wetlands]~~ **wetlands** permits (N.J.S.A. 13:9A-1 et seq.); and
3. (No change.)

(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the ~~[Coastal Zone]~~ **coastal zone** to the extent statutorily permissible:
1. – 4. (No change.)

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

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

(g) ~~[DEP]~~ **Department** management activities: **In addition to the management activities noted at N.J.A.C. 7:7E-1.1, this** ~~[This]~~ chapter shall apply, to the extent statutorily permissible, to the following ~~[DEP]~~ **Department** management actions **including permit decisions, approvals, certifications and conveyances**, in or affecting the coastal zone ~~[in addition to those noted at N.J.A.C. 7:7E-1.1]:~~

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

- ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.)~~[-];~~
- iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.)~~[-];~~ **and**
- iv. Inclusion of ~~[and adoption of regulations concerning]~~ river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).]
- 9. Division of Fish~~[-Game]~~ and Wildlife: ~~[Adoption of regulations]~~**Regulations** concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28)~~[-];~~
- 10. Natural and Historic Resources, Engineering and Construction ~~[Section]~~: **Management of ~~[Dam Permit]~~ dams** (N.J.S.A. 58:4-1)~~[-];~~ **and**
- 11. All Divisions: Management of State-owned lands by ~~[DEP]~~ **the Department**.

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

- 1. (No change.)
- 2. Natural and Historic Resources Programs:
 - i. – ii. (No change.).
- 3. ~~[Land and Water Planning]~~ **Division of Watershed Management** :
 - i. (No change.)
 - ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq. ~~[and~~
 - iii. ~~Allocation of Wastewater Treatment Construction Grants (N.J.S.A. 58:11B-1 et seq.).~~
 - iv. ~~Implementation and coordination of the Federal Coastal Zone Management Program.]~~
- 4. (No change.)
- 5. Division of Solid **and Hazardous** Waste ~~[Management]~~: Solid **and hazardous** waste management.
- 6. (No change.)
- 7. Division of Water Quality: Issuance of environmental decision documents for environmental infrastructure facilities that receive State financial assistance (P.L. 1985, c.329, N.J.A.C. 7:22-10)**
- 8. Office of Policy, Planning and Science: Implementation and coordination of the Federal Coastal Zone Management Program.**

New rule text subject to RPC

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.).

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

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

(g) Department management activities: In addition to the management activities noted at N.J.A.C. 7:7E-1.1, this chapter shall apply, to the extent statutorily permissible, to the following Department management actions including permit decisions, approvals, certifications and conveyances, in or affecting the coastal zone:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.);
2. Division of Water Quality:
 - i. Point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.);
 - ii. Wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6);
 - iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.);
 - iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4);
 - v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44);
 - vi. Fifty or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23); and
 - vii. Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).
3. Land Use Regulation Program:
 - i. Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.); and
 - ii. Activities under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.);
4. Water Supply Administration:
 - i. Diversion of surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.);
 - ii. Diversions for water supply (N.J.S.A. 58:1A et seq.);
 - iii. Drilling of wells (N.J.S.A. 58:4A-14);
 - iv. Construction of new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.); and
 - v. Installation of or maintenance of a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.);
5. Bureau of Non-Point Pollution Control: Discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.);
6. Air Quality Regulation:
 - i. Construction, installation or alteration of control apparatus or equipment (N.J.S.A. 26:2C-9.2);
 - ii. Operation of control apparatus or equipment (N.J.S.A. 26:2C-9.2); and
 - iii. Variances to exceed air quality standards (N.J.S.A. 26:2C-9.2);
7. Division of Solid and Hazardous Waste Management of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.);
8. Green Acres and Division of Parks and Forestry:
 - i. Regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19);
 - ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A. 13:1B-15.12a et seq.);
 - iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.); and
 - iv. Inclusion of river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).
9. Division of Fish and Wildlife: Regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28);
10. Natural and Historic Resources, Engineering and Construction: Management of dams (N.J.S.A. 58:4-1); and
11. All Divisions: Management of State-owned lands by the Department.

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

1. Land Use Regulation Program:
 - i. Coastal zone management;
2. Natural and Historic Resources Programs:
 - i. Navigational dredging; and
 - ii. Shore protection.
3. Division of Watershed Management:
 - i. Areawide water quality management ("208");
 - ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.)
4. Air Quality Regulation: Air quality planning.
5. Division of Solid and Hazardous Waste: Solid and hazardous waste management.
6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.
7. Division of Water Quality: Issuance of environmental decision documents for environmental infrastructure facilities that receive State financial assistance (P.L. 1985, c.329, N.J.A.C. 7:22-10)
8. Office of Policy, Planning and Science: Implementation and coordination of the Federal Coastal Zone Management Program.

7:7E-1.5 Coastal decision-making process

~~[(a) General: 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 comprising the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Rules on Coastal Zone Management address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. DEP does not, however, expect each proposed use of coastal resources to involve all Location Rules, Use Rules, and Resource Rules. Rather, the applicable rules are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.]~~

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

1. In the application of administrative discretion, ~~[DEP]~~ **the Department** officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.
 - i. – viii. (No change.)

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

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

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

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

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

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

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

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

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

"Development" means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. Development, for an application under 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 and developers should be dissuaded from proposing such uses. In cases where the Department considers the proposed use to be in the public interest despite its discouraged status the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern.

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

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

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

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

considered impervious cover.

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

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

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

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

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

"Mean high water line" (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone. (Note: For practical purposes, the mean high water line is often referred to as the "ordinary" high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Law, the surveyed mean high water elevation will be used.)

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

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

"Program" means NJDEP Land Use Regulation Program.

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

"Reconstruction" means the repair or replacement of a building, structure or other parts of a development, provided that such repair or replacement does not increase or change the location of the footprint of the preexisting development, does not increase the 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.

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

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

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

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

loading and unloading of vessels, and water-oriented recreation.

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

(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.**

New rule text subject to RPC

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

1. In the application of administrative discretion, 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.

7:7E-1.6 Mitigation

Changes to existing text as approved by OCRM

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The ~~Program~~ **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 Location Policies~~ **basic coastal policies** (N.J.A.C. 7:7E-1.5(~~b~~) **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 ~~3.48~~ **3.49**).

(b) (No change.)

New rule text subject to RPC

(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

7:7E-1.7 Correspondence with the Department

New rule text subject to RPC

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

7:7E-1.8 Definitions

This is a new rule as the definitions were recodified from 7:7E-1.5(c). New definitions and amendments to existing definitions since 1994 RPC approval are shown in boldface and strikeout text

(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.

...

“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.

...

“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 Coastal Area Facility Review Act~~ **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. ~~For the purposes of these rules, “development” pursuant to CAFRA does not include the reconstruction of any development that is damaged, destroyed, in whole or in part, by fire, storm, natural hazard and/or Act of God. Such reconstruction must be in compliance with existing requirements or codes of municipal State and Federal Law, but does not require a CFARA permit provided that the reconstruction does not result in the enlargement or relocation of the footprint of the development or an increase in the number of dwelling units or parking spaces within the 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 ~~expansions~~ **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.****

...

“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 for 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.

...

"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.

...

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

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

...

"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 ~~[of impervious coverage associated with the development]~~ 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 ~~[expansions]~~ 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 ~~[geographic scope of the proposed use of coastal resources that is under scrutiny using the Rules on Coastal Zone Management. Site also means the land area]~~ 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.]~~

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

...

"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 text subject to RPC

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

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

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

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

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

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

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

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

"Program" means the Department of Environmental Protection's Land Use Regulation Program.

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

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

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

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

"Spring 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.