

Routine Program Change - Summary of rule changes and significance of change
Coastal Zone Management rules -Subchapter 3
Special Area Rules
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-3.1 Purpose and scope	<ul style="list-style-type: none"> ➤ Added language explaining why special areas are important and require focused attention and special management ➤ Changes made to title, formatting and grammar for clarity with no change in meaning ➤ Clarified how special area rules apply in relation to General Area rules, and note that portion of site can be subject to both General land areas and Special area rules 	<p>The changes to this rule explaining why special areas are important and require focused attention and special management do not substantially change the uses subject to management or consideration of the national interest as the recodification of this language from N.J.A.C. 7:7E-2.2(a)1 is a technical change for the purposes of clarity. NOAA approved the language of N.J.A.C. 7:7E-2.2(a) in 1980. Further, changes in formatting and grammar are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes. Finally, the rule text prior to the 2003 amendments implied that a site can be classified as both a Special Area and a General Water Area. The amendments submitted herein merely clarify the Department's interpretation of the application of the rules. The Department does not consider this to be a substantial change as it does not change the application of the CZM rules. Further, the amendments to this rule preserve the consideration of the national interest in protection of recreation, water, air, ports, wetlands, endangered flora and fauna, living marine resources, flood plain and erosion hazard areas, barrier islands, historic sites and districts and areas of unique cultural significance, prime agricultural lands, and forests because in instances where a site is classified as both a special area (containing the above national interest areas) and general waters area, the more protective special area rules govern.</p>
7:7E-3.4 Prime Fishing areas	<ul style="list-style-type: none"> ➤ Added artificial reefs to areas considered prime fishing areas 	<p>The listing of artificial reefs as a prime fishing area does not substantially change the uses subject to management or consideration of the national interest. Artificial reefs were already considered a prime fishing area as they meet the definition of this special area since they support a significant recreational fishery. This change recognizes that these areas function as congregation, refuge, feeding and nursery areas for migratory species and thus, support extensive fisheries and thus should be singled out in the rule as with jetties and groins. Further, this rule change preserves the national interest by providing consideration of recreational needs and protection of living marine resources.</p>
7:7E-3.5 Finfish migratory pathways	<ul style="list-style-type: none"> ➤ Changes in terminology for consistency throughout the Chapter 	<p>Changes in terminology for the purposes of consistency throughout the Chapter are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>
7:7E-3.6 Submerged vegetation habitat	<ul style="list-style-type: none"> ➤ Changes to update cross-references and title of the Department's Division of Fish and Wildlife ➤ Added propwash and hull scour associated with the use of a dock or mooring, as prohibited activities which may result in erosion or turbidity increases in the water's supporting submerged vegetation, unless mitigating measures are provided 	<p>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.</p> <p>The addition of prop wash and hull scour as prohibited uses within submerged vegetation does not substantially change the uses subject to management or consideration of the national interest. Because prop wash and hull scour are not considered "development" the Department added these activities for the purposes of clarity. It has been the Department's experience based on aerial photographs and site inspections that boat access through submerged vegetation habitat adversely affects the habitat if sufficient water depth is not present. Further, it has been the Department's practice to require that a sufficient water depth (4 feet mean low water) be present in the area used to access a dock regardless of whether the dock is located within or outside of submerged vegetation habitat. This rule change merely codifies the Department's practice. Further, this rule change preserves the national interest in protection of living marine resources.</p>

Rule Citation	Rule change	Significance of Change
7:7E-3.8 Canals	<ul style="list-style-type: none"> ➤ Replaced reference to "Manasquan-Bayhead Canal" with "Point Pleasant Canal" to reflect title of this waterway as referenced on applicable NOAA Ocean Survey chart ➤ Amended rule prohibits any use that would interfere with existing or proposed canal boat traffic 	<p>Changes in terminology for the purposes of consistency with NOAA Ocean Survey charts are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p> <p>The change deleting reference to aquaculture, filling and dams and impoundments does not substantially change the uses subject to management or consideration of the national interest. The listing of these activities was repetitive because they would also interfere with existing or proposed canal boat traffic. Further, the changes to this rule preserve the national interest in protecting transportation and ports, navigation and recreation by maintaining these critical navigation channels.</p>
7:7E-3.10 Marina Moorings	<ul style="list-style-type: none"> ➤ Deletes provision indicating that new or maintenance dredging in marina mooring areas and access channels is conditionally acceptable provided the dredging complies with the appropriate sections of the Coastal Zone Management rules 	<p>The change to this rule deleting the provision stating that new or maintenance dredging within marina mooring areas and access channels is conditionally acceptable provided it complies with the appropriate sections of the CZM rules does not substantially change the uses subject to management or consideration of the national interest. Any development that requires a coastal permit must comply with all appropriate sections of the CZM rules. Thus if dredging is proposed, it must comply with the new or maintenance dredging rule. Further, this rule change does not affect consideration of the national interest in dredging.</p>
7:7E-3.14 Wet borrow pits	<ul style="list-style-type: none"> ➤ Changes to codifications, terminology and grammar for the purposes of clarity with no changes in meaning 	<p>Changes to codifications, terminology and grammar for clarity are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>
7:7E-3.15 Intertidal and subtidal shallows	<ul style="list-style-type: none"> ➤ Refines definition to clarify areas temporarily submerged are also considered intertidal and subtidal shallows and that these are measured from the spring high water line to a depth of four feet mean low water ➤ Sets forth standards for new dredging provided: <ul style="list-style-type: none"> (1) Demonstrated need; (2) No alternatives; and (3) Impacts to special area minimized ➤ Directional drilling for installation of submerged infrastructure is required unless it is demonstrated that it is not feasible ➤ Mitigation required at a ratio of one acre created to one acre loss or enhancement of degraded wetland system at ratio of two acres enhanced to one acre lost 	<p>The rule changes to the intertidal and subtidal shallows rule do not substantially change the uses subject to management or consideration of the national interest. The refinement of the definition of this special area merely clarifies the Department's interpretation of an intertidal and subtidal shallow. Areas located below the spring high tide line are already subject to regulation under the Waterfront Development Law, CAFRA and Wetlands Act of 1970.</p> <p>Prior to the 2003 amendments, maintenance dredging in intertidal and subtidal shallows was conditionally acceptable provided the proposed dredging met the standards of the Maintenance dredging rule. The depth was limited to 4 feet unless the dredging was required to maintain adequate water depths for existing or new marinas of 25 or more slips or public launching facilities and ports. This standard was deleted because it was no longer necessary due to changes in the Maintenance dredging rule. In 2003, the maintenance dredging rule was amended to apply to areas dredged within the last 10 years or currently used for navigation or mooring of vessels requiring the proposed water depth (maintenance dredging rule was approved by OCRM, May 2004). The requirement that the area not be dredged to a depth exceeding four feet mean low water was also deleted. Rather, the standard of the Maintenance dredging rule that requires the previously dredged depth not be exceeded shall apply. This change is not substantial because these areas were already disturbed by dredging and continue to be disturbed by boating use. Further, any additional disturbance via dredging is not allowed.</p> <p>The rule prior to the 2003 amendments discouraged new dredging in intertidal and subtidal shallows unless it met the standards of the new dredging rule and dredging was required to maintain adequate water depths for existing or new marinas of 25 or more slips or public launching facilities and ports. Under the amended Intertidal and subtidal shallows rule, new dredging is acceptable if there is a demonstrated need for the proposed facility that requires the dredging that cannot be met by other facilities; there is no alternative to the location for the facility that requires the dredging; the dredging project and facility that requires the dredging are designed to minimize disturbance to intertidal and subtidal shallows.</p>

Rule Citation	Rule change	Significance of Change
<p>7:7E-3.15 Intertidal and subtidal shallows (continued)</p>	<p>➤Exempts from mitigation requirement: (1) Filling in a lagoon between two existing bulkheads not more than 75 feet apart; (2)Maintenance dredging; (3) Beach nourishment; (4) New dredging to a depth not to exceed 4 feet mean low water; and (5) Replacement bulkheads</p> <p>➤Mitigation at single family home lots on site or in form of monetary contribution</p> <p>➤Mitigation requirements at sites other than single family home based on hierarchy depending upon type of mitigation and location of proposed mitigation</p> <p>➤Minor wording changes and changes to cross-references in response to the reorganization of Subchapter 4 were made to the acceptability conditions for the filling of intertidal and subtidal shallows for beach nourishment.</p>	<p>It has been the Department's practice to apply the standards for new dredging in evaluating dredging in intertidal and subtidal shallows because the standard of the shallows rule prior to this amendment provided that "development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with the acceptability conditions found in Subchapter 4." Subchapter 4 contains the New dredging rule. As such, the amended rule explicitly adds alternatives into the evaluation. The standard that new dredging is acceptable only at marinas with 25 or more slips, public launching facilities and ports was no longer necessary in light of these standards. This change is not significant because it mirrors the new dredging standards which already applied to intertidal and subtidal shallows.</p> <p>The intertidal and subtidal shallows rule has always contained standards for the installation of submerged infrastructure. Prior to the 2003 amendments, the rule provided that directional drilling was the preferred method of submerged cable installation over trenching. Given the advances in technology, the amended rule requires submerged infrastructure be installed by directional drilling unless it can be demonstrated that the use of directional drilling is not feasible. If the installation of submerged infrastructure cannot be installed by directional drilling, the applicant must demonstrate that there is no alternative route that would avoid disturbance of the intertidal and subtidal shallows. This requirement is consistent with the General water area rules for Submerged pipelines at N.J.A.C. 7:7E-4.14 and Submerged cables at N.J.A.C. 7:7E-4.20 (both rules were approved by OCRM, May 2004).</p> <p>Since August 1990, mitigation has been required for the destruction of intertidal and subtidal shallows. Prior to the 2003 amendments, mitigation was required for the destruction of intertidal and subtidal shallows at a ratio of one acre created to one acre lost. Further, the mitigation was required to be located in the same estuary when feasible. Exempted from the mitigation requirement were specific filling activities for bulkheads and beach nourishment projects, dredging activities at residential docks and dredging at marinas and ports provided the dredged area is reduced to the maximum extent practicable.</p> <p>The 2003 amendments further refine the rule's mitigation requirements. Under the amended rule, mitigation for the destruction of intertidal and subtidal shallows maintains the 1:1 ratio if mitigation is located on site or within the same HUC 11 (a subdivision of a larger watershed management area). However, if this mitigation is not feasible, then mitigation shall be in the form of enhancement of a degraded wetland system, at an enhancement to loss ratio of 2:1. Enhancement means improving the characteristics, habitat and functions of an existing degraded wetland. The enhancement to loss ratio of 2:1 is higher than the creation to loss ratio since wetland functions are already present at the mitigation site but at a lesser ecological value and the intent of the mitigation is improvement of the ecological value of the degraded wetland to equal that which was lost through the proposed development.</p> <p>Prior to this rule adoption, maintenance dredging was not exempted from the rule's mitigation requirements. However, under the 2003 amendments mitigation is not required for maintenance dredging as the impact to this special area occurred during the initial dredging. The dredge area is limited to the same water depth, length and width as the previous dredging operation and, for natural waterways, the area must also be currently used for navigation or mooring of vessels or have been dredged within the past 10 years. The Department has determined that the impacts associated with maintenance dredging in this special area are minimal and thus mitigation is not required.</p> <p>Prior to this adoption, the rule did not require mitigation for new dredging activities at residential noncommercial docks, ports or marinas.</p>

Rule Citation	Rule change	Significance of Change
<p>7:7E-3.15 Intertidal and subtidal shallows (continued)</p>		<p>This provision was deleted because new dredging at these locations has the same impacts on intertidal and subtidal shallows. Instead, mitigation is required for new dredging where the water depth of the area after dredging would exceed four feet mean low water. Mitigation is not required for new dredging where the water depth does not exceed four feet mean low water as the dredged area remains an intertidal or subtidal shallow. Because most dredging at established residential noncommercial docks, port and anchorages would be considered maintenance dredging and thus mitigation would not be required this is not a substantial change.</p> <p>Under the amended rule, the mitigation standards vary depending on whether or not the destruction takes place at a single family property. Under the amended rule, for single family properties only, if on site mitigation is not feasible, mitigation is required in the form of a monetary contribution in the amount of the value of the land filled and the cost of creation of the intertidal and subtidal shallows of equal ecological value to those being lost to the Wetlands Mitigation Fund. For the purposes of this rule, the value of the land filled is the appraisal of that land as buildable upland. For more than 14 years, mitigation has been required for filling at single family properties. It has been the Department's experience in implementing the mitigation requirement that many small-scale filling projects at single family properties can be mitigated on-site by balancing cutting and filling of an irregular shoreline. In situations where mitigation at a single family property can not occur on site, mitigation in the form of a monetary contribution is required since the costs would be less than those incurred through searching for an off-site mitigation area within the same watershed. Further, the Department has found that small-scale projects are not as ecologically beneficial as large-scale projects. By providing for monetary contributions where on-site mitigation is not feasible, the Department will be able to use these mitigation funds to achieve a greater environmental benefit through a larger scale project. This change is not a substantial change because it merely provides another option for mitigation for single family homeowners who cannot accommodate mitigation on site.</p> <p>When mitigation is required as described above, it shall be provided following a hierarchy depending upon the type and location of the mitigation proposed. Mitigation through the creation of intertidal and subtidal shallows shall occur first on site, second in the same HUC-11, and third in an adjacent HUC-11. If creation of intertidal and subtidal shallows is not feasible as described above, mitigation shall be in the form of enhancement of a degraded wetland system, first on site, second in the same HUC-11; and third in an adjacent HUC-11. If none of these options is feasible creation of intertidal shallows or enhancement of a degraded wetlands system within the same watershed management area is required.</p> <p>The goal of the mitigation hierarchy is to provide additional mitigation options while keeping the mitigation project as close to the impacted area as possible. As the hierarchy does not require mitigation in cases where it was not previously required, the changes are not substantial.</p> <p>All mitigation proposals under this rule shall comply with the standards of Subchapter 3B, Information required in wetland and intertidal and subtidal shallows mitigation proposals. Subchapter 3B, approved by OCRM in 1998, has been modified to include standards for the mitigation of intertidal and subtidal shallows. Although not previously codified, the Department has been using these standards for mitigation of intertidal and subtidal shallows for a number of years.</p> <p>The changes to this rule preserve the national interest in protecting living marine resources, wetlands, recreation, dredging and navigation. Changes in grammar and cross-references are considered minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>

Rule Citation	Rule Changes	Significance of Change
7:7E-3.16 Dunes	<ul style="list-style-type: none"> ➤Refines description of secondary and tertiary dunes to include "mounds" ➤Refines definition to clarify that all dune ridges and mounds landward of the secondary or tertiary dune are considered dunes 	<p>The changes in the description of tertiary and secondary dune do not substantially change the uses subject to management or consideration of the national interest. Dunes are defined as a wind or wave deposited or man-made formation of sand (mound or ridge), that lies generally parallel to, and landward of the beach and between the upland limit of the beach and the foot of the most inland dune slope. The description of a secondary and tertiary dune was amended for the purposes of consistency to include "mounds," thus reflecting the existing definition of "dune" contained in that same section. Further, consistent with the definition's geographic description of a dune, that is "...that lies generally parallel to, and landward of the beach and between the upland limit of the beach and foot of the most inland dune slope" the definition was further refined to clarify that all dune ridges and mounds landward of the secondary or tertiary dune are considered dunes. This refinement codifies the Department's interpretation of a dune. The refinement of this definition preserves the national interest in protection of barrier islands, living marine resources and endangered flora and fauna.</p>
	<ul style="list-style-type: none"> ➤Change the design dune volume for protection from the 100 year storm from 540 square feet to 1100 square feet 	<p>The change in the volume for the design dune does not substantially change the uses subject to management or consideration of the national interest. The technical standards for the minimum dune volume required for storm protection were incorporated into this rule in July 1994 and approved by OCRM on August 20, 1998. The volume was changed from 540 square feet to 1,100 square feet in order to conform to the recommendations contained in the Federal Emergency Management Agency's Coastal Construction Manual, FEMA 55CD, Third Editions, June 2000. This dune volume has been determined to be the minimum cross-sectional dune area necessary to provide protection from a 100-year storm. The rule does not require a designed dune to be this size but merely encourages it. This amendment furthers the national interest in providing adequate consideration in the protection of barrier islands.</p>
7:7E-3.17 Overwash areas	<ul style="list-style-type: none"> ➤Replaced restriction that beach/tourism oriented commercial development within an already developed municipal boardwalk/commercial area be located in Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood or Wildwood City with requirement that the commercial boardwalk area must have existed on July 19, 1993. 	<p>The change to areas where beach/tourism oriented commercial development is acceptable does not substantially change the uses subject to management or consideration of the national interest. This provision was adopted in August 1988 and was intended to allow low intensity infill development in certain oceanfront communities where an existing municipal boardwalk is already densely developed. In these areas, it was determined that the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited additional loss in property damages. In keeping with the intent of this provision, the rule was further modified in 2000. Reference to certain municipalities was deleted and replaced by language which recognizes all commercial boardwalk areas that existed on July 19, 1993, the date CAFRA jurisdiction was amended to include development on beaches, dunes and within 150 feet of the mean high water line. Because these areas are limited in their number and size, and the affects would be the same as the previous listed areas, this change is not substantial. This change facilitates public access to the waterfront along the coast in developed oceanfront areas, while discouraging new commercial boardwalk zones in areas vulnerable to storms. Further, this change preserves the national interest in protection of barrier islands, erosion hazard areas, recreation and public access to the waterfront. The major objectives of the national interest in these areas is to avoid the long and short term adverse impacts associated with the occupancy and modification of high risk erosion areas while protecting existing recreational areas and promoting public access to the waterfront.</p>
	<ul style="list-style-type: none"> ➤Added new subsection requiring development found acceptable under this rule to also meet the impervious cover and vegetative requirements of the CZM rules 	<p>The change requiring development found acceptable under this rule to also meet the impervious cover and vegetative requirements of the CZM rules does not substantially change the uses subject to management. It has always been the Department's practice to apply the impervious cover limits and vegetative cover requirements to developments subject to the CZM rules which are not specifically exempted under N.J.A.C. 7:7E-5.1(d). This change merely codifies the Department's application of Subchapters 5 and 5B in these areas.</p>
	<ul style="list-style-type: none"> ➤Updated reference to Coastal Engineering rule 	<p>Changes to update titles are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>

Rule Citation	Rule Changes	Significance of Change
7:7E-3.18 Coastal high hazard Areas	➤Divides existing (c) into 2 subsections since it contains 2 distinct standards with no changes in text	Changes in codification without changes in meaning are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
	➤Adds subsection requiring development within these areas comply with the impervious and vegetative cover requirements set forth in Subchapters 5 and 5B	The change to this subsection requiring development found acceptable under this rule to also meet the impervious cover and vegetative requirements of the CZM rules does not substantially change the uses subject to management. It has always been the Department's practice to apply the impervious cover limits and vegetative cover requirements to developments subject to the CZM rules which are not specifically exempted under N.J.A.C. 7:7E-5.1(d). This change merely codifies the Department's application of Subchapters 5 and 5B in these areas.
	➤Adds cross-reference to N.J.A.C. 7:7E-7.2(f) which contains standards for the expansion, reconstruction (with or without expansion) of a legally constructed habitable single family home or duplex (previously codified as N.J.A.C. 7:7E-7.2(e))	Changes in cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes
	<p>➤Allows hotels and commercial development to be constructed in coastal high hazard areas in Atlantic City provided development complies with the Atlantic City rule</p> <p>➤Exempts certain types of development in Atlantic City from the 25 foot setback requirement</p> <p>➤Allows following types of development in Atlantic City to be located within coastal high hazard areas provided the development meets the standards of the Atlantic City rule:</p> <ol style="list-style-type: none"> (1) Development on or over existing ocean piers; (2) Pilings necessary to support development proposed on or over the existing ocean piers; and (3) Development on or over the boardwalk 	<p>Atlantic City is unique. It is the only City in New Jersey where casino gambling is legal. Gambling was legalized by referendum in 1976 in part to revitalize the deteriorating City. Coastal high hazard areas or "V-zones" are special flood hazard areas subject to high velocity waters and thus subject to storm damage. Similarly, erosion hazard areas are shoreline areas that are eroding and/or have a history of erosion causing them to be highly susceptible to further erosion and damage from storms. Because these areas are subject to storm damage, the types of development that are allowed are limited. The changes to these rules allowing certain types of development only in Atlantic City to be located within coastal high hazard and erosion hazard areas does not substantially change the uses subject to management. These changes are tailored to the unique circumstances of Atlantic City, approved by public referendum, and therefore not replicated elsewhere along New Jersey's coast. In 2000, the Department adopted a new special area rule, the Atlantic City rule at N.J.A.C. 7:7E-3.49, to facilitate redevelopment of Atlantic City and its beach and oceanfront facilities and enable it to compete with other gaming resorts. To facilitate the Atlantic City rules, the Coastal high hazard rule was also amended. The goals of the Atlantic City rule as described in detail on pages 17-20, are consistent with the goals of CAFRA, that is, to promote multiple uses that support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all of the people of the State.</p> <p>To address the concerns for storm damage in these areas, the Atlantic City rule requires that development on or over the existing ocean piers receive approval from the Federal Emergency Management Agency (FEMA). This requirement ensures that Atlantic City is complying with the National Flood Insurance Program regulations and associated municipal flood damage prevention ordinances. Further, development on the piers is required to have an evacuation plan approved by the Atlantic City Office of Emergency Management. Further, the rule provides for driving of pilings to safely support this development on the piers while maintaining public access along the water.</p> <p>While allowing development on the existing 5 ocean piers and on or over the boardwalk, within coastal high hazard and erosion hazard areas of Atlantic City may be significant to the redevelopment of Atlantic City, it is not a significant change to New Jersey's coastal management program. New Jersey has approximately 127 miles of Atlantic Ocean coastline. The changes to these rules would allow limited development within a 2-mile stretch of Atlantic Ocean coastline within one municipality only.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.18 Coastal High hazard Areas (continued)		<p>Development within the coastal high hazard and erosion hazard areas is limited to the footprint of 5 existing ocean piers, including the Garden Pier, Steel Pier, Steeplechase Pier, Central Pier and Million Dollar (Ocean One) Pier as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery.</p> <p>The Atlantic City rule limits the types of development on these piers to a balance of mixed-use development including hotel, casino, non-casino entertainment, active and passive public recreation uses and public beach use-related amenities such as restroom and shower facilities. Residential development such as apartments and condominiums is prohibited on the piers. Only hotels that have received approval from FEMA are permitted.</p> <p>The area of hotel accommodations is further limited as a minimum of 50% of the total floor area of any building on the piers has to be devoted to non-casino entertainment and recreation and accessible to the public. Further, the size of the buildings on the piers is limited in height and by a setback from the seaward end of the pier. The building height is further restricted within the area of the setback.</p> <p>In addition to allowing limited development on the existing ocean piers within erosion hazard areas, the changes to the erosion hazard area rule allow limited development on or over the Boardwalk. The Atlantic City rule restricts this development to construction of elevated pedestrian bridges, awnings, canopies, marquees and other roof extensions and signs along the boardwalk. Because of the limited scope of development allowed and because many of these structures are similar to those that are allowed by this rule in already developed commercial boardwalk areas this is not considered a substantial change.</p> <p>The limited development within coastal high hazard and erosion hazard areas of Atlantic City furthers the goal of redevelopment of this urban area as set forth in New Jersey's State Development and Redevelopment Plan, the 1976 referendum approving casino gambling in Atlantic City, is consistent with the goals of CAFRA and the Coastal Zone Management Act (assisting the redevelopment of deteriorating waterfronts). By furthering the goals of these Acts, the rule changes described above preserves the national interest in protecting recreation, public access and furthers the national interest by promoting the redevelopment of deteriorated coastal urban areas.</p>
7:7E-3.19 Erosion hazard areas	➤Single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993 is conditionally acceptable	<p>The change to areas where beach/tourism oriented commercial development is acceptable does not substantially change the uses subject to management or consideration of the national interest. This provision was adopted in August 1988 and was intended to allow low intensity infill development in certain oceanfront communities where an existing municipal boardwalk is already densely developed. In these areas, it was determined that the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited additional loss in property damages. In keeping with the intent of this provision, the rule was further modified in 2000. Reference to certain municipalities was deleted and replaced by language which recognizes all commercial boardwalk areas that existed on July 19, 1993, the date CAFRA jurisdiction was amended to include development on beaches, dunes and within 150 feet of the mean high water line. Because these areas are limited in their number and size, and the affects would be the same as the previous listed areas, this change is not substantial. Further, in three of the municipalities Point Pleasant Borough, North Wildwood and Wildwood City, there are no erosion hazard areas because the beaches are presently accreting sand.</p> <p>This change facilitates public access to the waterfront along the coast in developed oceanfront areas, while discouraging new commercial boardwalk zones in areas vulnerable to storms. Further, this change preserves the national interest in providing adequate consideration for the protection of barrier islands, erosion hazard areas, recreation and public access to the waterfront.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.19 Erosion hazard areas (continued)		The major objectives of the national interest in these areas is to avoid the long and short term adverse impacts associated with the occupancy and modification of high risk erosion areas while protecting existing recreational areas and promoting public access to the waterfront
	➤ Adds subsection requiring development within these areas comply with the impervious and vegetative cover requirements set forth in Subchapters 5 and 5B	The change to this subsection requiring development found acceptable under this rule to also meet the impervious cover and vegetative requirements of the CZM rules does not substantially change the uses subject to management. It has always been the Department's practice to apply the impervious cover limits and vegetative cover requirements to developments subject to the CZM rules which are not specifically exempted under N.J.A.C. 7:7E-5.1(d). This change merely codifies the Department's application of Subchapters 5 and 5B in these areas.
	➤ Adds to listing of conditionally acceptable developments within erosion hazard areas, development in Atlantic City on or over the existing ocean piers and Boardwalk, including pilings necessary to support development proposed on or over the existing piers	The changes to this rule allowing limited development in the erosion hazard area of Atlantic City does not substantially change to uses subject to management or consideration of the national interest for the same reasons described under the coastal high hazard area rule on page 8.
7:7E-3.20 Barrier island corridor	<ul style="list-style-type: none"> ➤ Changes in punctuation ➤ Updates the existing cross-reference to Subchapter 5 with no changes in meaning 	Changes in punctuation and the updating of cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.21 Bay islands	➤ Clarifies that Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not considered bay islands	The change clarifying that existing lagoon edges are not bay islands does not substantially change to the uses subject to management. Existing lagoon edges remain subject to the Existing lagoon edges rule at N.J.A.C. 7:7E-3.24 and the uses permitted in these areas remains unchanged.
	➤ Clarifies that impervious cover limits for the areas not considered bay islands are determined either under the Special Area rules, N.J.A.C. 7:7E-3 or N.J.A.C. 7:7E-5 and 5B (Requirements for impervious cover and vegetative cover for General Land areas and certain special areas)	This rule change does not substantially change the uses subject to management. The rule as approved by OCRM, lists certain areas that are not considered bay islands. Language has been added to this section that clarifies that the impervious cover limits and vegetative cover requirements for the listed areas are determined by either the Special area rules, N.J.A.C. 7:7E-3, and/or under N.J.A.C. 7:7E-5B (Impervious cover limits and vegetative cover percentages). This rule change merely clarifies the Department's application of the CZM rules impervious cover limits and vegetative cover requirements to these specific areas and thus is not a substantial change.
	<ul style="list-style-type: none"> ➤ Water dependent development is acceptable provided: <ol style="list-style-type: none"> (1) Impervious cover limit does not exceed 30% of the bay island portion of the site; (2) For forested portions of bay islands, at least 30% of existing forest must be preserved; (3) For unforested portions of bay islands, at least 5% of bay island shall be planted with trees and remainder with herb shrub vegetation adapted to substrate and other environmental conditions of site 	The changes to this rule setting numerical impervious cover limits in place of the qualitative limits does not substantially change the uses subject to management. Bay islands are environmentally valuable because of their proximity to wetlands, intertidal flats, tidal waterways, shellfish beds, and endangered wildlife habitats. The bay island's value in part stems from their isolation from human activity as compared to the oceanfront barrier islands, where development and beach usage is generally intense. Development on bay islands could interfere with the evacuation of the barrier islands during severe coastal storms because bridges and causeways from the barrier islands to the mainland are built across the bay islands. Bay islands are also subject to flooding however, some bay islands have already been developed, and redevelopment on them would not pose a significant threat to environmental resources or interfere with emergency evacuations of the barrier islands. Provided the redevelopment is limited to the area of existing development.

Rule Citation	Rule Change	Significance of Change
7:7E-3.21 Bay islands (continued)	<p>➤ Redevelopment or modification of an existing development acceptable provided:</p> <p>(1) Construction of buildings and/or concrete pavement is located in the area covered by buildings and/or concrete pavement legally existing on site at the time of application to DEP and does not exceed number of dwelling units or square footage of interior floor space;</p> <p>(2) Trees shall be planted and/or preserved on at least 5 % of the bay island portion of the site</p>	<p>The changes to this rule do not substantially change uses subject to management or consideration of the national interest. The rule prior to the 2000 amendments did not contain a standard for bay islands that abutted either a paved public road or a sewerage conveyance system with adequate capacity. The amended rule addresses these situations by setting the impervious cover limit to 3%, the same impervious cover limit for the Environmentally Sensitive Planning Area, in which bay islands are located. Further, the tree and vegetation planting/preservation requirements are the same as those set forth at N.J.A.C. 7:7E-5B for the Coastal Environmentally Sensitive (CES) Planning Area. These changes substitute numerical impervious cover limits and vegetative cover requirements for the standard in the existing rule that allows water dependent development on undeveloped bay islands if there is no feasible alternative and if it minimizes environmental impacts. Non-water dependent development is prohibited as it was under the rule prior to these amendments. As the impervious cover and vegetative cover requirements are the same as all development located in the CES planning area, this is not a significant change to the rule.</p> <p>For bay islands which abut both a paved public road and sewerage conveyance system with adequate capacity, the impervious cover limit for water dependent uses is 30% and non-water dependent uses is 3%. The higher impervious cover limit is intended to balance the competing interests of providing water dependent uses, such as marinas, and conserving undeveloped sites on bay islands, and is in recognition that development should occur where the infrastructure to support it currently exists. Because infrastructure is present, there should be less disturbance and fewer adverse secondary impacts than on bay islands where no infrastructure is present. Hence this is not a significant change.</p> <p>This rule has contained a redevelopment provision since 1990 which precluded any increase in units or square footage of interior floor space, while setting an impervious cover limit of 80% or the amount that existed on the site whichever is less. The amendments to this rule retain the restriction on increasing the number of units or square footage of interior floor space, and merely clarify where the redevelopment (buildings, concrete/asphalt pavement) is to be located. Because the redevelopment is limited to areas covered by existing buildings, concrete or asphalt pavement, and further limited by the restriction on increases to the number of units or interior floor area, an impervious cover limit is no longer necessary. This is not a significant change as it allows redevelopment of developed to occur in areas that already have been disturbed. Further, the changes to this rule preserve the national interest in protecting barrier islands while promoting redevelopment of coastal areas.</p>
7:7E-3.22 Beaches	<p>➤ Adds to the list of examples of acceptable activities on beaches the following in Atlantic City:</p> <p>(1) Development on or over the existing ocean piers,</p> <p>(2) Pilings necessary to support development proposed on or over the piers; and</p> <p>(3) Development on or over the Boardwalk</p>	<p>The change adding development on or over the existing ocean piers and boardwalk and reconstruction of pilings necessary to support development proposed on the piers in Atlantic City to the list of acceptable activities does not substantially change the uses subject to management or consideration of the national interest. The standards of the Atlantic City rule require that any pilings necessary to support proposed development on the piers be designed and constructed in a manner which does not adversely affect the natural functioning of the beach and dune system and which minimizes disruption of sand movement, thus maintaining the beach for traditional beach uses. Public access from the piers to the beach and access along the beach under the pier are also required. Because the standards of the Atlantic City rule are consistent with the Beaches rule, this is not a substantial change. The changes to this rule continue to preserve the national interest in protecting beaches and public access while promoting the national interest goal of redeveloping deteriorated urban coastal areas.</p>
7:7E-3.23 Filled water's edge	<p>➤ Updates cross-reference to Subchapter 5 and 5B</p>	<p>Changes updating cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.23 Filled water's edge (continued)	<ul style="list-style-type: none"> ➤Rule provides 3 options for waterfront portion of site: (1) Developed with water dependent use; (2) Developed with an at-grade deck; and (3) Left undeveloped for future water dependent uses 	<p>The rule change allowing the construction of an at-grade deck within the waterfront portion of a filled water's edge site does not substantially change the uses subject to management or consideration of the national interest. The inclusion of the construction of an at grade deck as an acceptable activity within the waterfront portion of the site is intended to support water oriented tourism related uses without precluding the future development of water dependent uses. Allowing only at-grade decks limits the types of development that may occur. Further, the at-grade decks can be removed in favor of water dependent uses in the future. Thus this is not a significant change. This rule change preserves the national interest in promoting public access to the waterfront.</p>
7:7E-3.24 Existing lagoon edges	<ul style="list-style-type: none"> ➤Updates cross-references to the impervious cover and vegetative cover requirements and to the filling and structural shore protection rules. 	<p>Changes updating cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.</p>
7:7E-3.25 Flood hazard areas	<ul style="list-style-type: none"> ➤Amended definition of flood hazard area to clarify that flood hazard areas include DEP delineated areas and areas defined or delineated as A or V zones by FEMA 	<p>The changes to the definition of a flood hazard area do not substantially change the uses subject to management or consideration of the national interest. Prior to the 2003 amendments, this rule could have applied to any FEMA delineated flood hazard area including areas subject to greater than 100-year flood events. The amendments limiting the FEMA defined or delineated flood hazard areas to A or V zones thus limiting flood hazard areas to the 100-year flood event consistent with the DEP delineated flood hazard areas. This change does not affect consideration of the national interest in protecting floodplain and erosion hazard areas.</p>
	<ul style="list-style-type: none"> ➤Encourages dedication of developed and undeveloped flood hazard areas 	<p>The rule change encouraging dedication of developed and undeveloped flood hazard areas does not substantially change the uses subject to management or consideration of the national interest. This change merely encourages developed and undeveloped flood hazard areas be dedicated as public open space. Further, the major objectives of the national interest in these areas is to avoid the long and short term adverse impacts associated with the occupancy and modification of floodplains and high risk erosion areas. The changes to this rule further the above goals of the rule and objectives of consideration of the national interest.</p>
	<ul style="list-style-type: none"> ➤Clarified types of development that can occur in undeveloped flood hazard areas 	<p>The changes to this rule do not substantially change the uses subject to management or consideration of the national interest. The goal of this rule is to reduce losses of life and property resulting from unwise development of flood hazard areas and allow uses compatible with periodic flooding, agricultural and forestry, recreation, and fish and wildlife habitat and uses which require as water's edge location. This rule is consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The rule will ensure that the State's waterfront is not pre-empted by uses that could function equally well at inland locations.</p> <p>Flood Hazard Areas adjacent to rivers are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystems, providing flood storage capacity, physical and biochemical water filtration, primary productivity and wildlife habitats.</p> <p>For these reasons, the preferred rule is to preserve those flood hazard corridors that are in an undeveloped state with native or adapted forest vegetation for conservation purposes and to allow limited exceptions for water dependent uses, infill and uses for which there is no feasible alternative location.</p> <p>Further, the major objectives of the national interest in these areas is to avoid the long and short term adverse impacts associated with the occupancy and modification of floodplains and high risk erosion areas. The changes to this rule further the above goals of the rule and objectives of consideration of the national interest.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.25 Flood hazard areas (continued)	➤Corrected terminology and cross-references to other Coastal Zone Management rules	Corrections to terminology and changes to update cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.27 Wetlands	<p>➤Replaced term “conservation easement” with “conservation restriction” for purposes of consistency throughout the Chapter</p> <p>➤Replaced existing rule text addressing financial assurance requirements for wetland mitigation proposals with a cross-reference to Subchapter 3C which address the information required in tidal wetland and intertidal and subtidal shallows mitigation proposals</p>	Changes in terminology for the purposes of consistency throughout the Chapter and changes to cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.31 Coastal bluffs	➤Reduces the required 25 foot setback for individual single family homes from 25 feet to 10 feet on limited waterways	The change to this rule allowing the construction of individual single family homes and accessory structures on a coastal bluff is does not substantially change the uses subject to management or consideration of the national interest. This change was made because the Department found that such development need not be constructed 25 feet from top of bank to protect the integrity of the bluff. Rather, if a development is properly designed, a 10 foot setback is sufficient to maintain the integrity of the bluff. Development, including single family homes has always been subject to a setback requirement from the top of bluff. Under the amendments described herein, the setback from single family homes has been reduced from 25 feet from top of bluff to 10 feet. The rule requires that the proposed disturbance associated with the construction not result in the loss of stability of the bluff or vegetation on the face of the bluff. In addition, to the 10 foot setback, any development associated with the single family home that requires excavation must be setback from the top of the bluff an additional foot for each foot of excavation. For example, a swimming pool that requires 8 feet of excavation must be set back 18 feet from top of bluff (10 foot setback plus one foot for each foot of excavation required.) It is anticipated that this change will allow the construction of single family homes closer to the face of the bluff while preserving the integrity of the bluff. The reduced setback for single family homes does not apply to the high-energy shorelines of the Atlantic Ocean, Delaware Bay, and Sandy Hook and Raritan Bays. Further, the change to the setback requirements for this rule will continue to preserve the national interest in erosion hazard areas. The main objective of the national interest in these areas is to avoid short and long term impacts associated with high risk erosion hazard areas. The rule continues to require a setback from the top of bluff and also requires that the proposed disturbance not result in the loss of stability of the bluff. Further, the reduced setback for single family homes does not apply to the high-energy shorelines of the Atlantic Ocean, Delaware Bay, and Sandy Hook and Raritan Bays where the potential for damage of structures is much greater because of the structure’s exposure to increased wave heights.
7:7E-3.34 Steep slopes	<p>➤Discourages development where wetlands, wetlands buffers, intermittent stream corridors, threatened and endangered wildlife or vegetation species habitats or water areas are adjacent to the site or the slope is forested</p> <p>➤Elsewhere, development is conditionally acceptable provided slope is revegetated and stabilization measures are used</p>	The changes to this rule do not substantially change the uses subject to management or consideration of the national interest. Prior to the 2003 amendments, the rule discouraged development on steep slopes unless it was essential to a reasonable use of the site. It has been difficult to interpret what uses are essential to a reasonable use of the site, and, thus, it has been difficult to consistently apply this standard. In addition, this standard has not been clear to applicants. For these reasons this standard was deleted. Under the amended rule, development is discouraged where wetlands, wetland buffers, intermittent stream corridors threatened and endangered wildlife and vegetation species habitats or waters are located adjacent to or at the base of the steep slope and on steep slopes that are forested. This change provides greater protection where there is an environmentally sensitive feature such as a stream or wetland at the base of a steep slope.

Rule Citation	Rule Change	Significance of Change
7:7E-3.34 Steep slopes (continued)		<p>Development on steep slopes in areas where these features are not present is acceptable provided appropriate stabilization measures including natural vegetation and man-made controls are utilized.</p> <p>The standard requiring that the proposed development be consistent with the natural contour of the site was deleted because once the steep slope is developed, the slope will not be consistent with the natural contour of the site.</p> <p>The changes to this rule will continue to preserve the national interest in erosion hazard areas. The main objective of the national interest in these areas is to avoid short and long term impacts associated with high risk erosion hazard areas. For the reasons discussed above, the changes to this rule further the main objective of this national interest area.</p>
	➤Changes to cross-references	Changes to cross references are considered to be minor changes to the program that do not affect the five program approvability areas but are included for notification purposes.
7:7E-3.35 Dry borrow pits	➤Changes to codifications, terminology and grammar for the purposes of clarity with no changes in meaning	Changes to codifications, terminology and grammar for clarity are considered to be minor changes to the program change that do not affect the 5 program approvability areas but are included for notification purposes.
	➤Deleted reference to disposal of clean dredge spoil and radioactive or carcinogenic waste as exceptions to the standards for solid waste disposal in dry borrow pits	This change does not substantially change the uses subject to management. The rule was amendment to delete the specific types of solid waste for which this subsection does not apply since N.J.A.C. 7:7E-3.35(f) of this rule contains the acceptability criteria for dredged material disposal and the CZM rule's definition of solid waste excludes hazardous waste.
	➤Replaces standards for solid waste disposal in dry borrow pits with a cross-reference to the Coastal Zone Management rules' Solid Waste rule, N.J.A.C. 7:7E-8.22	The changes to this rule do not substantially change the uses subject to management. The acceptability conditions at N.J.A.C. 7:7E-3.35(g)2-7 are found in the Solid Waste Management rules, N.J.A.C. 7:26 or Recycling rules, N.J.A.C. 7:26A. These conditions were replaced with a cross-reference to the CZM rule's Solid Waste rule, N.J.A.C. 7:7E-8.22 since this rule requires that a coastal development comply with the above cited regulations.
7:7E-3.37 Specimen trees	➤Change to correct the title of the Division of Parks and Forestry	Changes to update titles of programs are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.40 Public open space	➤Adds provision allowing development in Atlantic City within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the Atlantic City rule	The change to this rule allowing certain types of development within street rights-of-way or the Boardwalk in Atlantic City that comply with the Atlantic City rule does not substantially change the uses subject to management or consideration of the national interest. The Atlantic City rule as discussed in further detail below, recognizes the Public Trust Doctrine by requiring that public access, both visual and physical to the waterfront be maintained at certain streets, along the Boardwalk and at portions of the ocean piers where access has been provided historically. The addition of the Atlantic City rule provision preserves the national interest in protecting recreational needs and public access to the waterfront.
7:7E-3.41 Special hazard areas	➤Change to correct the title of the Department's Division of Solid and Hazardous Waste	Changes to update titles of programs are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.42 Excluded federal lands	➤Amended to reflect changes as a result of the reauthorization of the Federal Coastal Zone Management Act in 1990	The changes to this rule that reflect the Coastal Zone Management Act Reauthorization Amendments of 1990 do not substantially change the uses subject to management or consideration of the national interest. The definition of Federal land was amended to reflect the changes made to the Federal definition as part of the reauthorization of the Federal Coastal Zone Management Act in 1990. Further, the rule was changed to reflect Coastal Zone Management Act Reauthorization Amendments of 1990 clarifying that Federal consistency applies to any Federal activity, regardless of location, that affects any land or water use, or natural resource. The changes to this rule preserve the national interest in providing adequate consideration of Federal agency activities and the Federal Coastal Zone Management Act.

Rule Citation	Rule Change	Significance of Change
7:7E-3.43 Special urban areas	➤ Replaced listing of qualifying municipalities with reference to where listing may be obtained	The change to this rule replacing the list of qualifying municipalities with a reference as to where a current list may be obtained does not substantially change the uses subject to management. Pursuant to the Coastal Zone Management rules, special urban areas are those municipalities defined in urban aid legislation qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. These are also known as “qualifying municipalities.” The list of municipalities throughout the State qualifying for urban aid under N.J.S.A. 52:27D-178 is determined each State fiscal year by the Department of Community Affairs and may vary from year to year. Rather than include what may become an inaccurate list of municipalities, this rule has been amended to delete the list of municipalities and simply refer to where the list may be obtained.
	➤ Changes to update cross-references	Changes to update cross-references are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area	➤ Change to update the address where copies of the MOA between the Pinelands Commission and Department may be obtained	Changes to update addresses are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.45 Hackensack Meadowlands District	➤ Changes to correct cross-reference and update title of the Department and New Jersey Meadowlands Commission	Changes to correct cross-reference and update titles of agencies are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.47 Geodetic control reference marks	➤ Changes to correct grammar	Changes to correct grammar are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
7:7E-3.48 Hudson River Waterfront area	➤ Changes to update cross-references and terminology and correct grammar	Changes to update cross-references and terminology and correct grammar are considered to be minor changes to the program that do not affect the 5 program approvability areas but are included for notification purposes.
	➤ Recodified and expanded provision encouraging consultation with Department for proposed that varies in detail from the standards of the rule	This rule change does not substantially change the uses subject to management. Prior to the 2003 rule amendments, the rule at N.J.A.C. 7:7E-3.48(d) encouraged consultation with the Department for proposed development on platforms(piers) that did not adhere to the standards of this section, as this form of development was a unique form of development. This concept of encouraging early consultation for developments that vary in detail from the standards of the rule was expanded to all such applications and recodified to N.J.A.C. 7:7E-3.48(f), which provides the standards for such variations.
7:7E-3.49 Atlantic City (NEW)	➤ Provides acceptability conditions for certain types of development including: (1) Development on the 5 ocean piers; (2) Development on and over the Boardwalk and within existing street rights-of-way	<p>The addition of a special area rule for Atlantic City does not substantially change the uses subject to management or consideration of the national interest. The Atlantic City rule is intended to facilitate certain types of urban development and encourage redevelopment of Atlantic City and its beach and oceanfront facilities, in recognition of Atlantic City's unique situation based on the 1976 referendum approving casino gaming in Atlantic City.</p> <p>Atlantic City was singled out for special treatment by virtue of the casino referendum (Public Question Number 1, 1976 General Election) authorizing casino gambling in the City. One goal of this referendum was to revitalize the deteriorating condition of the City. In the Department's experience, development in Atlantic City over the past 20 years has been unlike that in other areas and the new special area rule recognizes and accommodates the unique circumstances of casino-oriented development. The special area rule for the Hudson River waterfront area at N.J.A.C. 7:7E-7:7E-3.48 is in fact a precedent for the Atlantic City special area rule.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.49 Atlantic City (continued)		<p>The reasons for adoption of this rule are to (1) provide a more predictable permitting process for proposed developments in Atlantic City; (2) promote tourism; (3) maintain, enhance and promote continued public access to the Atlantic Ocean and Absecon Inlet waterfront and adjacent areas; (4) allow Atlantic City to continue to compete in the future with other gaming resorts throughout the nation; and (5) enable the City to reach its stated goal of becoming a world-class resort. The rule reflects the existing intensity of development in Atlantic City and the importance of the gaming industry to the continued enhancement of the tourist oriented resort economy, and recognizes the need to promote continued public use and tourism related development. This is consistent with the goals of CAFRA, that is to promote multiple uses that support diversity and are in the best long-term, social, economic, aesthetic and recreational interests of all the people of the State.</p> <p>The rule allows certain types of development on and over the five existing ocean piers (Garden Pier, Steeplechase Pier, Million Dollar Pier and Central Pier). The rule allows the construction of a balance of mixed-use development including hotel, casino, non-casino entertainment, active and passive public recreation uses and public beach use-reacted amenities such as restroom and shower facilities on the piers. In addition to the reasons for adopting the rule cited above, the rule will stimulate creative and responsible redesign of Atlantic City's waterfront and foster year-round family recreation and entertainment. Development on these piers is limited to the footprint of the pier depicted on the Department's 1995-97 National Aerial Photographic Program imagery. This photography was chosen because it most accurately reflects the current footprint of the piers and is available on the Department's Geographic Information System. Prior to this rule, hotels were prohibited on these piers. Residential development such as apartments and condominiums are prohibited on the 5 ocean piers except for hotels that have received a waiver of strict compliance from the Federal Emergency Management Agency. The intent of this provision is that FEMA with its expertise in emergency operations, hazard identification and risk assessment, review the proposed development on the piers to ensure that such development does not conflict with the FEMA-approved municipal flood damage prevention ordinance. The area of hotel accommodations is further limited as a minimum of 50% of the total floor area of any building on the piers has to be devoted to non-casino and recreation and accessible to the public. The size of the buildings is also limited in height and by a setback from the seaward end of the pier. Building height is even further restricted within the area of the set back. (Also see the summary of the changes to the Coastal High Hazard Area and Erosion Hazard Area rules, N.J.A.C. 7:7E-3.18 and 3.19 above.).</p> <p>Development on the piers is also subject to public access requirements. These requirements ensure that the existing public trust rights to access and the use of the Atlantic Ocean are maintained or enhanced, despite the increased development being allowed on the piers. Year-round tourism interests and public access to the waterfront are promoted by requiring: (1) public access walkways with seating and lighting around the perimeter of the pier at the level of the deck surface of the boardwalk; (2) publicly accessible restrooms, showers and changing areas; (3) access stairways leading directly to the beach; and (4) pedestrian access along the beach under the pier. Any building constructed on a pier would be required to provide a setback from the end of the pier to accommodate public seating, viewing and fishing, which adds greater public interest and diversity of uses to these uniquely located structures.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.49 Atlantic City (continued)		<p>The rule also contains standards for the size and spacing of pilings used to support development on the existing piers. The pilings must be designed and constructed in a manner which does not adversely impact the natural shoreline littoral processes, and allows for linear pedestrian access along the dry beach under the pier. This condition is imposed to maintain the beach for traditional beach uses and is in compliance with the Beach special area rule. In order to comply with this condition, an applicant must conduct an engineering study to evaluate the impacts downdrift. The rule does not allow for new piers nor extension (lengthening) or widening of existing piers, minimizing the potential for such impacts. Furthermore, The Atlantic City beach is already a heavily manipulated environment. In recognition of this, the State-Federal beach nourishment project for the City was designed by the US Army Corps of Engineers to take into consideration how sand placement should be accomplished depending on particular location and beach structures in place.</p> <p>Parking is prohibited on the piers to minimize the conflict with public access and prioritize use of the piers for hotel and recreational entertainment purposes. The construction of new commercial piers or expansion of existing commercial piers is prohibited unless the pier is associated with a marina that meets the marina rule, N.J.A.C. 7:7E-7.3 and the Marina development standards rule at N.J.A.C. 7:7E-7.3A. This standard will maintain both existing visual and physical access to the ocean and inlet. The rule sets forth standards for development on and over the Boardwalk, including pedestrian bridges for access to the piers, awnings, canopies, marquees and other roof extensions and signs along the Boardwalk. The standards for the construction of pedestrian bridges over the Boardwalk minimize the loss of light and air and enable the relationship between the Boardwalk, beach and ocean to remain unaltered, limiting the bridges to one per pier and restricting their height and width. The standards for the construction of awnings, canopies, marquees and other roof extensions and signs along the Boardwalk will enable the Boardwalk to remain primarily open to the beach and ocean and yet return some of the interest and architectural amenities found along the Boardwalk during the earlier part of the century. These elements are frequently incorporated into the design of buildings along the Boardwalk and oceanfront block and as such, the standards will ensure that these elements are designed in a manner that minimizes their impact on the use of public open space yet offers interest and diversity. Development that is not an elevated pedestrian bridge, awning, canopy, marquee or other roof extension or sign that meets the standards of this rule are prohibited. Prior to the adoption of the Atlantic City rule, these types of development were reviewed under the Public open space, Public access to the waterfront and Scenic resources and design rules. The Ac rule provides a more predictable means of addressing the issues related to public open space, scenic resources and public access.</p> <p>The rule requires mitigation in cases where structures encroach into street rights-of-way. Mitigation will be in the form of money paid to the Casino Redevelopment and Development Authority (CRDA) and designated for acquisition and/or improvement of lands for public access to public parks along the oceanfront and inlet. The mitigation requirement will compensate for the encroachment into the street rights-of-way by enhancing opportunities for public access to the waterfront elsewhere along the Atlantic City oceanfront and inlet. If the money is used for improvements within the street-end, it must be used for improvements if a street-end preserved under this rule. Thus the preserved street-ends will be enhanced to encourage public access to the beach and waterfront. The mitigation formula is based on the current municipal formula for mitigation in cases where development is allowed to encroach onto municipal streets, and has been applied to several developments, including Caesar's Hotel Casino and the Tropicana Hotel Casino.</p> <p>In order to consolidate the rules related to Atlantic City, the standards for the location of casinos and intercept parking were recodified as part of this rule.</p>

Rule Citation	Rule Change	Significance of Change
7:7E-3.49 Atlantic City (continued)		The adoption of the Atlantic City special area rule furthers the goal of redevelopment of this urban area as set forth in New Jersey's State Development and Redevelopment Plan, the 1976 referendum approving casino gambling in Atlantic City, and is consistent with the goals of CAFRA and the Coastal Zone Management Act (assisting the redevelopment of deteriorating waterfronts). By furthering the goals of these Acts, the rule described above preserves the national interest in protecting recreation, public access and furthers the national interest by promoting the redevelopment of deteriorated coastal urban areas.

Rule text - Subchapter 3

February 6, 2006

Changes to existing rule text approved by OCRM are shown as follows:

Additions indicated in **boldface**; and

Deletions indicated in ~~[bracketed-strikethrough]~~.

7:7E-3.1 Purpose and scope

Changes to existing rule as approved by OCRM

7:7E-3.1 ~~[Introduction]~~ **Purpose and scope**

(a) Special Areas are ~~[those 48 types of coastal areas which merit]~~ **areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit** focused attention and special management rules.

This subchapter divides Special Areas into ~~[Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.49).]~~ **four categories:**

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

2. ~~[The]~~ Special Water's Edge Areas, ~~[can be found at]~~ N.J.A.C. 7:7E-3.16 through 3.32, ~~[and]~~ are divided into three subcategories~~[-]~~ depending on their location~~[s]~~. **Special Water's Edge Areas in (a)2i and ii below are found only next to tidal waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters;**

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

ii. Barrier and Bay Islands, ~~[N.J.A.C. 7:7E-3.20 and 7:7E-3.21];~~ and

iii. Coastwide Special Water's Edge Areas, ~~[N.J.A.C. 7:7E-3.22 through 3.32];~~

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

~~[4-]~~ **3. Special Land Areas, N.J.A.C. 7:7E-3.33 through 3.35, generally** are landward of the **Special Water's Edge Areas**~~[-]~~; **and**

~~[5-]~~ **4. Coastwide Special Areas, N.J.A.C. 7:7E-3.36 through 3.49,** may include **Special Water Areas, Special Water's Edge Areas** or **Special Land Areas**.

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

New rule text subject to RPC

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

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

2. Special Water's Edge Areas, N.J.A.C. 7:7E-3.16 through 3.32, are divided into three subcategories depending on their location. Special Water's Edge Areas in (a)2i and ii below are found only next to tidal waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters;

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

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

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

3. Special Land Areas, N.J.A.C. 7:7E-3.33 through 3.35, generally are landward of the Special Water's Edge Areas; and

4. Coastwide Special Areas, N.J.A.C. 7:7E-3.36 through 3.49, may include Special Water Areas, Special Water's Edge Areas or Special Land Areas.

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

7:7E-3.4 Prime fishing areas

Changes to existing rule text approved by OCRM

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins ~~and~~, public fishing piers or docks **and artificial reefs**. Prime fishing areas also include all red line delineated features within the **coastal waters** ~~[State of New Jersey's three-mile territorial sea]~~ illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay". While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone.

(b) ~~[Policy]~~ **Standards** relevant to prime fishing areas ~~[is]~~ **are** as follows:

1. Permissible uses of prime fishing areas include recreational and commercial finfishing and shellfishing, as presently regulated by ~~[NJDEP]~~ **the Department's** Division of Fish~~[-Game,]~~ and Wildlife, scuba diving and other water related recreational activities.
2. (No change.)

(c) Rationale

New rule text subject to RPC

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins , public fishing piers or docks and artificial reefs. Prime fishing areas also include all red line delineated features within the coastal waters illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988) "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay". While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone.

(b) Standards relevant to prime fishing areas are as follows:

1. Permissible uses of prime fishing areas include recreational and commercial finfishing and shellfishing, as presently regulated by the Department's Division of Fish and Wildlife, scuba diving and other water related recreational activities.
2. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards.

(c) Rationale

7:7E-3.5 Finfish migratory pathways

Changes to existing rule text approved by OCRM

(a) – (c) (No change.)

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the ~~[NJDEP]~~ **the Department's**, Division of Fish~~[-Game]~~ and Wildlife approves the design of the access structure. As of January, 1994, the ~~[NJDEP]~~ **Department's** Division of Fish~~[-Game]~~ and Wildlife is ~~[currently]~~ evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) (No change.)

New rule text subject to RPC

(a) Finfish migratory pathways are waterways (rivers, streams, creeks, bays and inlets) which can be determined to serve as passageways for diadromous fish to or from seasonal spawning areas, including juvenile anadromous fish which migrate in autumn and those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory" NJDEP Miscellaneous Report No. 41, and including those portions of the Hudson and Delaware Rivers within the coastal zone boundary.

1. Species of concern include: alewife or river herring (*Alosa pseudoharengus*), blueback herring (*Alosa sapidissima*), American shad (*Alosa aspidissima*), striped bass (*Monroe saxatilis*), Atlantic sturgeon (*Acipenser oxyrinchus*), Shortnose sturgeon (*Acipenser brevirostrum*) and American eel (*Anguilla rostrata*).

(b) Development, such as dams, dikes, spillways, channelization, tide gates and intake pipes, which creates a physical barrier to the movement of fish along finfish migratory pathways is prohibited, unless acceptable mitigating measures such as fish ladders, erosion control, or oxygenation are used.

(c) Development which lowers water quality to such an extent as to interfere with the movement of fish along finfish migratory pathways or to violate State and Delaware River Basin Commission water quality standards is prohibited.

1. Mitigating measures are required for any development which would result in: lowering dissolved oxygen levels, releasing toxic chemicals, raising ambient water temperature, impinging or suffocating fish, entrainment of fish eggs, larvae or juveniles, causing siltation, or raising turbidity levels during migration periods.

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the Department's, Division of Fish and Wildlife approves the design of the access structure. As of January, 1994, the Department's Division of Fish and Wildlife is evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) Rationale

7:7E-3.6 Submerged vegetation habitat

Changes to existing rule text approved by OCRM

(a) A Submerged vegetation special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (*Ruppia maritima*), sago pondweed (*Potamogeton pectinatus*), horned pondweed (*Zannichellia palustris*) and eelgrass (*Zostera marina*). In New Jersey, submerged vegetation is most prevalent in the shallow portions of the Navesink, Shrewsbury, Manasquan and Metedeconk Rivers, and in Barnegat, Manahawkin and Little Egg Harbor Bays. Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (*Elodea nuttalli*), Eriocaulon parkeri, *Liaeopsis chinesis*, *Naja flexilis*, *Nuphar variegatum*, *Potamogeton crispus*, *Potamogeton epihydrus*, *Potamogeton perfoliatus*, *Potamogeton pusillus*, *Scirpus subterminalis* and *Vallisneria americana*. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation and also on "Eelgrass Inventory" maps prepared by the Division of Fish and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.

(b) ~~[Regulated activities]~~ **Development** in submerged vegetation habitat ~~[are]~~ **is** prohibited except for the following:

1. (No change.)

2. New dredging of ~~[State and Federal]~~ navigation channels **maintained by the State or Federal government** provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possesses submerged aquatic vegetation;

3. Maintenance dredging as defined at N.J.A.C. 7:7E-~~[4.2(f)]~~ **4.6** of previously authorized, existing ~~[State and Federal]~~ navigation channels **maintained by the State or Federal government** and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging as defined at N.J.A.C. 7:7E-~~[4.2(f)]~~ **4.6 and 4.7**, of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion

of the marina) and existing launching facilities with 25 or more dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging as defined at N.J.A.C. 7:7E-~~4.2(f)~~ **4.6** to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. – 7. (No change.)

(c) ~~[Regulated activities]~~ **Development** in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which results in erosion or turbidity increases in the waters supporting submerged vegetation **or prop or hull scour through use of the development** ~~[are]~~**is** prohibited unless mitigating measures are provided.

(d) – (e) (No change.)

New rule text subject to RPC

(a) A Submerged vegetation special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (*Ruppia maritima*), sago pondweed (*Potamogeton pectinatus*), horned pondweed (*Zannichellia palustris*) and eelgrass (*Zostera marina*). In New Jersey, submerged vegetation is most prevalent in the shallow portions of the Navesink, Shrewsbury, Manasquan and Metedeconk Rivers, and in Barnegat, Manahawkin and Little Egg Harbor Bays. Other submerged vegetation species in lesser quantities include, but are not limited to, the following: water weed (*Elodea nuttalli*), Eriocaulon parkeri, Liaeopsis chinesis, Naja flexilis, Nuphar variegatum, Potamogeton crispus, Potamogeton epiphydrus, Potamogeton perfoliatus, Potamogeton pusillus, Scirpus subterminalis and Vallisneria americana. Detailed maps of the distribution of the above species for New Jersey, and a method for delineation, are available from DEP in the New Jersey Submerged Aquatic Vegetation Distribution Atlas (Final Report), February, 1980, conducted by Earth Satellite Corporation and also on "Eelgrass Inventory" maps prepared by the Division of Fish and Wildlife, Bureau of Shellfisheries, 1983. If the Department is presented with clear and convincing evidence that a part of its mapped habitat lacks the physical characteristics necessary for supporting or continuing to support the documented submerged vegetation species, such a site would be excluded from the habitat definition.

(b) Development in submerged vegetation habitat is prohibited except for the following:

1. Trenching for utility pipelines and submarine cables in the public interest, provided there is no practicable or feasible alternative alignment, the impact area is minimized and that, following pipeline or cable installation, the disturbed area is restored to its preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;
2. New dredging of navigation channels maintained by the State or Federal government provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example dredging width, length and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possesses submerged aquatic vegetation;
3. Maintenance dredging as defined at N.J.A.C. 7:7E-4.6, of previously authorized, existing navigation channels maintained by the State or Federal government and associated disposal areas provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;
4. New and maintenance dredging as defined at N.J.A.C. 7:7E-4.6 and 4.7, of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths and widths) are minimized to the maximum extent practicable;
5. Maintenance dredging as defined at N.J.A.C. 7:7E-4.6, to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;
6. Construction of a single noncommercial dock or pier provided that:
 - i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;
 - ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;
 - iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

- iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;
- v. No dredging shall be performed in conjunction with the use of the dock or pier;
- vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and
- vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation; and

7. The extension of existing piers or floating docks through submerged vegetation habitat to water at least four feet deep at mean low water, for the purpose of eliminating dredging or boating through submerged vegetation habitat, provided the width of the extended portion of the pier does not exceed four feet (except for the portion of the pier adjacent to the mooring area where the width shall not exceed six feet), there will be no increase in the number of boat moorings, and no dredging will be performed in conjunction with the use of the structure.

(c) Development in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which results in erosion or turbidity increases in the waters supporting submerged vegetation or prop or hull scour through use of the development is prohibited unless mitigating measures are provided.

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).

(e) Rationale

7:7E-3.8 Canals

Changes to existing rule text as approved by OCRM

(a) ~~["Canals"]~~ are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, ~~Bay Head-Manasquan]~~ **Point Pleasant**, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

~~(b) [Policy: The Cape May and Bay Head-Manasquan Canals are man-made tidal guts. Development in these canals must be consistent with the General Water Area policies for Tidal Guts (N.J.A.C. 7:7E-4.7) as well as with the following policies:~~

~~1. In canals presently used for navigation, such as the Cape May and Bay Head-Manasquan canals, the following policies shall apply:~~

- ~~i. Aquaculture, filling, dams and impoundments, and any other use which would interfere with existing or proposed canal boat traffic is prohibited;~~
- ~~ii. Maintenance dredging is encouraged as needed provided that an acceptable spoil disposal site is available and turbidity is controlled.]~~ **In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.**

~~[2-] (c)~~ In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistent with the rules and regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45~~[-4]~~).

~~[(e)]~~ **(d)** (No change in text.)

New rule subject to RPC

(a) Canals are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, Point Pleasant, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

(b) In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.

(c) In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistent with the rules and

regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45).

(d) Rationale

7:7E-3.10 Marina moorings

Changes to rule text as approved by OCRM

(a) – (c) (No change.)

~~[(d) New or maintenance dredging in marina mooring areas and access channels is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new and maintenance dredging, N.J.A.C. 7:7E-4.2(f) and (g).]~~

~~[(e)]~~ **(d)** (No change in text.)

New rule subject to RPC

(a) Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for five or more recreational boats.

(b) Non-water dependent development in a marina mooring area is prohibited.

(c) Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

(d) Rationale

7:7E-3.14 Wet borrow pits

Changes to existing rule text as approved by OCRM

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, **the Wetlands rule, N.J.A.C. 7:7E-3.27**, and/or Wetlands Buffers **[Rules] rule, N.J.A.C. 7:7E-3.28**, shall apply. ~~[(See N.J.A.C. 7:7E-3.27 and 3.28).]~~

(b) – (c) (No change.)

(d) Surface mining is conditionally acceptable provided condition (b) above ~~[is met and the Use Rules for Mining (see N.J.A.C. 7:7E-7.8) are complied with]~~ **and the Mining rule, N.J.A.C. 7:7E-7.8, are met.**

(e) (No change.)

(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. (No change.)

2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in **a** pattern **designed** to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1. –3. (No change.)

4. ~~[There is designation of a]~~ **A** water quality buffer zone **of at least 50 feet is designated in accordance with or (j) below** around **remaining** water areas ~~[of at least 50 feet];~~

5. A program for water quality monitoring and maintenance is included with the application; **and**

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance~~;~~ **and**

7. ~~All requirements of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., are satisfied].~~

(h) – (i) (No change.)

~~[(j) Limited recreational use of the wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized.]~~

~~[(k)]~~ **(j)** A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. **Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.**

~~[(+)]~~ **(k)** (No change in text)

New rule text subject to RPC

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, the Wetlands rule, N.J.A.C. 7:7E-3.27, and/or Wetlands Buffers rule, N.J.A.C. 7:7E-3.28, shall apply.

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). In addition, such activities must receive a Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities.

(c) Proposed uses which would promote the wildlife habitat and scenic amenity values of wet borrow pits are encouraged.

(d) Surface mining is conditionally acceptable provided condition (b) above and the Mining rule, N.J.A.C. 7:7E-7.8, are met.

(e) Recreational use of wet borrow pits is acceptable provided that wildlife habitat disturbance is minimized.

(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. The dredged material is clean and non-toxic, an appropriate particle size for the site, and will not disturb groundwater flow or quality;
2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in a pattern designed to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1. The fill is clean and will not degrade groundwater quality;
2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit is left as open water;
3. Land-water edges are maximized and vegetated to promote native wildlife;
4. A water quality buffer zone of at least 50 feet is designated in accordance with (j) below around remaining water areas;
5. A program for water quality monitoring and maintenance is included with the application; and
6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance.

(h) Discharge of liquid or solid waste, other than clean dredge fill of acceptable particle size, is prohibited.

(i) All proposed uses directly adjacent to wet borrow pits shall grade all banks at the immediate water's edge, except those in acceptable water access areas, to a slope not greater than 33 percent, and shall stabilize the surface and initiate succession of native vegetation adapted to water's edge conditions.

(j) A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.

(k) Rationale

7:7E-3.15 Intertidal and subtidal shallows

Changes to existing rule text as approved by OCRM

(a) Intertidal and subtidal shallows means all permanently or ~~[twice-daily]~~ **temporarily** submerged areas from the spring high ~~[tide]~~ **water line** to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with ~~[the acceptability conditions found at]~~ **(c), (d), (e), and (f) below and with** N.J.A.C. 7:7E-4.2 **through 4.22.** ~~[Dredging is acceptable only if the following criteria are satisfied in addition to the acceptability conditions found at N.J.A.C. 7:7E-4.2:]~~

~~[1-The]~~ **(c) Maintenance** dredging of intertidal and subtidal shallows ~~[may be]~~ **is** acceptable to maintain adequate water depths **in accordance with N.J.A.C. 7:7E-4.6** ~~[for any existing or new marinas with 25 or more slips or public launching facilities and existing ports].~~

~~[2-Maintenance dredging of intertidal and subtidal shallows for legally constructed, existing docks other than those identified in (b)1 above, is acceptable provided the following criteria are met:~~

- ~~i. The depth of the proposed dredge area does not exceed four feet mean low water;~~
- ~~ii. The width of the access channel is the minimum width required to moor a boat at the dock; and~~
- ~~iii. The maintenance dredging complies with all applicable Special Water Area Rules (N.J.A.C. 7:7E-3).]~~

(d) New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

- 1. There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;**
- 2. There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other Special Areas; and**
- 3. The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.**

~~[3-]~~ **(e) The installation of** ~~[Submerged]~~ **submerged** infrastructure **within intertidal and subtidal shallows** is conditionally acceptable, provided ~~[that]~~:

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;

~~[i-]~~ **2. Where directional drilling is not feasible,** ~~[There]~~ **there** is no feasible alternative route that would not disturb intertidal and subtidal shallows;

~~[ii-]~~ **3. The infrastructure is** ~~[buried]~~ **located** deeply enough to avoid exposure or hazard; **and** ~~[iii. Directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching where feasible; and]~~

~~[iv-]~~ **4. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.**

~~[4-]~~ **(f)** The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements ~~[found under]~~ **of** the Filling rule ~~[{] at~~ N.J.A.C. 7:7E-~~[4-2(j)]~~ **4.10(f)** and the Coastal Engineering rule ~~[{] at~~ N.J.A.C. 7:7E-7.11(d)~~]~~.

~~[(e) If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. Specific filling activities acceptable under N.J.A.C. 7:7E-4.2(j)2iii(1) and 7.11(d) are exempt from this mitigation requirement.~~

~~1. Dredging activities for residential noncommercial docks will not require mitigation. Dredging activities for projects which do not meet the criteria at (b)1 and 2 above, marinas and ports will not require mitigation provided the dredged area is reduced to the minimum extent practicable (minimum being the smallest area compared to the area needed to develop the same project at another site)]~~

(g) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (h) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (e)1, 2 and 3;

2. Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;

3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);

4. New Dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and

5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(h) Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to lost ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single family home or duplex property mitigation shall

be performed in accordance with the following hierarchy:

i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;

ii. If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;

iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;

iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;

v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code where the destruction is located;

vi. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:

(1) Creation of intertidal and subtidal shallows at a creation to lost ratio of 1:1 within the same watershed management area; or

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

[(*)] (i) Rationale

New rule text subject to RPC

(a) Intertidal and subtidal shallows means all permanently or temporarily submerged areas from the spring high water line to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e), and (f) below and with N.J.A.C. 7:7E-4.2 through 4.22.

(c) Maintenance dredging of intertidal and subtidal shallows is acceptable to maintain adequate water depths in accordance with N.J.A.C. 7:7E-4.6.

(d) New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

1. There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;
2. There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other Special Areas; and
3. The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.

(e) The installation of submerged infrastructure within intertidal and subtidal shallows is conditionally acceptable, provided:

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;
2. Where directional drilling is not feasible, there is no feasible alternative route that would not disturb intertidal and subtidal shallows;
3. The infrastructure is located deeply enough to avoid exposure or hazard; and
4. All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

(f) The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable

provided it meets the requirements of the Filling rule at N.J.A.C. 7:7E-4.10(f) and the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(d).

(g) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (h) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c) and (e)1,2 and 3;
2. Maintenance dredging in accordance with N.J.A.C. 7:7E-4.6;
3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);
4. New Dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and
5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(h) Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to lost ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or
2. At a property other than a single family home or duplex property mitigation shall be performed in accordance with the following hierarchy:
 - i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;
 - ii. If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;
 - iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;
 - iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;
 - v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code where the destruction is located;
 - iv. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:
 - (1) Creation of intertidal and subtidal shallows at a creation to lost ratio of 1:1 within the same watershed management area; or
 - (2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.

(i) Rationale

7:7E-3.16 Dunes

Changes to existing text as approved by OCRM

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

1. – 2. (No change.)

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

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

1. – 5. (No change.)
6. Shore protection structures which meet the ~~use conditions of~~ **Coastal Engineering rule** at N.J.A.C. 7:7E-7.11(e); and
7. (No change.)

(c) The creation of dunes for the purpose of shore protection is strongly encouraged. According to the National Flood Insurance Program (NFIP) Regulations established by the Federal Emergency Management Agency (FEMA), primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to or less than ~~540~~ **1,100** square feet. This standard represents the minimal dune volume to be considered effective in providing protection from the 100-year storm surge and associated wave action, and should represent a "design dune" goal.

(d) Rationale

New rule text subject to RPC

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

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.
2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing or alteration of dunes is prohibited, unless these activities are a component of a Department approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;
2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7E-3A);
3. Limited stairs, walkways, pathways, and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7E-3A, provided they cause minimum feasible interference with the beach and dune system;
4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7E-3A;
5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7E-3A;
6. Shore protection structures which meet the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(e); and
7. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1).

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

(d) Rationale

7:7E-3.17 Overwash areas

Changes to existing rule text approved by OCRM

(a) (No change.)

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

1. – 3. (No change.)

4. Shore protection structures which meet the ~~[use conditions]~~ **Coastal Engineering rule at N.J.A.C. 7:7E-7.11(e)**;

5. – 7. (No change.)

(c) (No change.)

(d) A single story, beach/tourism oriented commercial development located within ~~[an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City]~~ **a commercial boardwalk area existing on July 19, 1993** is conditionally acceptable provided that it meets the following conditions:

1. – 4. (No change.)

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(f) Rationale

New rule text subject to RPC

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

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.

2. The landward limit of the overwash area is the inland limit of sediment transport.

3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

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

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7E-3A;

2. Demolition and removal of paving and structures;

3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runup;

4. Shore protection structures which meet the Coastal Engineering rule at N.J.A.C. 7:7E-7.11(e);

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

6. Removal of newly deposited overwash fans from public roads and or developed lots; and

7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

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

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

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

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

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

(f) Rationale

7:7E-3.18 Coastal high hazard areas

Changes to existing rule text approved by OCRM

(a) (No change.)

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

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

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

1. – 4. (No change.)

(e) Any development determined to be acceptable at (c) and (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

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

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

1. Development on or over existing ocean piers;

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

3. Development on or over the Boardwalk.

~~[(e)](h)~~ Rationale

Rule text subject to RPC

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

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

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

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

1. The site is landward of the boardwalk;

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

3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility complies with all the flood proofing requirements at N.J.A.C. 7:7E-3.25, Flood hazard areas.

(e) Any development determined to be acceptable at (c) and (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

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

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

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

(h) Rationale

7:7E-3.19 Erosion hazard areas

Changes to existing rule text approved by OCRM

(a) (No change.)

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

1. – 2. (No change.)
3. Single story, beach/tourism oriented commercial development located within ~~[an already developed municipal boardwalk/commercial area of Point Pleasant Beach, Seaside Heights, Ocean City, North Wildwood and Wildwood City]~~ **a commercial boardwalk area existing on July 19, 1993** is conditionally acceptable provided that it meets the following conditions:
 - i. – ii. (No change.)
 - iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded; ~~[and]~~
 - iv. The facility meets all the flood proofing requirements of the Flood Hazard Areas rule **(N.J.A.C. 7:7E-3.25)**; and
 - v. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B;**
4. Single family and duplex developments that meet the standards of N.J.A.C. 7:7E-7.2(e) **or (f)**;
5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7E-3A;
6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7E-3A; **and**
- 7. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:**
 - i. Development on or over existing ocean piers;**
 - ii. Pilings necessary to support development proposed on or over existing ocean piers; and**
 - iii. Development on or over the Boardwalk.**

(c) Rationale

New rule subject to RPC

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

1. Erosion hazard areas may be identified by any one of the following characteristics:
 - i. Lack of beaches;
 - ii. Lack of beaches at high tide;
 - iii. Narrow beaches;
 - iv. High beach mobility;
 - v. Foreshore extended under boardwalk;
 - vi. Low dunes or no dunes;
 - vii. Escarped foredune;
 - viii. Steep beach slopes;
 - ix. Cliffed bluffs as adjacent to beach;
 - x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;
 - xi. High long-term erosion rates; or
 - xii. Pronounced downdrift effects of groins (jetties).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Development on or over existing ocean piers;

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

iii. Development on or over the Boardwalk.

(c) Rationale

7:7E-3.20 Barrier island corridors

Changes to existing text approved by OCRM

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

1. (No change.)

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided ~~[that the criteria for high development potential are met, as defined in the policy for Land Areas (see N.J.A.C. 7:7E-5.5) and the maximum acceptable intensities for development under the Land Area Policies are not exceeded]~~ **that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.**

(c) Rationale

New rule text subject to RPC

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

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

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

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

(c) Rationale

7:7E-3.21 Bay islands

Changes to existing rule text approved by OCRM

7:7E-3.21 Bay islands

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). **Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.**

1. (No change.)

2. ~~[This rule will not apply to proposed development located in the following areas:]~~ **For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.**

OCEAN COUNTY

Bonnett Island, Stafford Township
Chadwick Island, Dover Township
Channel Island, Mantoloking Borough
Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY

Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough
West Wildwood, Wildwood City
West 17th Street, Ocean City

(b) On bay islands ~~[sites]~~ which ~~[do not]~~ ~~abut~~ **either** a paved public road ~~[and are not served by a sewerage system with adequate capacity]~~ **or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, or which abut neither a paved public road nor such a conveyance,** non-water dependent development is prohibited **unless it meets the standards of (d) below** and water dependent development is discouraged. Water dependent development ~~[may be]~~ **is conditionally** acceptable ~~[if there are not feasible alternatives and environmental impacts are minimized.]~~ **provided that:**

- 1. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);**
- 2. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and**
- 3. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.**

(c) On bay islands ~~[sites]~~ which ~~abut~~ a paved public road and ~~[sewerage system with adequate capacity]~~ **abut the conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, development is conditionally acceptable as follows:**

1. ~~[water]~~ **Water** dependent development is conditionally acceptable, provided ~~[all other applicable Coastal Zone Management rules are complied with.]~~ **that:**
 - i. Impervious cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);**
 - ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with**

N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and
iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

2. [New non-water] Non-water dependent development is conditionally acceptable [only at low intensity of development as defined in N.J.A.C. 7:7E-5.6(d) except for existing lagoon edges (N.J.A.C. 7:8E-3.23) where the acceptable intensity of development may be increased to moderate.] provided that:

i. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

3. Impervious cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets (d)1 above, in which case the impervious cover limit shall not exceed 30 percent.

(d) Redevelopment or modification [of] **within** an existing [~~above-ground facility~~]
development on a bay island is conditionally acceptable [~~subject to the following provisions~~]
provided that:

1. The [~~facility~~] **construction of buildings and/or concrete asphalt pavement is located on the area covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department and** does not exceed the existing development [~~density~~] as to **any one of** the following:

i. – ii. (No change.)

2. [~~The site development does not exceed either 80 percent impervious coverage of the site or the existing intensity of development, that is, existing percent of impervious surface cover, whichever is less.~~] **Trees shall be planted and/or preserved on at least five percent of the bay island portion of the site in accordance with N.J.A.C. 7:7E-5.4(d) and (e).**

New rule text subject to RPC

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.

1. In cases where a bay island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), the more restrictive provisions of the two rules shall apply.

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

OCEAN COUNTY

Bonnett Island, Stafford Township
Chadwick Island, Dover Township
Channel Island, Mantoloking Borough
Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY

Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough
West Wildwood, Wildwood City
West 17th Street, Ocean City

(b) On bay islands which abut either a paved public road or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, or which abut neither a paved

public road nor such a conveyance, non-water dependent development is prohibited unless it meets the standards of (d) below and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

1. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);
2. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and
3. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

(c) On bay islands which abut a paved public road and abut the conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat and dispose of the sewage generated from the proposed development, development is conditionally acceptable as follows:

1. Water dependent development is conditionally acceptable, provided that:
 - i. Impervious cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);
 - ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and
 - iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and
2. Non-water dependent development is conditionally acceptable provided that:
 - i. Impervious cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);
 - ii. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(d), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and
 - iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. 7:7E-5.5, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. 7:7E-5.4(d) and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.
3. Impervious cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets (d)1 above, in which case the impervious cover limit shall not exceed 30 percent.

(d) Redevelopment or modification within an existing development on a bay island is conditionally acceptable provided that:

1. The construction of buildings and/or concrete asphalt pavement is located on the area covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department and does not exceed the existing development as to any one of the following:
 - i. Number of units; or
 - ii. Square footage of interior floor space; and
2. Trees shall be planted and/or preserved on at least five percent of the bay island portion of the site in accordance with N.J.A.C. 7:7E-5.4(d) and (e).

7:7E-3.22 Beaches

Changes to existing text approved by OCRM

(a) (No change.)

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

Examples of acceptable activities are:

1. – 6. (No change.)
7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities; **[and]**
8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the

upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at **N.J.A.C. 7:7E-3A; and 9. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:**

i. Development on or over existing ocean piers;

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

iii. Development on or over the Boardwalk.

(c) - (d) (No change.)

New rule subject to RPC

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including ocean, bay and river shorelines (see Appendix, Figure 1), that extend landward from the mean high water line to either:

1. A man-made feature generally parallel to the ocean, inlet, or bay waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except the sandy areas that extend fully under and landward of an elevated boardwalk are considered beach areas; or
2. The seaward or bayward foot of dunes, whichever is closest to the bay, inlet or ocean waters.

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

Examples of acceptable activities are:

1. Demolition and removal of paving and structures;
2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. 7:7E-3A;
3. The reconstruction of existing amusement and fishing piers and boardwalks;
4. Temporary recreation structures for public safety such as first aid and lifeguard stations;
5. Shore protection structures which meet the use conditions of N.J.A.C. 7:7E-7.11(e);
6. Linear development which meets the Rule on Location of Linear Development (N.J.A.C. 7:7E-6.1);
7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities include routine cleaning, debris removal, mechanical sifting, maintenance of access ways and Department approved dune creation and maintenance activities;
8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. 7:7E-3A; and
9. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7E-3.49:
 - i. Development on or over existing ocean piers;
 - ii. Pilings necessary to support development proposed on or over existing ocean piers; and
 - iii. Development on or over the Boardwalk.

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

(d) Rationale

7:7E-3.23 Filled water's edge

Changes to existing text approved by OCRM

(a) – (b) (No change.)

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

1. The waterfront portion of the site shall be:
 - i. Developed with a water dependent use [~~(see N.J.A.C. 7:7E-1.(c) for definitions)~~], **as defined at N.J.A.C. 7:7E-1.8;**
 - ii. **Developed with an at-grade deck provided:**
 - (1) **The deck is open to the general public;**
 - (2) **The use of the deck is water oriented;**
 - (3) **The deck is not enclosed; and**
 - (4) **A public walkway is provided around the deck landward of the mean high water line at the water's edge; or**
 - iii. [~~or left~~] **Left** undeveloped for future water dependent uses;
2. – 3. (No change.)

(d) (No change.)

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the ~~Stormwater Runoff~~ **stormwater management** rule (N.J.A.C. 7:7E-8.7).

(f) (No change.)

(g) The ~~[intensity of a development does not exceed the maximum allowed under the Acceptability of Development in General and Areas Rule (N.J.A.C. 7:7E-5.2)]~~ **development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.**

(h)-(j) (No change.)

New rule text subject to RPC

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

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

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

1. The waterfront portion of the site shall be:

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

ii. Developed with an at-grade deck provided:

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

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

(3) The deck is not enclosed; and

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

iii. Left undeveloped for future water dependent uses;

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

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

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

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

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

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

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

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

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

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

(g) The development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

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

1. The development proposal addresses, as a minimum, past use of the site as well as potential for future water dependent, commercial, transportation, recreation, and compatible maritime support services uses;
2. The developed land uses closest to the water's edge are water oriented;
3. Currently active maritime port and industrial land uses are preserved;
4. Adverse impacts on local residents and neighborhoods are mitigated to the maximum extent practicable; and
5. All other coastal rules are met.

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

(j) Rationale

7:7E-3.24 Existing lagoon edges

Changes to existing text approved by OCRM

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

1. (No change.)

(b) Development of Existing Lagoon Edges is acceptable provided ~~that~~:

1. – 2. (No change.)

3. New or reconstructed retaining structures are consistent with the ~~Acceptability Conditions for Filling (N.J.A.C. 7:7E-4.11(i)), 7:7E-4.11(j))~~ **the Filling rule at N.J.A.C. 7:7E-4.10** and Structural Shore Protection **rule** ~~[(N.J.A.C. 7:7E-7.11(e))] policies~~; and

4. The ~~intensity of a development does not exceed the maximum allowed under the Acceptability of Development in General and Areas Rule (N.J.A.C. 7:7E-5.2)~~ **development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.**

(c) (No change.)

New rule text subject to RPC

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

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

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

1. The proposed development is compatible with existing adjacent land and water uses;
2. Existing retaining structures are adequate to protect the proposed development;
3. New or reconstructed retaining structures are consistent with the filling rule at N.J.A.C. 7:7E-4.10 and structural shore protection rule N.J.A.C. 7:7E-7.11(e); and
4. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B.

(c) Rationale

7:7E-3.25 Flood Hazard Areas

Changes to existing text approved by OCRM

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by ~~[DEP]~~ **the Department** under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.); ~~[or]~~ **and areas defined or delineated as an A or a V zone** by the Federal Emergency Management Agency (FEMA) ~~[or the flood hazard area around other coastal~~

~~water bodies as defined by FEMA].~~ They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both ~~[DEP] the Department~~ and FEMA, ~~[DEP] the Department~~ delineations shall be used. Where flood hazard areas have not been delineated by ~~[DEP] the Department~~ or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix 1, Figures 6 and 7, incorporated herein by reference).

1- 2. (No change.)

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, ~~[Alluvial Flood Margins,]~~ Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge ~~[policies]~~ **rules** shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of ~~[undeveloped]~~ flood hazard areas for purposes of public open space is encouraged. ~~[, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.) For the purpose of this rule, "undeveloped" means areas, including, but not limited to, lawns and farm fields, which are not covered by impervious surfaces.]~~

(c) In **an undeveloped portion of a flood hazard area** ~~[s, development]~~ **that is** within 100 feet of a navigable water body, **development** is prohibited unless the development is for water dependent use ~~[or low intensity use which does not reduce the flood dissipating value of the flood hazard area or preclude water dependent use of the area].~~ ~~["Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-1.5(c)]~~ **1.8. For the purposes of this subsection and (d) below, an "undeveloped" area is an area that has no impervious cover.**

(d) ~~[Elsewhere in the in the undeveloped portions of the]~~ **In a portion of an undeveloped flood hazard area** ~~[s]~~ **that is 100 feet or farther from a navigable waterway,** development is conditionally acceptable provided ~~[that:~~

1. ~~The acceptable intensity of development does not exceed the maximum allowed under acceptability of development in General Land Areas (N.J.A.C. 7:7E-5.2) for sites that received a Low Intensity Rating and does not exceed Moderate Intensity level for all other sites. Low and Moderate Acceptable Development Intensities are defined in N.J.A.C. 7:7E-5.6(c) and (d) (that is, up to three to five percent of the site for low or 30 percent to 40 percent of the site for moderate can be developed into paving and structures); and~~

2. ~~It]~~ **the development** would not ~~[preempt use of the waterfront portion of the floodplain for potential water dependent use]~~ **prevent potential water-dependent use in any portion of the flood hazard area within 100 feet of a navigable water body.**

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater ~~[Runoff]~~ **Management** rule (N.J.A.C. 7:7E-8.7).

(f) (No change.)

(g) ~~[In developed areas, the intensity of development shall not exceed the maximum allowed under the acceptability of development in the General Land Area rules (N.J.A.C. 7:7E-5.2).]~~ **Development of a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, as applicable.**

(h) (No change.)

New rule text subject to RPC

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by the Department under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.); and areas defined or delineated as an A or a V zone by the Federal Emergency Management Agency (FEMA). They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both the Department and FEMA, the Department delineations shall be used. Where flood hazard areas have not been delineated by the Department or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix 1, Figures 6 and 7, incorporated herein by reference).

1. A complete list of streams for which the Department has delineated the flood hazard area can be found in N.J.A.C. 7:13 (Rules Governing Flood Hazard Areas).

2. The Federal Emergency Management Agency has delineated the tidal floodplain for all Coastal Zone municipalities.

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer,

Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge rules shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of flood hazard areas for purposes of public open space is encouraged.

(c) In an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body, development is prohibited unless the development is for water dependent use. "Navigable" and "water dependent" are defined at N.J.A.C. 7:7E- 1.8. For the purposes of this subsection and (d) below, an "undeveloped" area is an area that has no impervious cover.

(d) In a portion of an undeveloped flood hazard area that is 100 feet or farther from a navigable waterway, development is conditionally acceptable provided the development would not prevent potential water-dependent use in any portion of the flood hazard area within 100 feet of a navigable water body.

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater Management rule (N.J.A.C. 7:7E-8.7).

(f) Development in areas subject to fluvial flooding must conform with the Flood Hazard Area Control Act and rules adopted thereunder. Development in areas subject to tidal flooding must conform with applicable federal flood hazard reduction standards as found at 44 C.F.R. Part 60 and the Uniform Construction Code, N.J.S.A. 52:27D-1 et seq.

(g) Development in a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, as applicable.

(h) Rationale

7:7E-3.27 Wetlands

Changes to existing rule text approved by OCRM

7:7E-3.27 Wetlands

(a) – (b) (No change.)

(c) Development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-~~[1-5]~~**1.8**;
2. – 4. (No change.)

(d) – (g) (No change.)

(h) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with the following:

1. – 2. (No change.)

3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats.

~~[Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in the amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.~~

~~i. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.]~~ **A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or entity that is exempt from this requirement under Federal law. The financial assurance requirements are found at N.J.A.C. 7:7E-3B.3.**

4. - 5. (No change.)

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation ~~[easement]~~ **restriction** and register this restriction on the deed for the subject parcel. This **conservation** restriction will provide that no regulated activities will occur in the created or enhanced wetland area. The **conservation** restriction shall be ~~[memorialized in a deed restriction meeting the Department's requirements]~~ **approved by the Department** and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the ~~[deed]~~ **conservation** restriction is ~~[registered]~~ **recorded** with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the ~~[registered]~~ **recorded conservation** restriction is submitted to the Department will be considered in violation of these rules.

i. (No change.)

7. (No change.)

8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of the mitigation site, the owner shall be required to record a conservation ~~[easement]~~ **restriction** governing that site.

9. – 11. (No change.)

(i) (No change.)

New rule text subject to RPC

(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands areas are identified and mapped on the following:

i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 (generalized locations only);

ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEP at a scale of 1:2,400; and

iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii and iii above are available from the DEP Map and Publications sales office (609) 777-1038.

2. Generalized locations of some wetland types can be found in county soil surveys prepared by the U.S. Department of Agriculture, Soil Conservation Service.

3. The maps referenced under (a)1i, iii, and 2 above shall be useful as an indicator to assist in the preliminary determination of the presence or absence of wetlands only. They have been determined to be unreliable for the purposes of locating the actual wetlands boundary on a specific site.

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.2, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A).

(c) Development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.8;

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent as defined in N.J.A.C. 7:7E-1.5;

2. Has no prudent or feasible alternative on a non-wetland site;

3. Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and

4. Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

(d) In particular, dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(e) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This

rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

(f) Development that adversely affects white cedar stands such as water table drawdown, surface and groundwater quality changes and the introduction of non-native plant species is prohibited.

(g) For projects which require a Waterfront Development permit, the reuse of former dredged material disposal sites for continued dredged material disposal is conditionally acceptable provided the following criteria are met:

1. The site has been used for dredged material disposal within the past 10 years;
2. The site has existing dikes or berms in sound condition, and/or has sufficient area of previously disposed material within the previously disturbed disposal area to allow the construction of structurally sound dikes and berms;
3. There are no anticipated adverse effects on threatened or endangered species;
4. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);
5. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;
6. The former dredged material disposal area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and
7. The required Waterfront Development permit and Water Quality Certification are obtained.

(h) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.
2. When a permit allows the disturbance or loss of wetlands by filling or other means, this disturbance or loss shall be compensated for as specified under (h)9 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.
3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats. A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or entity that is exempt from this requirement under Federal law. The financial assurance requirements are found at N.J.A.C. 7:7E-3B.3.
4. Where the Department permits a mitigation surface area of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing natural resources protected under the applicable Special Area Rules (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.
5. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.
6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation restriction and register this restriction on the deed for the subject parcel. This conservation restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This conservation restriction shall be approved by the Department and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the conservation restriction is recorded with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the recorded conservation restriction is submitted to the Department will be considered in violation of these rules.
 - i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:
 - (1) Not involve a wetland site;
 - (2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;
 - (3) Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and

- (4) There is a compelling public need for the activity greater than the need to protect the mitigation site.
- ii. To satisfy (h)6 above, the applicant shall provide a copy of the recorded document or a receipt showing that the conservation restriction has been recorded at the county clerk's office.
7. Except for publicly funded projects, as described at (h)7i below, any mitigation carried out off-site shall be on private property.
- i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.
8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of the mitigation site, the owner shall be required to record a conservation restriction governing that site.
9. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:
- i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to preactivity condition.
- (1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)9ii(3) below.
- (2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)9iii below.
- ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:
- (1) A non-wetlands site; or
- (2) A former wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains wetland characteristics such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in creation. Rather, it is only eligible for enhancement activities pursuant to (h)9iii below. If the disturbance to a formerly wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation proposal, or a permit, or both, on the resolution of the violation.
- (3) Creation will be required at a ratio of two acres created to one acre lost or disturbed. Under no circumstances shall the mitigation area be smaller than the disturbed area.
- (4) Creation shall not be permitted on a site that retains wetlands characteristics.
- iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.
- iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation. If money is donated, the Department will require an amount equivalent to the lesser of the following costs:
- (1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or
- (2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.
- v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.
10. All mitigation projects shall be carried out on-site to the maximum extent practicable. Mitigation of wetlands, on-site or off-site, from other existing climax habitats is not practicable and is discouraged.
- i. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.
11. All mitigation proposals submitted to the Department shall be prepared in accordance with N.J.A.C. 7:7E-3B.

(i) Rationale

7:7E-3.31 Coastal bluffs

Changes to existing rule text approved by OCRM

(a) (No change.)

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on the Location of Linear Development (N.J.A.C. 7:7E-6.1), ~~and~~ shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11), and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay and comply with N.J.A.C. 7:7E-7.2(e) or (f).

(c) – (d) (No change.)

New rule text subject of RPC

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff.
2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland (see Appendix, Figures 7 and 8, incorporated herein by reference).
3. Steep slopes (N.J.A.C. 7:7E-3.34) are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on the Location of Linear Development (N.J.A.C. 7:7E-6.1), shore protection activities which meet the appropriate Coastal Engineering Use rules (N.J.A.C. 7:7E-7.11), and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay and comply with N.J.A.C. 7:7E-7.2(e) or (f).

(c) The stabilization of coastal bluffs with vegetation is encouraged.

(d) Rationale

7:7E-3.34 Steep slopes

Changes to existing rule text subject to RPC

(a) ~~Steep slopes~~ are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. 7:7E-~~3.30~~ **3.31**). Steep slopes include natural swales and ravines, as well as manmade areas, such as those created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes ~~[(see Resource Policy on Soil Erosion and Sedimentation, N.J.A.C. 7:7E-8.8)].~~

(b) Development on steep slopes is discouraged ~~[unless its use is essential to a reasonable use of the site and it can be shown to the satisfaction of the Division that the development will:~~

1. ~~Produce minimum feasible site disturbance;~~ where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. 7:7E-5.5(c).

(c) Development on steep slopes other than those listed in (b) above, is conditionally acceptable provided:

- ~~1. [Provide for maximum feasible vegetation of the] The steep slope [; especially] is vegetated with native woody vegetation to the maximum extent practicable; and~~
~~[3. Be consistent with the natural contour of the site to the maximum extent feasible; and]~~
~~[4.] 2. [Include limited stabilization] Stabilization measures are used, if necessary, such as terracing and paving, that are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable[; and~~
~~5. Meet the Resource Policies for Runoff, and Soil Erosion and Sedimentation (N.J.A.C. 7:7E-8.7 and 8.8)].~~

~~(e)]~~ **(d)** (No change in text.)

New rule text subject to RPC

(a) Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. 7:7E-3.31). Steep slopes include natural swales and ravines, as well as manmade areas, such as those created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes.

(b) Development on steep slopes is discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. 7:7E-5.5(c).

(c) Development on steep slopes other than those listed in (b) above, is conditionally acceptable provided:

1. The steep slope is vegetated with native woody vegetation to the maximum extent practicable; and
2. Stabilization measures are used, if necessary, such as terracing and paving, that are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable.

(d) Rationale: See note in the beginning of this chapter.

7:7E-3.35 Dry borrow pits

Changes to existing rule text approved by OCRM

(a) ~~["~~Dry borrow pits~~"]~~ are excavations for the purpose of extracting coastal minerals which have not extended below the groundwater level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Surface mining is conditionally acceptable, provided the Mining Use ~~Policies~~ ~~(~~**rule at N.J.A.C. 7:7E-7.8**~~)~~ ~~are complied with~~ **is satisfied**.

(c) – (e) (No change.)

(f) Dredged ~~spoil~~ **material** disposal is conditionally acceptable provided that:

1. The ~~spoil~~ **dredged material** will not degrade groundwater quality;
2. The ~~spoil~~ **dredged material** is of a particle size that will not disturb groundwater hydrology; and
3. ~~Spoil~~ **Dredged material** disposal is compatible with neighboring uses.

(g) Solid waste disposal ~~[other than clean dredge spoil, and not including radioactive or carcinogenic waste;]~~ is conditionally acceptable on a case-by-case basis provided that:

1. Waste disposal is compatible with neighboring uses;
- ~~2. The borrow pit is lined with clay, plastic or other impermeable material; leachate is collected, treated and discharged to the ground through an injection well or other technique that will not degrade groundwater quality; and maintenance will be available for the life of the landfill;~~
- ~~3. The solid waste is stacked and interlayered with inert material;~~
- ~~4. A reclamation plan is submitted with the application showing naturalistic final grading, surface improvement with topsoil and organic additives and planting to initial native successions with guarantees of survival for the first five years;~~
- ~~5. Elevations of landfill do not exceed original surface elevations before mining;~~
- ~~6. The reclamation proposals are worked toward during dumping, and completed at conclusion; and~~

~~7. The applicant can demonstrate that even during accidental failure of a treatment plant, the leachate cannot degrade ground or surface water.]~~

2. Elevations of the landfill do not exceed original surface elevations before mining; and

3. The waste disposal complies with the Solid and Hazardous Waste rule at N.J.A.C. 7:7E-8.22.

(h) Filling or grading for construction is conditionally acceptable provided ~~[that:~~

- ~~1. Other coastal policies are satisfied; and~~
- ~~2. The~~ **the** fill is clean and of a texture **that will** not ~~[te]~~ disturb local groundwater flow.

(i) – (j) (No change.)

New rule text subject to RPC

(a) Dry borrow pits are excavations for the purpose of extracting coastal minerals which have not extended below the groundwater level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Surface mining is conditionally acceptable, provided the mining use rule at N.J.A.C. 7:7E-7.8 is satisfied.

(c) Channeling clean surface runoff into dry sand and gravel pits for the purposes of aquifer recharge is encouraged. Pavement runoff may be channeled into dry borrow pits provided that it is adequately filtered to remove pavement contaminants.

(d) Discharge of clean effluent from liquid waste treatment facilities for aquifer recharge is encouraged (e.g., tertiary sewage effluent), provided groundwater quality is monitored and maintained.

(e) Storing water in impermeable dry borrow pits is conditionally acceptable.

(f) Dredged material disposal is conditionally acceptable provided that:

1. The dredged material will not degrade groundwater quality;
2. The dredged material is of a particle size that will not disturb groundwater hydrology; and
3. Dredged material disposal is compatible with neighboring uses.

(g) Solid waste disposal is conditionally acceptable on a case-by-case basis provided that:

1. Waste disposal is compatible with neighboring uses;
2. Elevations of the landfill do not exceed original surface elevations before mining; and
3. The waste disposal complies with the solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

(h) Filling or grading for construction is conditionally acceptable provided the fill is clean and of a texture that will not disturb local groundwater flow.

(i) All proposed uses must reduce all banks to a slope of less than one in three, stabilize them, and prepare them for planting, and initiate native successions.

(j) Rationale

7:7E-3.37 Specimen trees

Changes to existing rule text approved by OCRM

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's ~~[Bureau]~~ **Division** of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by ~~[DEP]~~ **the Department's** Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) – (c) (No change.)

New rule text subject to RPC

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's Division of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by the Department's Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) Development is prohibited that would significantly reduce the amount of light reaching the crown, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree. The site of the tree extends to the outer limit of the buffer area necessary to avoid adverse impacts, or 50 feet from the tree, whichever is greater.

(c) Rationale

7:7E-3.40 Public open space

(a) – (c) (No change.)

(d) Development within existing public open space is conditionally acceptable, provided that the development ~~[complies with the Rules on Coastal Zone Management and]~~ is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

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

(f) – (h) (No change.)

New rule text subject to RPC

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

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

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

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

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

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

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

(h) Rationale

7:7E-3.41 Special hazard areas

Changes to existing text approved by OCRM

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

(b) (No change.)

(c) Approvals from the ~~[DEP's]~~ **Department's** Division of **Solid and** Hazardous Waste ~~[Management]~~ shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

(d) (No change.)

New rule text subject to RPC

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

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

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

(d) Rationale

7:7E-3.42 Excluded Federal lands

Changes to existing text approved by OCRM

(a) ~~[""]~~Excluded Federal lands~~[""]~~ are those lands, ~~[that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the United States of America]~~ **the use of which is, by law, subject solely to the discretion of or held in trust by the Federal**

Government, its officers or agents [~~and~~]. **These lands** are excluded from [~~New Jersey's Coastal Zone~~] **the coastal zone** as required by **Section 304 of** the Federal Coastal Zone Management Act. [~~They are listed in the New Jersey Coastal Management Program (August, 1980) at page 370.~~] **The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.**

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

(c) Rationale

New rule text subject to RPC

(a) Excluded Federal lands are those lands, the use of which is, by law, subject solely to the discretion of or held in trust by the Federal Government, its officers or agents. These lands are excluded from the coastal zone as required by Section 304 of the Federal Coastal Zone Management Act.

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

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

(c) Rationale

7:7E-3.43 Special urban areas

Changes to existing text approved by OCRM

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. **Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.** [~~The following municipalities within the coastal zone qualify as special urban areas in 1993:~~

- ~~— Asbury Park~~
- ~~— Atlantic City~~
- ~~— Bayonne~~
- ~~— Bellville~~
- ~~— Bridgeton~~
- ~~— Camden~~
- ~~— Carteret Borough~~
- ~~— Commercial Twp.~~
- ~~— Elizabeth~~
- ~~— Glassboro~~
- ~~— Gloucester City~~
- ~~— Gloucester Twp.~~
- ~~— Hoboken~~
- ~~— Jersey City~~
- ~~— Keansburg~~
- ~~— Kearny~~
- ~~— Lakewood~~
- ~~— Long Branch~~
- ~~— Millville~~
- ~~— Mt. Holly Twp.~~
- ~~— Neptune Twp.~~
- ~~— New Brunswick~~
- ~~— Newark~~
- ~~— North Bergen~~
- ~~— Old Bridge City~~
- ~~— Passaic~~
- ~~— Paulsboro~~
- ~~— Pennsauken~~
- ~~— Penns Grove~~

~~—Perth Amboy~~
~~—Pleasantville~~
~~—Rahway~~
~~—Salem~~
~~—Trenton~~
~~—West New York~~
~~—Weehawken~~
~~—Willingboro~~
~~—Woodbridge~~
~~—Woodbury]~~

(b) – (c) (No change.)

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

(e) (No change.)

New rule text subject to RPC

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

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

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

1. Where piers have been removed as part of the harbor clean up program, the equivalent pier area may be replaced in either the same or other nearby location;
2. Where structurally sound existing pilings have been reconfigured, provided that the total area of water coverage is not increased and that fisheries resources are not adversely impacted; or
3. Where expansion of the existing total area water coverage has occurred, provided that it can be shown that extensions are functionally necessary for water dependent uses. For example, additional piers and pilings would be conditionally acceptable for a marina which is a water dependent use.

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

(e) Rationale

7:7E-3.44 Pinelands National Reserve and Pinelands Protection area
Changes to existing rule text approved by OCRM

(a) (No change.)

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. (No change.)

2. The Department's Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the **[Environmental Regulations' Coastal/Land Planning Group at CN 423, 401 East State Street] Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.**

(c) – (d) (No change.)

New rule text subject to RPC

(a) The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625), an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County and from Gloucester and Camden County on the west to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east (see Appendix, Figure 10, incorporated herein by reference). The "Pinelands Area" is a slightly smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act of 1979 (N.J.S.A. 13:18-1 et seq.). The Pinelands Commission adopted a Comprehensive Management Plan in November, 1980. Within the Pinelands Area, the law delineates a Preservation Area, where the plan shall "preserve an extensive and contiguous area of land in its natural state, thereby insuring the continuation of a Pinelands environment ..." (Section 8c).

1. Under the authority of the Department's Surface Water Quality Standards (N.J.A.C. 7:9B), all surface waters within the boundaries of the Pinelands Area, except those waters designated as FWI, are designated "Pinelands Waters" which have special antidegradation policies, designated uses and water quality criteria (see N.J.A.C. 7:9B1-4, 1.5(d)6ii, 1.12(b), and 1.14(b)). The Department's present Groundwater Quality Standards (N.J.A.C. 7:9-6), which were adopted on March 3, 1981, and revised on February 1, 1993, identify the "Central Pine Barrens Area" as the only part of the Pinelands distinguished from the rest of the State (N.J.A.C. 7:9-6.7(c)).

2. The coastal municipalities wholly or partly within the Pinelands National Reserve Area include:

Atlantic County

Brigantine City
Corbin City
Egg Harbor City
Egg Harbor Township
Estell Manor Township
Galloway Township
Hamilton Township
Mullica Township
Port Republic
Somers Point City
Weymouth Township

Burlington County

Bass River Township
Washington Township

Cape May County

Dennis Township
Middle Township
Upper Township
Woodbine Borough

Cumberland County

Maurice River Township

Ocean County

Barnegat Township
Beachwood Borough
Berkeley Township
Dover Township
Eagleswood Township
Lacey Township
Lakehurst Borough
Little Egg Harbor Township
Manchester Township
Ocean Township
South Toms River Borough
Stafford Township
Tuckerton Borough

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. Within the Pinelands National Reserve, the Pinelands Commission will serve as a reviewing agency for coastal construction permit applications.

2. The Department's Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum

of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Department's Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(c) Coastal activities in areas under the jurisdiction of the Pinelands Commission 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 in freshwater wetlands and/or State open waters shall require a State permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Clean Water Act of 1977, or under an individual or statewide general permit program administered by the State under the provisions of 33 USC 1344 and N.J.S.A. 13:9B-6(b).

(d) Rationale

7:7E-3.45 Hackensack Meadowlands District

Changes to existing text approved by OCRM

(a) The "Hackensack Meadowlands District" is a 19,730 acre area of water, coastal wetlands and associated uplands designated for management by a State-level agency known as the ~~[Hackensack Meadowlands Development Commission (HMDC)]~~ **New Jersey Meadowlands Commission**, by the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A. 13:17-1 et seq.). See Figure 20.

(b) The ~~[HMDC]~~ **New Jersey Meadowlands Commission** will act as the lead coastal planning and management agency within this Special Area. The ~~[HMDC]~~ **New Jersey Meadowlands Commission** Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see ~~[section on GAPS in Chapter 4]~~ **the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263**). The ~~[Division]~~ **Department** will periodically review Commission actions and will consider incorporating any proposed changes in ~~[HMDC]~~ **New Jersey Meadowlands Commission** plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) Coastal activities under the jurisdiction of the ~~[HMDC]~~ **New Jersey Meadowlands Commission** 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

New rule text subject to RPC

(a) The "Hackensack Meadowlands District" is a 19,730 acre area of water, coastal wetlands and associated uplands designated for management by a State-level agency known as the New Jersey Meadowlands Commission, by the Hackensack Meadowlands Reclamation and Development Act of 1968 (N.J.S.A. 13:17-1 et seq.). See Figure 20.

(b) The New Jersey Meadowlands Commission will act as the lead coastal planning and management agency within this Special Area. The New Jersey Meadowlands Commission Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263). The Department will periodically review Commission actions and will consider incorporating any proposed changes in New Jersey Meadowlands Commission plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) Coastal activities under the jurisdiction of the New Jersey Meadowlands Commission 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

7:7E-3.47 Geodetic control reference marks

Changes to existing rule text approved by OCRM

(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. – 4. (No change.)

(b) – (c) (No change.)

Rule text subject to RPC

(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. 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

7:7E-3.48 Hudson River waterfront area

Changes to existing text approved by OCRM

(a) – (b) (No change.)

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal ~~[Resource and Development Policies]~~ **Zone Management rules** 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]~~ **Department** as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under ~~[policies]~~ **rules** 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. –iv. (No change.)

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) (No change.)

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

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

vi. – ix. (No change.)

(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] restriction** in favor of the Department. The conservation **[easement] restriction** 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] Department** will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.
2. – 3. (No change.)

(f) Applications which vary in detail from the standards of this **[policy] rule** are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict **[policy] compliance with this rule. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.**

New rules text subject to RPC

(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 Zone Management rules with particular attention given to N.J.A.C. 7:7E- 3.40, Public open space, N.J.A.C. 7:7E-3.41 Special hazards areas, N.J.A.C. 7:7E-3.43 Special urban areas, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

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

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:
 - i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;
 - ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

For 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:

For example:

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

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

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

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

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

vi. At least one public access walkway of at least 16 feet in width shall be provided along the entire length of a pier, from the waterward end to the landward end at the point at which it abuts the Hudson River Waterfront Walkway. All such walkways shall be at pier deck level or ramped so that disabled access is provided between the public open space areas at both ends of a pier;

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

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

ix. All pier structures shall 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 Department will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.

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

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

a pedestrian right of way. Stop signs, speed bumps and similar design techniques shall be used as necessary.

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

7:7E-3.49 Atlantic City
New rule subject to RPC

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

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

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

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

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

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

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

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

i. Garden Pier;

ii. Steel Pier;

iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

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

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

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

5. The height of the structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements and amusement rides which shall not exceed 200 feet. There shall be no occupancy above the 100 foot elevation.

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

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

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

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

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

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

iv. The public open space shall have unrestricted access, at no cost, and shall not be limited to patrons of the commercial or hotel facilities;

v. An open-air public access walkway of at least 18 feet in width shall be provided perpendicular to the Boardwalk, along the entire southwestern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vi. An open-air public access walkway of at least 12 feet in width shall be provided perpendicular to the Boardwalk, along the entire northeastern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vii. Public restrooms, showers and changing areas shall be provided on the pier, immediately adjacent to the Boardwalk and the stairs from the beach on either side of the pier. Alternatively, the public restrooms, showers and changing areas may be located immediately adjacent to the Boardwalk provided these facilities are:

(1) Owned and maintained by the pier owner; and

(2) Located no further than 200 linear feet from the pier; and

viii. Signage shall be provided along the Boardwalk at the entrance to the piers indicating the location and availability of the public access features listed in (c)8i through vii above.

9. Service corridors to the piers shall be located beneath the Boardwalk, or if service to the piers is to be provided over the Boardwalk, it shall be restricted to the period between 12 o'clock midnight and 8:00 A.M.

10. The size and spacing of the pilings necessary to support the proposed development on the piers shall comply with the following conditions:

i. The pilings shall not cause significant adverse long-term impact to natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities;

ii. The pilings shall not cause significant adverse impacts to the local sediment supply;

iii. The pilings shall not create net adverse shoreline sand movement downdrift, including erosion or shoaling; and

iv. Pilings shall be spaced so as to provide linear access along the dry beach as required by (c)8i above.

11. Parking is prohibited on the piers.

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless the pier is associated with a marina which meets the Resort Recreational Use rule, N.J.A.C. 7:7E-7.3, and the Marina Development Standards at N.J.A.C. 7:7E-7.3A or meets the standards at N.J.A.C. 7:7E-3.49(c).

(e) The following standards apply to all development proposed in the Boardwalk right-of-way as defined at (e)1 below:

1. For the purposes of this subsection, Boardwalk right-of-way means the shore-parallel promenade located immediately adjacent to the ocean and inlet beach occupying a 20 foot right-of-way from Jackson Avenue to Roosevelt Place, a 40 foot right-of-way from Roosevelt Place to Bellevue Avenue, a 60 foot right-of-way from Bellevue Avenue to Rhode Island Avenue, a 40 foot right-of-way from Rhode Island Avenue to Atlantic Avenue, and a 20 foot right-of-way from Atlantic Avenue to Caspian Avenue as shown on the 1999 Atlantic City tax duplicate.

2. Elevated pedestrian bridges are acceptable provided they meet the criteria of (e)2i through vi below:

i. The elevated pedestrian bridge shall be designed and used only for pedestrian movement and shall not provide for or be used for vehicular traffic, commercial space, storage or advertisement, either attached to or positioned within the elevated pedestrian bridge;

ii. The lowest portion of the elevated pedestrian bridge shall be elevated a minimum of 14 feet six inches above the deck surface of the Boardwalk;

iii. The elevated pedestrian bridge shall be a maximum of 20 feet wide and 15 feet high;

iv. The elevated pedestrian bridge shall be transparent with the exception of the support structure;

v. The elevated pedestrian bridge shall connect to an existing pier as defined at (c)1 above; and

vi. There shall be no more than one pedestrian bridge per existing pier.

3. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (e)3i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and

iii. There is an eight-foot clearance between the structure and the deck surface of the Boardwalk.

4. Signs which are not awnings, canopies, marquees or other roof extensions are acceptable provided they meet the criteria of (e)4i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and

iii. There is a 14 foot six inch clearance between the structure and the deck surface of the Boardwalk.

5. Any development that does not meet the standards in (e)2, 3 or 4 above is prohibited.

(f) Development is prohibited in the street rights-of-way listed in (f)1 and 2 below as shown on the 1999 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, with the exception of signage extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk and of below-grade utilities, roads, sidewalks, public stairs and ramps providing access to the Boardwalk and mitigation pursuant to (j) below.

1. That portion of the following streets located southeast of Pacific Avenue:

i. Sovereign Avenue (50 foot right-of-way);

ii. Montpelier Avenue (60 foot right-of-way);

iii. Iowa Avenue (72 foot right-of-way);

iv. Missouri Avenue (50 foot right-of-way);

v. Kentucky Avenue (50 foot right-of-way);

vi. Tennessee Avenue (60 foot right-of-way); and

vii. Rhode Island Avenue (50 foot right-of-way);

2. That portion of the following streets located northeast of Rhode Island Avenue:

i. Atlantic Avenue (100 foot right-of-way);

ii. Pacific Avenue (60 foot right-of-way); and

iii. Grammercy Place (60 foot right-of-way);

3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 1999 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon.

(g) Development is acceptable southeast of Pacific Avenue in or over the right-of-way of a street listed in (g)1 through 6 below as shown on the 1999 Atlantic City tax duplicate provided that it either meets the standards of (g)7 and 8 below or of (i) below.

1. Chelsea Avenue (60 foot right-of-way);

2. Texas Avenue (50 foot right-of-way);

3. Florida Avenue (50 foot right-of-way);

4. Martin Luther King, Jr. Boulevard (50 foot right-of-way);

5. South Carolina Avenue (50 foot right-of-way);

6. New Hampshire Avenue (50 foot right-of-way);

7. A corridor 50 feet in height and 50 feet in width, except 60 feet in width for Chelsea Avenue, shall be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk. The entire corridor shall be unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public.

8. Mitigation is provided in accordance with (j) below.

(h) Development is acceptable in or over the right-of-way of any street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) or (g) above provided that it meets the standards of (i) below or mitigation is provided in accordance with (j) below.

(i) The following may be constructed without mitigation in or over the right-of-way of an existing street located perpendicular to the Atlantic Ocean and southeast of Pacific Avenue and not listed in (f) above:

1. Elevated pedestrian bridges are acceptable provided they meet the criteria of (i)1i and ii below:

i. The elevated pedestrian bridge meets the standards at (e)2i through iv above; and

ii. The elevated pedestrian bridges shall be no closer to one another than 1,000 feet, as measured along the street right-of-way;

2. Awnings, canopies, marquees, and other roof extensions are acceptable provided they meet the criteria of (i)2i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than 8 feet into the street right-of-way; and

iii. There is an eight-foot clearance between the structure and the surface of the sidewalk;

3. Signs which are not awnings, canopies, marquees, or other roof extensions are acceptable provided they meet the criteria of (i)3i through iii below:

i. The structure is not enclosed;

ii. The structure extends no more than eight feet into the street right-of-way; and

iii. There is a 14 foot six inch clearance between the structure and surface of the sidewalk; and

4. Below-grade utilities, roads, sidewalks, and public stairs and ramps providing access to the Boardwalk approved as mitigation under (j) below.

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

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

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

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

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

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

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

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

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

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

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