

**NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT**

Division of Policy Implementation

Notice of Determination on Routine Program Change to New Jersey Coastal Management Program

Take Notice that the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management has, by letter dated January 30, 2014, approved changes to New Jersey's Federally approved Coastal Management Program (see 45 N.J.R. 2613(b); December 16, 2013). The New Jersey Coastal Management Program has been changed to incorporate two Department rulemaking actions as a routine program change pursuant to Federal regulations 15 CFR 923.80 through 923.84. Particularly, the rulemaking actions incorporated are the regulatory amendments, repeals and new rules to the Coastal Permit Program rules and Coastal Zone Management (CZM) rules that were adopted on an emergency basis and subsequently readopted to address the significant adverse social, economic, and environmental impacts associated with Superstorm Sandy which hit New Jersey's coastline on Monday, October 29, 2012 (see 45 N.J.R. 1141(a), May 6, 2013; 45 N.J.R. 1696(a), July 15, 2013), and regulatory amendments to the CZM rules to implement legislative amendments to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13-19-1, et seq., concerning the construction of wind energy facilities on piers (see 44 N.J.R. 12(a), January 3, 2012; 44 N.J.R. 1972(a), July 16, 2012). Federal Consistency requirements of the Federal Coastal Zone Management Act apply to the approved provisions as of the date of publication of this notice.

Pursuant to the requirements of 15 CFR 923, changes to the Coastal Management Program must be approved by NOAA. On December 10, 2013, the Department submitted to NOAA a request for concurrence with the Department’s determination that incorporation of the above actions into New Jersey’s Coastal Management Program constitutes a routine program change (see 45 N.J.R. 2613(b); December 16, 2013). Under 15 C.F.R. 923.84(a), changes to an approved coastal management program constitute Routine Program Change when they do not result in the kind of amendments of the state’s Coastal Management Program that can be described as “substantial changes to enforceable policies or authorities related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and, (5) coordination, public involvement and national interest.” NOAA requested comments on whether the change should be considered a routine program change. No comments on the routine program change submission were received by NOAA.

NOAA has concurred with the Department’s determination that the following actions constitute a routine program change:

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ADDED:		mm/dd/yyyy	mm/dd/yyyy
Definitions of living shoreline, non-polluting material, and pumpout facility.	N.J.A.C. 7:7-1.3	04/16/2013	04/16/2013
New permit-by-rule for expansion or	N.J.A.C. 7:7-7.2(a)8	04/16/2013	04/16/2013

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relocation (with or without expansion) of the footprint of a legally constructed residential, including accessory structures, or commercial development, landward or parallel to the mean high water line provided the development has been or could have been legally occupied in the most recent five year period.			
New permit-by-rule for reconfiguration of any legally existing dock, wharf, or pier located at a legally existing marina that is not located within shellfish habitat, submerged vegetation habitat, or wetlands.	N.J.A.C. 7:7-7.2(a)15	04/16/2013	04/16/2013
New permit-by-rule for placement of sand fencing to create or sustain a dune, provided the fencing does not require the grading or excavation of a dune.	N.J.A.C. 7:7-7.2(a)16	04/16/2013	04/16/2013
New permit-by-rule for placement of land-based upwellers and raceways for aquaculture.	N.J.A.C. 7:7-7.2(a)17	04/16/2013	04/16/2013
New permit-by-rule of predator screens and oyster spat attraction devices within a shellfish lease area.	N.J.A.C. 7:7-7.2(a)18	04/16/2013	04/16/2013
New permit-by-rule for placement of shellfish cages within a shellfish lease area.	N.J.A.C. 7:7-7.2(a)19	04/16/2013	04/16/2013
New permit-by-rule for construction and/or installation of a pumpout facility and/or pumpout support facilities, as well as the connection of a pumpout facility and/or pumpout support facility to an existing sewer line.	N.J.A.C. 7:7-7.2(a)20	04/16/2013	04/16/2013
New permit-by-rule for sediment sampling performed in a water area for the purpose	N.J.A.C. 7:7-7.2(a)21	04/16/2013	04/16/2013

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of characterizing the physical and chemical composition of sediments in two instances, when performed as part of a (1) dredging or dredged material management activity, or (2) remedial investigation of a contaminated site.			
New general permit for habitat creation, restoration, enhancement, and living shorelines.	N.J.A.C. 7:7-7.29	04/16/2013	04/16/2013
New general permit for the dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency.	N.J.A.C. 7:7-7.32	04/16/2013	04/16/2013
New general permit for the dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency.	N.J.A.C. 7:7-7.33	04/16/2013	04/16/2013
New general permit for dredging and dredged material management of material from a marina that was deposited as a result of a storm event for which the Governor declared a State of Emergency.	N.J.A.C. 7:7-7.34	04/16/2013	04/16/2013
New general permit for construction and/or placement and maintenance of commercial aquaculture equipment including floating upwellers, shellfish rafts, racks and bags, lantern nets, and cages.	N.J.A.C. 7:7-7.35	04/16/2013	04/16/2013
New general permit for placement of shell within shellfish lease areas.	N.J.A.C. 7:7-7.36	04/16/2013	04/16/2013
Definitions of engineered beach, engineered dune, living shoreline, non-polluting material, pumpout facility, and State Aid Agreement.	N.J.A.C. 7:7E-1.8	04/16/2013	04/16/2013

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Allows for the establishment of a living shoreline; allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead.	N.J.A.C. 7:7E-3.2(h)	04/16/2013	04/16/2013
Allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead.	N.J.A.C. 7:7E-3.2(i)	04/16/2013	04/16/2013
Allows for the establishment of a living shoreline.	N.J.A.C. 7:7E-3.15(g)	04/16/2013	04/16/2013
Allows for the one-time replacement, reconstruction, or renovation of a legally existing bulkhead.	N.J.A.C. 7:7E-3.15(h)	04/16/2013	04/16/2013
Includes standards for maintaining engineered dunes to the dune design template.	N.J.A.C. 7:7E-3.16(d)	04/16/2013	04/16/2013
Allows for the establishment of a living shoreline.	N.J.A.C. 7:7E-3.27(d)	04/16/2013	04/16/2013
Requires activities subject to this chapter to comply with any applicable management plan for the protection of State and Federally listed, threatened and endangered species, approved by the Department and USFWS.	N.J.A.C. 7:7E-3A.1(b)	04/16/2013	04/16/2013
Provision allowing for the establishment of a living shoreline.	N.J.A.C. 7:7E-4.10(d)	04/16/2013	04/16/2013
New rule which sets forth the standards for the establishment of living shorelines.	N.J.A.C. 7:7E-4.23	04/16/2013	04/16/2013
Repealed existing rule and added new rule. New rule continues the standards from the repealed rule; the standards are reorganized and modified to emphasize and clarify the Department's shore protection and/or storm damage reduction	N.J.A.C. 7:7E-7.11	04/16/2013	04/16/2013

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priorities, and to facilitate the rebuilding of a more resilient shoreline.			
MODIFIED:			
CAFRA: Included exemption for the rehabilitation and use of an existing dredged material management area within the same footprint.	N.J.A.C. 7:7-2.1(b)	04/16/2013	04/16/2013
Waterfront Development: Refined how the size of the structure is determined.	N.J.A.C. 7:7-2.3(d)6 and 7	04/16/2013	04/16/2013
Permit-by-rule for the reconstruction of a legally constructed, residential or commercial development within the same footprint. Also applies to the reconstruction of a residential or commercial structure that was damaged or destroyed.	N.J.A.C. 7:7-7.2(a)7	04/16/2013	04/16/2013
Coastal general permit: add storage buildings to the list of support facilities authorized under this general permit; reduce the setback requirements for support facilities and restrooms from 100 feet to 15/25 feet depending upon the presence of a bulkhead; notify applicants that a Treatment Works Approval must be obtained when required by the Department's rules governing TWAs; deleted standards for construction of pumpout facilities; and deleted requirement that development under this general permit must comply with the CZM rules' riparian zone rule.	N.J.A.C. 7:7-7.13	04/16/2013	04/16/2013
*Updated Department's mailing address.	*N.J.A.C. 7:7E-1.7	04/16/2013	04/16/2013
Clarified and expanded the exception to the prohibition at 3.2(c) to reference the	N.J.A.C. 7:7E-3.2(c)	04/16/2013	04/16/2013

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activities already described in the rule and to add reference to living shorelines subject to 3.2(h); clarified that construction of docks and piers and the one-time replacement/reconstruction of certain bulkheads in waters classified as prohibited are acceptable; and updated terminology.			
Replaced existing language with newly defined term “non-polluting material.”	N.J.A.C. 7:7E-3.2(d)3i(1)	04/16/2013	04/16/2013
*Updated to reflect provisions relating to living shorelines, one-time bulkhead replacement and to update cited statistics.	*N.J.A.C. 7:7E-3.2(m)	04/16/2013	04/16/2013
Refined to allow for the establishment of a living shoreline.	N.J.A.C. 7:7E-3.6(b)	04/16/2013	04/16/2013
*Updated to reflect changes to rule.	*N.J.A.C. 7:7E-3.6(e)	04/16/2013	04/16/2013
Added living shorelines and the construction or replacement of a bulkhead to the listing of acceptable activities.	N.J.A.C. 7:7E-3.15(b)	04/16/2013	04/16/2013
Modified and Recodified: Added the establishment of living shorelines as an activity that does not require mitigation.	N.J.A.C. 7:7E-3.15(g)	04/16/2013	04/16/2013
*Updated to reflect changes to rule concerning living shorelines.	*N.J.A.C. 7:7E-3.15(k)	04/16/2013	04/16/2013
*Updated to reflect change allowing for maintenance of engineered dunes.	*N.J.A.C. 7:7E-3.16(e)	04/16/2013	04/16/2013
Included standards at 3.22(b)10 for maintaining engineered beaches to the beach berm design template.	N.J.A.C. 7:7E-3.22(b)	04/16/2013	04/16/2013
Updated to reflect change allowing for maintenance of engineered beaches.	N.J.A.C. 7:7E-3.22(d)	04/16/2013	04/16/2013
*Updated to reflect changes relating to living shorelines.	*N.J.A.C. 7:7E-3.27(j)	04/16/2013	04/16/2013

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<p>Refined to require activities be conducted in a manner that does not destroy, jeopardize or adversely modify endangered or threatened wildlife or plant species habitat; refined to require activities cannot jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species; updated terminology; refined standards for routine beach maintenance activities within documented habitat for threatened or endangered beach nesting shorebirds; added standards for routine beach maintenance activities within areas documented by the Department as supporting known occurrences of threatened and endangered plant species; added standards to allow removal of sand accumulated beneath a boardwalk; clarified that sand removed from boardwalks, street ends and single family lots must be piled on the seaward toe of the existing dune, or if no dune is present, the upper beach berm; and added standards for winter sand management activities.</p>	<p>N.J.A.C. 7:7E-3A.2(a)</p>	<p>04/16/2013</p>	<p>04/16/2013</p>
<p>Refined to require activities be conducted in a manner that does not destroy, jeopardize or adversely modify endangered or threatened wildlife or plant species habitat; refined to require activities cannot jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species; updated terminology; refined standards for routine beach maintenance activities within documented habitat for threatened</p>	<p>N.J.A.C. 7:7E-3A.2(b)</p>	<p>04/16/2013</p>	<p>04/16/2013</p>

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or endangered beach nesting shorebirds; and added standards for routine beach maintenance activities within areas documented by the Department as supporting known occurrences of threatened and endangered plant species.			
Refined standards for use of geotextile bags or tubes as part of an emergency post-storm recovery.	N.J.A.C. 7:7E-3A.3(b)	04/16/2013	04/16/2013
*Corrected grammatical error.	*N.J.A.C. 7:7E-3A.3(e)	04/16/2013	04/16/2013
Refined to allow for use of suitable dredged material as fill for geo tubes; and refined to require geotextile bag or geotube be installed with a manufacturer's recommended scour apron.	N.J.A.C. 7:7E-3A.3(f)	04/16/2013	04/16/2013
Refined standards for placement of sand, gravel, rubble and other inert materials as part of an emergency post-storm beach restoration plan to include rock; and adjusted timeframes for such materials to remain in place while permit application is under review.	N.J.A.C. 7:7E-3A.3(g)	04/16/2013	04/16/2013
Refined rule to: require dune vegetation to be species native to New Jersey and requires that certain specified vegetation be used to maximum extent practicable; specify that dune vegetation be diversified to maximum extent practicable; and require landscape plan be created as part of any dune creation activity.	N.J.A.C. 7:7E-3A.4(c)	04/16/2013	04/16/2013
*Deleted extraneous reference.	*N.J.A.C. 7:7E-3A.4(d)	04/16/2013	04/16/2013
Refined scope to specifically address shellfish aquaculture. *Updated rule rationale.	N.J.A.C. 7:7E-4.2(a)-(c);	04/16/2013	04/16/2013

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	*N.J.A.C. 7:7E-4.2(d)		
Included living shorelines and construction of boat ramps as activities that do not require mitigation.	N.J.A.C. 7:7E-4.10(f)	04/16/2013	04/16/2013
Modified standard relating to filling for the purposes of beach nourishment to allow for dredged material to be used in the establishment of a living shoreline provided the Department has issued an acceptable use determination.	N.J.A.C. 7:7E-4.10(h)	04/16/2013	04/16/2013
*Updated rule rationale.	*N.J.A.C. 7:7E-4.10(i)	04/16/2013	04/16/2013
Refined focus of the rule to protection of boat mooring areas such as those at marinas and to include flexibility in the design of vertical wake or wave attenuation structures. *Updated rule rationale.	N.J.A.C. 7:7E-4.19(a)-(d) *N.J.A.C. 7:7E-4.19(e)	04/16/2013	04/16/2013
Incorporated newly defined term “non-polluting material.”	N.J.A.C. 7:7E-7.3(d)10iii	04/16/2013	04/16/2013
Refined to allow a wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for the pier.	N.J.A.C. 7:7E-7.4(b)	03/03/2011	03/03/2011
Added “capping” as another example of a beneficial use of dredged material.	N.J.A.C. 7:7E-7.12(a)	04/16/2013	04/16/2013
Clarified that the construction of a confined disposal facility is prohibited in wetlands unless it complies with N.J.A.C. 7:7E-3.27.	N.J.A.C. 7:7E-7.12(c)	04/16/2013	04/16/2013
Clarified that this subsection applies to the beneficial use of dredged material and added an additional example of a beneficial use.	N.J.A.C. 7:7E-7.12(d)	04/16/2013	04/16/2013

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Clarified that this provision applies to both the transport of the dredged material to an upland confined disposal facility and to the site where dredged material will be beneficially used.	N.J.A.C. 7:7E-7.12(e)	04/16/2013	04/16/2013
Updated terminology.	N.J.A.C. 7:7E-7.12(h)	04/16/2013	04/16/2013
*Updated to reflect the State's long term policy concerning the beneficial use of dredged material.	*N.J.A.C. 7:7E-7.12(j)	04/16/2013	04/16/2013
Included living shorelines as acceptable use within this resource area.	N.J.A.C. 7:7E-8.2(c)	04/16/2013	04/16/2013
*Updated cited statistics and included information concerning living shorelines.	*N.J.A.C. 7:7E-8.2(d)	04/16/2013	04/16/2013
DELETED:			
Provision concerning types of services provided at marinas.	N.J.A.C. 7:7E-7.3(d)2i	04/16/2013	04/16/2013
Repealed existing rule and added new rule	N.J.A.C. 7:7E-7.11	04/16/2013	04/16/2013