

Section V. Coastal Zone Management Rules

The New Jersey's Coastal Management Program defines the New Jersey coastal zone as including all areas where the State has authority through the Department and the NJMC to regulate land and water uses that may have a significant impact on coastal resources. The Hackensack Meadowlands District consists of uplands and coastal wetlands interlaced by tidal rivers and streams. Because the District encompasses waters and adjacent shoreline with direct and significant impact on coastal waters and resources, it was included in the NJCMP and identified as a geographic area of particular concern under the Federal Coastal Zone Management Act, 16 U.S.C. 1450 (See New Jersey Coastal Management Program, Final Environmental Impact Statement, page 269). Under the NJCMP, the District is treated differently from other parts of the coastal zone in recognition of the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-1 et seq. and the comprehensive land use planning that has occurred under the auspices of the NJMC. The District is designated by the NJCMP as a geographic area of particular concern requiring special management. According to the Federal Coastal Zone Management Program regulations at 15 C.F.R. 923.20, special management may include regulatory or permit requirements applicable only to the area of particular concern.

In response to the *NJMC Master Plan* and revised District Zoning Regulations, and the Department's many years of experience reviewing coastal activities in the District, the Department entered into an MOA with the NJMC on November 9, 2005 identifying the roles of each agency in reviewing proposed developments and coastal activities in the District. The Department then proposed in March 2007 and adopted in April 2008 amendments to the CZM rules' Hackensack Meadowlands District rule, N.J.A.C. 7:7E-3.45, which clarified the application of the CZM rules in the review of coastal activities or developments within the District. As part of that rulemaking, the Department adopted amendments to the Wetlands rule that address the standards used to review proposed coastal activities and development within wetlands in the District.

The CZM rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. These rules are used to review permit applications submitted under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3. The rules are also a basis for making recommendations to the Tidelands Resource Council on applications for Tidelands Instruments, and are applied in other Department decision-making pursuant to N.J.A.C. 7:7E-1.2. The authority for the CZM rules is founded in the following statutes:

- **N.J.S.A. 12:5-3, Waterfront Development Law:** This Law authorizes the Department to regulate the construction or alteration of a dock, wharf, pier, bulkhead, bridge, pipeline, cable or other similar development on or adjacent to tidal waterways throughout the state. Outside of the CAFRA area and Hackensack Meadowlands District, the Law applies in upland areas adjacent to tidal waters extending from the mean high water line to the first paved public road, railroad or surveyable property line. Upland jurisdiction extends from the mean high water

- line landward a minimum of 100 feet and not exceeding 500 feet. Within this area, construction, reconstruction, alteration, expansion or enlargement of any structure, or the excavation or filling of any area are subject to this Law;
- **N.J.S.A. 13:9A-1 et seq., Wetlands Act of 1970:** This Act authorizes the Department to regulate activities on coastal wetlands that have been delineated and mapped by the Department. Examples of regulated activities include excavation, dredging, fill or placement of a structure on a mapped coastal wetland;
 - **N.J.S.A. 13:19-1 et seq., Coastal Area Facility Review Act (CAFRA):** CAFRA applies to projects near coastal waters in the southern part of the State. The CAFRA area begins where the Cheesequake Creek enters Raritan Bay in Old Bridge, Middlesex County. It extends south along the coast around Cape May, and then north along the Delaware Bay ending at Kilcohook National Wildlife Refuge in Salem County. The inland limit of the CAFRA area is an irregular line that follows public roads, railroad tracks, and other features. The width of the CAFRA area varies from a few thousand feet to nearly 17 miles. The law divides the CAFRA area into zones, and regulates different types and sizes of development in each zone. Regulated activities within the CAFRA area include a wide variety of residential, commercial, industrial or public development such as construction, relocation, and enlargement of buildings and structures; and associated work such as excavation, grading, site preparation and the installation of shore protection structures;
 - **N.J.S.A. 13:1D-9, Powers of the Department:** This statute provides that the Department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State; and
 - **N.J.S.A. 13:1D-29 et seq., Ninety-Day Construction Law:** This Chapter establishes application submission requirements, public notice requirements, fees and review procedures for permit applications submitted to the Department under the Waterfront Development Law, N.J.S.A. 12:5-3; Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. and Flood Hazard Area Control Act, N.J.S.A. 58:16A -1 et seq. as well as sewer extensions under the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Table C, Routine Program Change, Coastal Zone Management rules, N.J.A.C. 7:7E-3.27 Wetlands and 3.45 Hackensack Meadowlands District, compares the CZM rules as they existed prior to the April 2008 amendments with the rules as amended April 7, 2008 and contains an analysis describing the changes between these regulations. These changes do not change the program approvability area of boundaries nor do they change the District's designation as a special management area. While the 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 described in the analysis portion of Table C. A copy of the rule text subject to the Routine Program Change is included in this submission.

Table C
Routine Program Change
Coastal Zone Management rules, N.J.A.C. 7:7E
Wetlands, N.J.A.C. 7:7E-3.27 and Hackensack Meadowlands District, N.J.A.C. 7:7E-3.45
September 8, 2009

| Legal Citation | Description of change | Enforcement Mechanism | Date adopted by State | Date Effective in State | Significance of Change |
|-----------------------|---|--|-----------------------|-------------------------|---|
| 7:7E-3.27(b) Wetlands | MODIFIED: Specified that the standards used to review proposed coastal activities and development within the Hackensack Meadowlands District (District) are those of the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-4, 5 and 7 | N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program | 04/07/2008 | 04/07/2008 | <p>Development in all tidal and freshwater wetlands located outside of the District and north of the Raritan River is subject to the permitting requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A. However, development in wetlands located in the District does not require a freshwater wetland permit, except that the discharge of dredged or fill materials may require a permit issued under the Federal Clean Water Act, 33 U.S.C. 1251, and applicable State laws, under a permitting program administered by the State. The Department addresses proposed coastal activities and development in wetlands in the District through the Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certificates under Section 401 of the Clean Water Act, 33 U.S.C. 1251, and the Federal consistency provisions under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. 1451. Prior to this rule change, the standards for review of such activities were those of the CZM rules' Wetlands rule, N.J.A.C. 7:7E-3.27.</p> <p>Through the Department's experience in reviewing wetland impacts within and outside of the District, the Department determined that the conditions, limits and requirements of the Freshwater Wetlands Protection Act rules for individual and general permits are the appropriate standards to apply to development in wetlands in the District, rather than those of the CZM rules at N.J.A.C. 7:7E-3.27(c). Under N.J.A.C. 7:7E-3.27(c) development in wetlands is prohibited unless the 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 only applies to development proposed on or adjacent to waterways); (2) has no prudent or feasible alternative on a non-wetland site; (3) will result in minimum</p> |

| Legal Citation | Description of change | Enforcement Mechanism | Date adopted by State | Date Effective in State | Significance of Change |
|--|---|--|-----------------------|-------------------------|--|
| 7:7E-3.27(b) (continued) | | | | | <p>feasible alteration or impairment of natural tidal circulation; and (4) will result in minimum feasible alteration or impairment of the natural contour or the natural vegetation of the wetlands. The Department compared these four requirements that were previously used to review coastal activities and development proposed within wetlands in the District with the conditions, limits, and requirements for reviewing development in tidal and freshwater wetlands located outside of the Hackensack Meadowlands and north of the Raritan River, found at N.J.A.C. 7:7A-4, 5, and 7. These are the general and individual permit standards. A general permit is issued only after an environmental analysis has been conducted and the Department has determined that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters. An individual permit is issued only after consideration of alternatives and minimization. Additional criteria are applied to non-water dependent activities.</p> <p>The conditions, limits, and requirements at N.J.A.C. 7:7A-4, 5, and 7 reflect the considerations of the previous requirements at N.J.A.C. 7:7E-3.27(c). The Department determined to use the conditions, limits and requirements of N.J.A.C. 7:7A-4, 5 and 7 to review development and coastal activities proposed in wetlands in the District because those standards are appropriately protective of wetlands resources. The mitigation requirements of the CZM rules' Wetlands rule will continue to apply to any coastal activity or development in wetlands in the District, unless the conditions, limits or requirements of N.J.A.C. 7:7A-4 and 5 do not require mitigation. Therefore, the Department does not consider the changes to the CZM Wetlands rule to be a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> |
| 7:7E-3.45(a) Hackensack Meadowlands District | MODIFIED: Recalculated acreage of the District; updated title of the "Hackensack Meadowlands Reclamation Act;" and repealed Figure 11 | N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program | 04/07/08 | 04/07/08 | Prior to this rulemaking, the rule stated that the District encompassed 19,730 acres of water, coastal wetlands and associated uplands. According to the New Jersey Meadowlands Commission (NJMC) staff, this acreage was calculated using municipal tax records and planimetry paper copies of tax maps from 1969. In revising the Master Plan, the acreage of the District was recalculated using digitized tax maps which correct inaccuracies. |

| Legal Citation | Description of change | Enforcement Mechanism | Date adopted by State | Date Effective in State | Significance of Change |
|--|---|-----------------------|-----------------------|-------------------------|---|
| | | | | | <p>The recalculated acreage of the District is 19,485 acres. Therefore, the rule has been changed to reflect the recalculated acreage. The boundary of the District did not change.</p> <p>The language identifying the NJMC as the State-level management agency was deleted from the definition of this special area because the management agency is not relevant to the definition. Language indicating that the NJMC is the lead planning and management agency within the District was added to the rule rationale.</p> <p>The title of the Hackensack Meadowlands Reclamation Act was revised for accuracy.</p> <p>The reference to “See Figure 20” was deleted. The reference to this figure in chapter 1 was in error as there was no Figure 20 in Appendix 1, and the Appendix 1 figure depicting the boundary of the District was Figure 11. However, as Figure 11 was inaccurate and unnecessary in terms of establishing boundaries, Appendix 1, Figure 11 was repealed.</p> <p>Thus, none of these changes are substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> |
| 7:7E-3.45(b) recodified as (h) Hackensack Meadowlands District | MODIFIED: Recodification of discussion of roles of the Department and New Jersey Meadowlands Commission; Recodification of subsection addressing the inapplicability of the Freshwater Wetlands Protection Act to coastal activities under the jurisdiction of the NJMC with no changes in text | | | | <p>Prior to this change, subsection (b) of the rule generally described the roles of the Department and the NJMC in the NJCMP. In 1980, it was determined that the Master Plan was consistent with the goals of the NJCMP. While subsection (b) explained that the Master Plan and District zoning regulations were adopted as part of the NJCMP, it did not set forth the specific development standards within the District but provides background information. The discussion of roles remains in the CZM rules, recodified within the rule rationale, subsection (h). Accordingly, this is not a substantial change to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> <p>Changes to the codification of subsections with no changes in text 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> |

| Legal Citation | Description of change | Enforcement Mechanism | Date adopted by State | Date Effective in State | Significance of Change |
|---|---|-----------------------|-----------------------|-------------------------|---|
| 7:7E-3.45(b)-(g) Hackensack Meadowlands District | <p>ADDED: Clarified the application of the CZM rules in the review of coastal activities and developments within the District</p> <p>Incorporation of the November 9, 2005 MOA between the Department and the NJMC</p> | | | | <p>Under the NJCMP, the District is treated differently than other parts of the coastal zone because of the comprehensive land use decision-making governed by a regional agency which is part of State government and has objectives and policies compatible with the NJCMP. The NJMC Master Plan and District zoning regulations were adopted as part of the approved CMP in 1980. Prior to this rulemaking, the rule stated that the Master Plan and zoning regulations would be the review standards when the NJMC was reviewing a proposed coastal activity or development.</p> <p>Through this rulemaking, the standards for proposed coastal activities or developments within the District were clarified. These standards are dependent upon whether a zoning certificate or statement of consistency from the NJMC is required and whether the proposed activity or development is subject to the Waterfront Development Law. The Department can not issue a Waterfront Development permit, Federal Consistency Determination, or Water Quality Certificate (except for those that do not require a zoning certificate from the NJMC), without a statement of consistency, zoning certificate or resolution from the NJMC approving the activity or development, from the NJMC. The review process outlined in the MOA described below has been incorporated into the rule to codify this process. <i>(See program change analysis for the incorporation of the MOA into the NJCMP).</i></p> <p>In the District, the Waterfront Development Law applies to coastal activities or developments located in a tidal waterway or in any lands lying thereunder, up to and including the mean high water line. Accordingly, the rule provides that all applicable CZM rules apply to these activities or developments regardless of whether a zoning certificate or statement of consistency from the NJMC is required.</p> <p>Certain activities and developments do not require a zoning certificate from the NJMC and do not follow any alternative review process with the New Jersey Meadowlands Commission and thus are not subject to management by the NJMC. Examples of such activities and developments are coastal activities on Federal lands, municipal, county, or State highway projects (e.g. New Jersey Turnpike), and railroad projects. Hence, the rule provides that these</p> |

| Legal Citation | Description of change | Enforcement Mechanism | Date adopted by State | Date Effective in State | Significance of Change |
|------------------------------|-----------------------|-----------------------|-----------------------|-------------------------|---|
| 7:7E-3.45(b)-(g) (continued) | | | | | <p>coastal activities and developments must comply with all applicable CZM rules.</p> <p>The District is designated as a geographic area of particular concern requiring special management under the NJCMP. According to 15 C.F.R. 923.20, special management may include regulatory or permit requirements applicable only to the area of particular concern. As such, the Master Plan and zoning regulations are used in determining the acceptability of activities and development within the District. As described above, the changes to the rule set forth a process for the review of coastal activities and developments within the District and the applicability of the Master Plan, zoning regulations and CZM rules. In addition, the changes clarify the roles of the Department and NJMC in the review of coastal activities and developments within the District and are in keeping with the relationship between the Department and NJMC as described in the 1980 program document which was formalized through the November 9, 2005 MOA. Therefore, the above changes are not substantial changes to special management areas, uses subject to management, authorities and organization or consideration of the national interest.</p> |

Rule Text
Wetlands rule, N.J.A.C. 7:7E-3.27
Hackensack Meadowlands District rule, N.J.A.C. 7:7E-3.45

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

Additions indicated in **underlined boldface**; and

Deletions shown in [~~bracketed strikethrough~~].

7:7E-3.27 Wetlands

Changes to existing text approved by OCRM

(a) (No change.)

(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), **except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, 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. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:**

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located below the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act 33 U.S.C. 1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in N.J.A.C. 7:7A-4, 5 and 7. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands above the mean high water line that does not require a zoning certificate, resolution or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7E-3.45(c) in the Hackensack Meadowlands District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act 33 U.S.C. 1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in* N.J.A.C. 7:7A-4, 5 and 7.

i. The mitigation requirements at (h) below shall apply to any coastal activity or development reviewed under this subsection, unless, where the coastal activity or development is reviewed under the conditions, limits, and requirements at N.J.A.C. 7:7A-4 and 5, those conditions, limits, and requirements do not require mitigation.

(c) –(h) (No change.)

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 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, 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. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located below the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act 33 U.S.C. 1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in N.J.A.C. 7:7A-4, 5 and 7. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands above the mean high water line that does not require a zoning certificate, resolution or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7E-3.45(c) in the Hackensack Meadowlands District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act 33 U.S.C. 1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in* N.J.A.C. 7:7A-4, 5 and 7.

i. The mitigation requirements at (h) below shall apply to any coastal activity or development reviewed under this subsection, unless, where the coastal activity or development is reviewed under the conditions, limits, and requirements at N.J.A.C. 7:7A-4 and 5, those conditions, limits, and requirements do not require mitigation.

(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;

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: The environmental values and fragility of wetlands have been officially recognized in New Jersey since the passage of the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the passage of the Freshwater Wetlands Protection Act of 1987 (N.J.S.A. 13:9B-1 et seq.). Tidal and freshwater wetlands, are the most environmentally valuable land areas within the coastal zone.

Wetlands contribute to the physical stability of the coastal zone by serving as (i) a transitional area between forces of the open sea and upland areas that absorb and dissipate wind-driven storm waves and storm surges, (ii) a flood water storage area, and, (iii) a sediment and pollution trap.

Also, wetlands naturally perform the wastewater treatment process of removing phosphorous, nitrogenous and other water pollutants, unless the wetlands are stressed.

The biological productivity of New Jersey's wetlands is enormous and critical to the functioning of estuarine and marine ecosystems. The emergent cord grasses and associated algal mats convert inorganic nutrients into organic plant material through the process of photosynthesis. In this way, the primary base for estuarine and marine food webs is provided. The principal direct dietary beneficiaries of organic wetland detritus are bacteria and protozoan, which are in turn fed upon by larger invertebrates. Important finfish, shellfish, and other resources feed upon these invertebrates. New Jersey's wetlands are prime wintering habitat annually for hundreds of thousands of migratory waterfowl. Approximately two-thirds of marine finfish and shellfish are known to be estuarine, and, therefore, wetlands dependent.

Inland herbaceous wetlands, such as bogs and marshes, play an important role in regulating the quality of the water in streams that flow to the estuaries. They retard runoff and store storm waters. They are important areas for primary productivity for estuarine systems. They are critical habitats and movement corridors for several species of plants and animals that are endangered or threatened.

They are productive habitats for other game and non-game animals, such as fur bearers and song birds. These wetlands also serve as fire breaks, and may limit the spread of forest, brush, or grass fires. They are inappropriate development sites due to poor drainage and load bearing capacity of the underlying soils.

Forested wetlands play a critical role in coastal and other ecosystems. Roots and trunks stabilize shorelines and trap sediment. They are physical and biochemical water filter areas maintaining stream water quality. High productivity, high water availability and high edge to area ratio make these areas especially productive wildlife areas.

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and

serving as a rich habitat for many and endangered plant and animal species, as well as game species, such as deer. White cedars also act as forest fire breaks. White cedar stands most commonly occur in flood plains and in the fringe areas of drainage ways and bogs, which are frequently underlain with saturated organic peat deposits. This material is particularly unsuited for development.

White cedar is New Jersey's most valuable timber species and grows in discrete stands. The wood has a long tradition of maritime and local craft uses. Unfortunately, white cedars have been eliminated from much of their previous range in New Jersey.

7:7E-3.45 Hackensack Meadowlands District

Changes to existing text approved by OCRM

(a) The ~~["Hackensack Meadowlands District"]~~ is a ~~[49,730]~~ **19,485**-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] **within the boundaries described in** the Hackensack Meadowlands Reclamation and Development Act [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 the 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.]~~

(b) A coastal activity or development for which the New Jersey Meadowlands Commission requires a zoning certificate shall be consistent with the New Jersey Meadowlands Master Plan, as evidenced by receipt of a zoning certificate from the New Jersey Meadowlands Commission.

(c) In addition to (b) above, a coastal activity or development identified at 1 through 3 below shall be consistent with the New Jersey Meadowlands Master Plan as evidenced by receipt of a resolution or statement of consistency from the New Jersey Meadowlands Commission.

1. Municipal or county projects necessitating the expenditure of any public funds and requiring review and approval through a resolution from the New Jersey Meadowlands Commission in accordance with the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-12(b);

2. Municipal projects, located on land owned by a municipality, provided that the following conditions as outlined in the New Jersey Meadowlands Commission District Zoning Regulations, N.J.A.C. 19:4-3.2(a)5 are met:

i. The governing body and planning board of the municipality have entered into a memorandum of understanding with the New Jersey Meadowlands Commission,

and remain in compliance with the memorandum of understanding, agreeing that municipal projects shall comply with applicable New Jersey Meadowlands Commission District Zoning Regulations and that review of the project by the municipality shall utilize New Jersey Meadowlands Commission standards;

ii. The municipal project has been reviewed by the planning board of the municipality, which has certified to the New Jersey Meadowlands Commission that the project is in compliance with all applicable New Jersey Meadowlands Commission District Zoning Regulations;

iii. A complete copy of the plans for the municipal project, and a certification of the planning board, have been sent to the New Jersey Meadowlands Commission for review, and the New Jersey Meadowlands Commission has not notified the municipality within 45 days of the receipt thereof of any objection to the project; and

3. Developments and improvements proposed or sponsored by the New Jersey Meadowlands Commission, in accordance with New Jersey Meadowlands Commission District Zoning Regulations at N.J.A.C. 19:4-3.2(a)3.

(d) If a coastal activity or development, including any coastal activity or development identified at (b) or (c) above, is located in a tidal waterway or in any lands lying thereunder, up to and including the mean high water line, the coastal activity or development shall comply with all applicable rules in this chapter.

(e) Any coastal activity or development not identified at (b) or (c) above shall comply with all applicable rules in this chapter.

(f) 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.

(g) The Department's Division of Land Use Regulation and New Jersey Meadowlands Commission will coordinate the review of proposed developments and activities within the Hackensack Meadowlands District through the process outlined in the November 9, 2005 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. A copy of the Memorandum of Agreement may be obtained from the Department's Division of Land Use Regulation, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

~~[(d)]~~ (h) Rationale: [The District Master Plan was amended by the Hackensack Meadowlands Reclamation and Development Act. The Master Plan, together with its components, management plans and zoning regulations, embody adopted State policies for the District. The New Jersey Meadowlands Commission has a professional staff of

~~natural scientists, engineers and planners with the experience and expertise to apply State coastal policy of this Special Area.]~~ **The New Jersey Meadowlands Commission is the lead planning and management agency within this special area. Under the Federal Coastal Zone Management Act (16 U.S.C. 1450), the New Jersey Meadowlands Commission Master Plan is adopted as part of New Jersey's Coastal Management Program. The Hackensack Meadowlands District is identified by New Jersey's Coastal Management Program as a Geographic Area of Particular Concern pursuant to 16 U.S.C. 1455 (see "New Jersey Coastal Management Program and Final Environmental Impact Statement," August 1980, page 263).**

In 2004, the New Jersey Meadowlands Commission adopted a revised Master Plan for the District. The Master Plan is the primary planning document for the New Jersey Meadowlands Commission. It presents a cohesive set of planning principles and standards adopted by the New Jersey Meadowlands Commission to guide future development while protecting the resources of the District. The policies and principles of the Master Plan are effectuated through the New Jersey Meadowlands Commission District Zoning Regulations, N.J.A.C. 19:4.

New rule text subject to RPC

(a) The Hackensack Meadowlands District is a 19,485-acre area of water, coastal wetlands and associated uplands within the boundaries described in the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.).

(b) A coastal activity or development for which the New Jersey Meadowlands Commission requires a zoning certificate shall be consistent with the New Jersey Meadowlands Master Plan, as evidenced by receipt of a zoning certificate from the New Jersey Meadowlands Commission.

(c) In addition to (b) above, a coastal activity or development identified at 1 through 3 below shall be consistent with the New Jersey Meadowlands Master Plan as evidenced by receipt of a resolution or statement of consistency from the New Jersey Meadowlands Commission.

1. Municipal or county projects necessitating the expenditure of any public funds and requiring review and approval through a resolution from the New Jersey Meadowlands Commission in accordance with the Hackensack Meadowlands Reclamation and Development Act, N.J.S.A. 13:17-12(b);

2. Municipal projects, located on land owned by a municipality, provided that the following conditions as outlined in the New Jersey Meadowlands Commission District Zoning Regulations, N.J.A.C. 19:4-3.2(a)5 are met:

i. The governing body and planning board of the municipality have entered into a memorandum of understanding with the New Jersey Meadowlands Commission, and remain in compliance with the memorandum of understanding, agreeing that municipal projects shall comply with applicable New Jersey Meadowlands Commission District Zoning Regulations and that review of the project by the municipality shall utilize New Jersey Meadowlands Commission standards;

ii. The municipal project has been reviewed by the planning board of the municipality, which has certified to the New Jersey Meadowlands Commission that the

project is in compliance with all applicable New Jersey Meadowlands Commission District Zoning Regulations;

iii. A complete copy of the plans for the municipal project, and a certification of the planning board, have been sent to the New Jersey Meadowlands Commission for review, and the New Jersey Meadowlands Commission has not notified the municipality within 45 days of the receipt thereof of any objection to the project; and

3. Developments and improvements proposed or sponsored by the New Jersey Meadowlands Commission, in accordance with New Jersey Meadowlands Commission District Zoning Regulations at N.J.A.C. 19:4-3.2(a)3.

(d) If a coastal activity or development, including any coastal activity or development identified at (b) or (c) above, is located in a tidal waterway or in any lands lying thereunder, up to and including the mean high water line, the coastal activity or development shall comply with all applicable rules in this chapter.

(e) Any coastal activity or development not identified at (b) or (c) above shall comply with all applicable rules in this chapter.

(f) 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.

(g) The Department's Division of Land Use Regulation and New Jersey Meadowlands Commission will coordinate the review of proposed developments and activities within the Hackensack Meadowlands District through the process outlined in the November 9, 2005 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. A copy of the Memorandum of Agreement may be obtained from the Department's Division of Land Use Regulation, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060.

(h) Rationale: The New Jersey Meadowlands Commission is the lead planning and management agency within this special area. Under the Federal Coastal Zone Management Act (16 U.S.C. 1450), the New Jersey Meadowlands Commission Master Plan is adopted as part of New Jersey's Coastal Management Program. The Hackensack Meadowlands District is identified by New Jersey's Coastal Management Program as a Geographic Area of Particular Concern pursuant to 16 U.S.C. 1455 (see "New Jersey Coastal Management Program and Final Environmental Impact Statement," August 1980, page 263).

In 2004, the New Jersey Meadowlands Commission adopted a revised Master Plan for the District. The Master Plan is the primary planning document for the New Jersey Meadowlands Commission. It presents a cohesive set of planning principles and standards adopted by the New Jersey Meadowlands Commission to guide future development while protecting the resources of the District. The policies and principles of

the Master Plan are effectuated through the New Jersey Meadowlands Commission District Zoning Regulations, N.J.A.C. 19:4.