

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **ENVIRONMENTAL PROTECTION**

### **LAND USE MANAGEMENT**

#### **Coastal Zone Management and Coastal Permit Program Rules**

**Adopted Recodifications with Amendments: N.J.A.C. 7:7-1.3 as 1.5; 1.6 as 20.1; 1.10 as 19; 2.1 as 2.2; 2.2 as 2.3; 2.3 as 2.4; 7.1 as 3.2; 7.2 as 4.1 through 4.20; 7.4 as 7; 7.5 through 7.36 as 6; 8 as 29; and 10 as 25; and 7:7E-1.1 as 7:7-1.1; 7:7E-1.2 as 7:7-1.2; 7:7E-1.4 as 7:7-1.3; 7:7E-1.5 as 7:7-1.4(b); 7:7E-3 as 7:7-9; 7:7E-3A as 7:7-10; 7:7E-3C as 7:7-11; 7:7E-4 as 7:7-12; 7:7E-5.1 and 5B.1 as 7:7-13.1; 7:7E-5.2 through 5.5 as 7:7-13.2 through 13.5; 7:7E-5A.2 through 5A.10 as 7:7-13.6 through 13.14; 7:7E-5B.2 through 5B.6 as 7:7-13.15 through 13.19; 7:7E-6 as 7:7-14; 7:7E-7 as 7:7-15; 7:7E-8 as 7:7-16; 7:7E Appendix 3 as 7:7 Appendix H; and 7:7E Appendix 5 as 7:7 Appendix I**

**Adopted Amendments: N.J.A.C. 7:7-1.4 and 7:7 Appendices A, B, and C**

**Adopted Repeals: N.J.A.C. 7:7-1.1, 1.5, 1.7, 1.8, 1.9, 1.11, 3, 4, 5, 6, 7.3, 7.3A, 8.8, 8.9, 8.10, 8.11, 8.12, and 8.15; and 7:7E-1.3, 1.6, 1.7, 1.8, 3B, 5A.1, and 7.3A, and 7:7E Appendix 1**

**Adopted New Rules: N.J.A.C. 7:7-1.6, 1.7, 1.8, 2.1, 2.5, 3.1, 3.3 through 3.8, 4.21, 4.22, 5, 6.32, 8, 9.49, 12.8, 17, 18, 21 through 28, and 29.9, and 7:7 Appendices D, E, F, G, and J**

Proposed: June 2, 2014, at 46 N.J.R. 1051(a)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Adopted: June 2, 2015, by Bob Martin, Commissioner, Department of Environmental Protection

Filed: June 2, 2015, as R.2015 d. 108, **with non-substantial changes** not requiring additional public notice (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 12:3-1 et seq., 12:5-3, 13:1D-1 et seq., 13:9A-1 et seq., and 13:19-1 et seq.

DEP Docket Number: 03-14-04

Effective Date: July 6, 2015

Expiration Date: November 14, 2021

The rule adoption can also be viewed or downloaded from the Department's website at [www.nj.gov/dep/rules](http://www.nj.gov/dep/rules).

### Summary

As part of the Department's effort to transform the operations of the land use permitting programs administered by the Division of Land Use Regulation, the Department is adopting amendments, repeals, and new rules which consolidate the Coastal Permit Program Rules and the Coastal Zone Management Rules into one chapter, the Coastal Zone Management (CZM) rules, codified at N.J.A.C. 7:7. The new CZM rules establish a comprehensive and streamlined set of rules governing land use in the coastal area. Through this adoption and anticipated rulemaking to amend the Freshwater Wetlands Protection Act Rules (FWPA) and Flood Hazard Area Control

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Act (FHACA) Rules, the Department intends to align the rules governing the permitting processes of all three programs to the extent the respective enabling statutes allow.

The adopted amendments, repeals, and new rules address the alignment of the permitting process rules relating to emergency authorizations, pre-application conferences, application requirements, requirements for an applicant to provide public notice, application review, permit conditions and changes to issued permits, and requests for adjudicatory hearings. The adopted amendments, repeals, and new rules also transform the operations of the land use permitting programs by streamlining functions, re-engineering business processes, and leveraging technology to eliminate unnecessary paperwork, share applications and forms across the Department, and increase the use of electronic submittals. Further, this adoption amends various standards of the Department's rules regarding the use and development of the State's coastal resources, specifically those relating to dredging and dredged material management, marina development and expansion, and mitigation.

**Summary of Hearing Officer's Recommendation and Agency Response:**

The Department held three public hearings on the proposal on: Wednesday, June 25, 2014, at 5:30 P.M., at the Long Branch Council Chambers, Long Branch; Thursday, June 26, 2014, at 1:00 P.M., at the NJ Department of Environmental Protection Public Hearing Room, Trenton; and Wednesday, July 9, 2014, at 11:00 A.M., at the Jacques Cousteau National Estuarine Research Reserve, Jacques Cousteau Coastal Education Center, Tuckerton. At the July 9, 2014 public hearing, Environment New Jersey delivered 19,408 pre-printed postcards, each bearing its name. Each postcard requests that the rebuilding of the shore be done in a sustainable

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

manner. Each postcard bore the handwritten name, address and telephone number of a different individual. Given the postcards unity of source, delivery and message, the Department considers them together akin to a petition, and designated them together as commenter 164 below. Further, on July 16, 2014, a representative of Environment New Jersey hand-carried a pre-printed petition bearing its name. The petition requests that the rebuilding of the shore be done in a sustainable manner that protects the shore's waters and environment, and limits flooding and other serious effects of future storms. The petition contains the handwritten name, address, and, in some cases, telephone number of 376 individuals. The Department has designated this petition as commenter 165. Ms. Virginia Kop'kash, Assistant Commissioner, Land Use Management, was the hearing officer for the June 25 and July 9 public hearings and Kimberly Springer, Rule Manager, was the hearing officer for the June 26 public hearing. Nineteen thousand nine hundred forty-seven persons (19,947) provided written comments and/or oral comments at the public hearing. The hearing officers recommended that the amendments, repeals, and new rules be adopted with the changes described in the responses to comments and summary of agency-initiated changes below. The Department accepts the recommendation. The hearing record is available for inspection in accordance with applicable law by contacting:

Office of Legal Affairs

Attention: DEP Docket No. 03-14-04

Department of Environmental Protection

401 East state Street, 7<sup>th</sup> floor

Mail Code 401-04L

P.O. Box 402

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Trenton, NJ 08625-0402

**Summary** of Public Comments and Agency Responses:

The following persons timely submitted comments on the proposal:

1. Fred Akers, Great Egg Harbor River Council and Watershed Association
2. Irene Almeida
3. Amy Barlet
4. Adam Beamer
5. Kate Beck
6. Rose Behlert
7. Christine Bell, Jersey Shore Chapter of Surfrider Foundation
8. Rob Benjamin
9. Marge Berkeyheiser
10. John Bonino, South Jersey Surfrider Foundation
11. David Brogan, New Jersey Business and Industry Association
12. Cheryl Buist
13. Jason Buist
14. Martin Burns
15. Robert Burr
16. Theresa Callahan
17. Allison Candelmo
18. Jon Carnahan, Pioneer Marine

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

19. Rick Castellini
20. Katherine Catinella
21. Thomas Chiappa
22. Jennifer Coffey, Association of New Jersey Environmental Commissions
23. Beth Collis
24. Daniel Conway
25. Mary Conway
26. Sarah W. Cooksey, Delaware Coastal Management Program
27. Alex Creed
28. Melissa Danko, Marine Trades Association of New Jersey
29. Lacey DeBoer
30. Don Delzio
31. John DiGenni
32. Tim Dillingham, American Littoral Society
33. Patricia Doerr, The Nature Conservancy
34. Theresa Domino
35. Rachel Donovan
36. Christopher Duffy
37. Chris Eaves
38. Linda Edwards
39. Donald Ehrenbeck
40. Peter English

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

41. Marc Feldman
42. Peter Ferwerda
43. Brian Fischer
44. Robert Flynn
45. David Fox
46. David Fox on behalf of Dock Road Residents (informally)
47. Adelaide Franklin, Marine Trades Association of NJ
48. Jane Galetto, Citizens United to Protect the Maurice River and its Tributaries
49. Kathryn Gardella
50. Elizabeth George-Cheniara, Esq., New Jersey Builders Association
51. Matt Gove, Surfrider Foundation
52. Joyce Grant
53. Kathy Greenstone
54. L. Stan Hales, Jr.
55. Margret-Kristine Halkes
56. Brian Hall, Dillons Creeek Marina
57. Kellee Hand
58. Eric Hansen, Maritime Marina
59. Bruce Harris, New Jersey Turnpike Authority
60. Ed Harrison, Baywood Marina
61. Ed Harrison III, Baywood Marina
62. Helen Henderson, American Littoral Society

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

63. Jeanne Herb on behalf of the New Jersey Climate Adaptation Alliance

64. Chandra Hertel

65. Sara Hiebert-Burch

66. Virgil Holmes, State of Delaware, Wetlands and Subaqueous Lands Section

67. Robert Holzwarth

68. Rachel Horowitz

69. Gabrielle Howat

70. Channing Irwin, Irwin Marine

71. Jay Jackson

72. Ella Jankoski, Environment New Jersey

73. Nicholas Jiorle

74. Edward Klements

75. Boris Kofman

76. Robert Kopp

77. Ernest Kovacs, on behalf of the Sailing Foundation of Brant Beach

78. Edward Kownacki

79. Dona Kozlowski, Morrison's Marina

80. Beth Kwart, South Jersey Chapter of Surfrider Foundation

81. Vince Lepore

82. David Littlehale

83. Peter Lomax, The Lomax Consulting Group

84. Lesley M.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

85. Sara MacDonald
86. Tony Macdonald, Urban Coast Institute, Monmouth University
87. Blake Mahoney, Cohansey Area Watershed Association
88. John Mangino
89. Colin Martin
90. Stacy McCormack on behalf of American Littoral Society, Association of New Jersey Environmental Commissioners, New Jersey Environmental Lobby, New Jersey Audubon, and New York/New Jersey Baykeeper
91. Shaun McGrath
92. Jim McManus
93. Daniel Mease, Ocean Gate Yacht Club
94. Margit Meissner-Jackson, Sierra Club, Ocean County group
95. Clark Milioti
96. John Miller on behalf of the New Jersey Association for Floodplain Management
97. Kenneth Miller
98. Thomas Morford, Baker Marina Group
99. Melissa Mott
100. Michelle Murphy
101. Veronica Neely
102. Christine Nolan, South Jersey Land and Water Trust
103. Christopher Ohrenich
104. Gilbert Olsen

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

105. Lauren Olsen

106. William Olson

107. Doug O'Malley, Environment New Jersey

108. Kerry O'Neil

109. Cassandra O'Neill, Clean Ocean Action

110. Marie O'Neill

111. Stacy Parsons

112. William Parsons

113. Lisa Pashley

114. Margaret and Manuel Pego

115. Margo Pellegrino

116. Robert Piel, Amy Green Environmental Consultants

117. Michael Pierro

118. Michael Pisauro, New Jersey Environmental Lobby

119. R. William Potter, Esq. on behalf of the Dock Road Homeowners

120. Dave Pringle, Clean Water Action

121. Robert Raimo

122. Cheryl Reardon on behalf of the South Jersey Bayshore Coalition

123. Daniel Reed

124. Mark Renna, Evergreen Environmental, LLC

125. Marshall Robert, Rowbear Consulting , PC

126. Rebecca Rodriguez

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

127. Bill Rosenblatt

128. Jeffrey Salmon

129. Edward Sampson, Monmouth County Planning Board

130. Bob Sandberg

131. Tammy Savidge, Dredge Harbor Boat Center LLC

132. Valerie Schaeffer

133. Georgia Shanley

134. Bruce Shapiro, New Jersey Association of Realtors

135. Karin Simeone

136. Imants Smildziins

137. Jessica Soell

138. Heather Sokolowski

139. Vincent Solomeno

140. Wendy Stein

141. Jason Storbeck

142. Matthew Stout

143. Chris Sturm, New Jersey Future

144. Linda Tavares, Cozy Cove Marina

145. Paul Terzian, Causeway Marine

146. Jeff Tittel, Sierra Club, New Jersey Chapter

147. Claire Tondreau

148. Rick Traber, Pier 47 Marina

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

149. Lloyd Tubman, Esq., Archer & Greiner, P.C.

150. John Van Dalen, Van Dalen Brower, L.L.C.

151. Maya van Rossum, Delaware Riverkeeper Network

152. Christopher Vernon

153. Beverly Wardell

154. Tom Wells, The Nature Conservancy

155. Rudolph J. Wenzel

156. Kristin Wildman, The Lomax Consulting Group

157. Bill Williams

158. Bill Wolfe, New Jersey Public Employees for Environmental Responsibility

159. Gregory Wright

160. Michael Young, Beach N Boat, LLC

161. Benjamin Yu

162. Cindy Zipf, Clean Ocean Action

163. Cindy Zirkle, Cohansey Area River Preservation

164. At the July 9, 2014 public hearing, Environment New Jersey delivered 19,408 postcards, pre-printed each bearing its name. Each postcard requests that the rebuilding of the shore be done in a sustainable manner. Each postcard bore the handwritten name, address and telephone number of a different individual. Given the postcards unity of source, delivery and message, the Department considers them together akin to a petition, and designated them together as commenter 164.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

165. On July 16, 2014, a representative of Environment New Jersey hand-carried a pre-printed petition bearing its name. The petition requests that the rebuilding of the shore be done in a sustainable manner that protects the shore's waters and environment, and limits flooding and other serious effects of future storms. The petition contains the handwritten name, address, and in some cases telephone number of 376 individuals. The Department has designated this petition as commenter 165.

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

### **General**

1. COMMENT: The proposed changes to the CZM rules and Coastal Permit Program Rules are supported. (150)
  
2. COMMENT: The administrative alignment to make various land use regulations consistent is supported. (124)
  
3. COMMENT: The easing of red tape is supported. (88)
  
4. COMMENT: The Department's stated objective of transforming business practices to facilitate electronic permitting by aligning permitting processes and targeting select activities for streamlined permit processing: permits-by-rule, general permits, and a proposed new category of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

permit-by-certification for activities that will cause only minimal adverse environmental impacts when performed separately or cumulatively when considered in combination with other projects, is generally supported. (33, 154)

5. COMMENT: The changes to the administrative process that coordinate the administrative procedures for pre-application conferences, public hearings, administrative hearings, application requirements, and review procedures across the flood hazard area, freshwater wetlands, and coastal permitting programs are supported. These changes will save time, effort, and money for permit applicants and will make things more efficient for the Department in terms of processing land use applications. (116)

6. COMMENT: The Department's efforts in the consolidation of N.J.A.C. 7:7 and 7:7E to provide consistent permit applications and standards across the different rules are generally supported; such changes help the Department operate more efficiently and reduce application costs. (54)

7. COMMENT: The plans to consolidate the CZM rules and Coastal Permit Program Rules into one chapter and the streamlining of the approval process must move forward. (41)

8. COMMENT: The rule proposal is supported; these changes are needed and should be adopted immediately. The time and research the Department has spent on these rule changes is

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

recognized and the Department is commended for its efforts. This rule is a good balance between the environment and business interests. (43)

9. COMMENT: This proposal is a very positive step which will assist home and business owners when making repairs of their properties, especially for those which are still damaged following the devastation caused by Superstorm Sandy. In addition, the rule changes will assist home and business owners by providing clarity when applying for and obtaining permits necessary to perform work on their properties by streamlining the permit application process and making the procedure for obtaining various permits more consistent.

The changes put forward by the Department will further assist home and business owners by cutting unnecessary red tape, as has been the goal of the Department over the last several years. Moreover, the proposal does so in a way that balances maintaining environmental protections while providing a simplified process which will make it easier for those doing work on or fixing their properties.

The consolidation of the CZM rules and Coastal Permit Program Rules into one chapter is another helpful step for those doing work on their properties in the coastal zone as they will only have to be subject to one set of rules. (134)

10. COMMENT: As a resident and business owner in a shore community, the rule proposal is supported. Businesses support the economy in vast ways and the existing permitting process is too long, complicated, and expensive. No one is going to let developers run wild; laws can be

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

changed and if things don't go smoothly once they are adopted, modifications can be made.

(145)

11. COMMENT: The Department is commended for the furtherance of Governor Christie's Executive Order No. 2 to adopt "common sense" principles to the Department's rules and policies. The Department's attempt to streamline the application submittal process by eliminating the unnecessary application requirements and documents that are now commonly available on the web and to align them with the processes of the flood hazard area and freshwater wetlands permitting programs will improve the regulatory process without compromising the overall regulatory intent or the coastal environment. The Department's consideration and revision of the proposed rules to streamline the application process and remove unnecessary impediments to responsible and balanced development in the coastal region is also commended.

(83, 156)

12. COMMENT: In general, the proposed changes to the CZM rules and Coastal Permit Program Rules are supported. (11)

13. COMMENT: The rules are well thought out. (40)

14. COMMENT: The Department's effort to consolidate its rules and streamline the permitting process to achieve better efficiencies for the Department and the regulated public is supported.

(50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

15. COMMENT: The Department's efforts to consolidate and modify the Coastal Permit Program Rules in the aftermath of Superstorm Sandy in order to promote the resiliency and rebuilding of coastal communities while at the same time protecting health, safety, and the environment are supported. (59)

16. COMMENT: The Department's efforts to make its programs more effective, more responsive to their statutory responsibilities and obligations, and reflective of the management needs of environmental resources is supported. (90)

RESPONSE TO COMMENTS 1 THROUGH 16: The Department acknowledges these comments in support of the rules.

17. COMMENT: One commenter opposed the changes and two commenters requested that the Department not adopt the changes. (16, 74, 126)

18. COMMENT: The Department should not adopt these regulations. Thoughtful development needs to occur along with sensible oversight by the appropriate State agencies. (82)

RESPONSE: TO COMMENTS 17 AND 18: This consolidation of the Coastal Permit Program Rules and Coastal Zone Management rules into a single chapter to establish a comprehensive and streamlined set of rules governing land use in the coastal area is part of the Department's effort

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

to transform the operations of the land use permitting programs administered by the Division of Land Use Regulation. In addition to consolidation of the two sets of coastal rules through this adoption, and through anticipated rulemaking to amend the FWPA and FHACA Rules, the Department intends to align the rules governing the permitting processes of all three programs to the extent the respective enabling statutes allow. The rules governing the process for obtaining a permit will be standardized across all three chapters and will be organized in a uniform order and format. These amendments, repeals, and new rules will make the rules easier to understand and use, and will lead to increased compliance.

The transformation of the operations of the land use permitting programs also involves streamlining functions, re-engineering business processes, and leveraging technology to eliminate unnecessary paperwork, share applications and forms across the Department, and increase the use of electronic submittals.

To further the effort to prioritize and refocus its permitting efforts on the activities posing the most risk to the coastal environment, the Department adopted two additional permits-by-rule and a new general permit and modified several existing general permits.

The amendments allowing for the construction of a restaurant at certain new or existing marina facilities and the expansion of existing or construction of new marinas in limited “infill” situations are intended to help maintain the economic viability of existing marinas and encourage the development of new ones in appropriate circumstances while minimizing environmental impacts. Further, the amendments relating to dredging and dredged material management are intended to provide clarity and flexibility, as well as promote the State’s policy of encouraging the beneficial use of dredged material.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department has also amended the coastal wetland mitigation requirements to achieve consistency between the Department's freshwater wetland and coastal wetland mitigation requirements, in the process assuring that the State's coastal wetland mitigation requirements reflect current science.

19. COMMENT: Through this rulemaking, the Department is streamlining its procedures by merging the regulatory and review processes of a wide variety of statutes, including the Coastal Area Facility Review Act (CAFRA), the Coastal Zone Management Act (CZMA), the Coastal and Freshwater Wetlands Acts, and Waterfront Development Act, among others, in order to have a single and consistent regulatory structure. While it is doubtful that such a merger will advance one of the stated goals of the new regulations, to promote more development in the coastal area, which at best is problematic and potentially hazardous to public health and safety given the realities of sea level rise, and the resulting increased frequency and severity of storm surges, the merger presents a more fundamental problem: is this merger statutorily permissible? It is questionable as to whether the merger is consistent with the procedures outlined in each of these statutes. This overriding legal issue should be thoroughly explored and explained by the Department's lawyers as well as reviewed by the State Legislature as a fundamental part of the latter's constitutional oversight functions. Specifically, N.J. Const. art. V § 4 ¶ 6, provides: "The Legislature may review any rule or regulation to determine if the rule or regulation is consistent with the intent of the Legislature as expressed in the language of the statute which the rule or regulations is intended to implement." (119)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The overall goal of this proposal is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules' requirements can be processed in the most efficient manner possible, both for the applicant and the Department.

While the standards that an applicant must meet to obtain a permit differ widely among the coastal, freshwater wetlands, and flood hazard area permitting programs, many of the permitting procedures are very similar. For example, all three permitting programs require public notice of an application submission to the Department. Some procedural components of the coastal permitting program are required by statute, such as deadlines for Department decisions on an application. As indicated in the proposal Summary, where the statutory requirements of the three permitting programs do not match, the Department cannot, and has not attempted to, make the rules uniform across all three programs. Therefore, portions of the rules governing the permit process will differ among the three permitting programs, as they are tailored to the enabling statutory authority of the permitting program. This is particularly true of the application review procedures for CAFRA individual permits. The changes to the permitting process are intended to standardize the language of the three permitting programs using the clearest, most well-organized provisions from each program. This in turn will make it easier for applicants to understand and comply with the rules of each permitting program, especially when they must obtain more than one Land Use permit.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

20. COMMENT: The consolidation efforts are opposed; through this effort, some of the basic science that originally supported establishment of the rules has been lost, especially in terms of ensuring that a citizen's constitutional rights to health and safety are protected. An extension of time is necessary for the Department to reevaluate some of the science that is the basis for the rules, specifically as it relates to water and air quality. (42)

RESPONSE: The rules as amended and consolidated continue to protect coastal resources and, in conjunction with the Department's other programs, the health and safety of residents of and visitors to the coastal region. As explained in the Response to Comment 19, the overall goal of this proposal is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules' requirements can be processed in the most efficient manner possible, both for the applicant and the Department. The amendments to the rules governing the use, development, and protection of the State's coastal resources further the State's recovery from Superstorm Sandy. In addition, the CZM rules continue to contain rules that specifically address the protection of water quality and air quality (see N.J.A.C. 7:7-16.6 and 16.8, respectively), consistent with Section 10 of CAFRA which requires that the Department make findings regarding compliance of a proposed activity with various environmental standards, including water quality and air quality standards, prior to issuance of a CAFRA permit. The only change made to these previously existing sections of the rules as part of this rulemaking was to change a cross-reference to the traffic rule, N.J.A.C. 7:7-

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

16.12, to reflect the new codification of that referenced section as a result of consolidation of the rules.

21. COMMENT: The significant stakeholder outreach effort undertaken by the Department prior to the release of the CZM proposal to obtain and consider input from various interest groups is appreciated. The Department is encouraged to continue such stakeholders processes and dialogue in modifying any regulatory program. (50)

RESPONSE: The Department acknowledges this comment in support of its stakeholder outreach.

22. COMMENT: The stakeholder process utilized by the Department is a “fake-holder process” as the stakeholder meetings were by invitation only. There are a lot of people that were not represented; only the development and business communities were briefed on the rule and the environmental communities, public interest communities, and recreational communities were not extended that same opportunity to the commenter’s knowledge. The result of this biased process is an inferior rule. (158)

RESPONSE: As explained at 46 N.J.R. 1051, the Department conducted extensive stakeholder outreach. The Department sought input from local governments, the development community, the environmental community, the public interest community, and recreation community and State and Federal agencies through 10 stakeholder meetings from spring 2011 through spring

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2012. These discussions informed the 2013 emergency rulemaking and concurrent proposal, as well as this rulemaking.

23. COMMENT: While living shorelines, raising of salt marshes with clean spoils, and other techniques for protecting the coast are supported, the majority of the proposed regulations weaken the requirements of the current rules by: expanding general permits and permits-by-rule; the creation of general permits-by-certification which allow an automatic online permit with no governmental review; a new “public good” waiver should the application not meet the standards for development due to impacts on coastal resources; doubling the exemptions from CAFRA, and the flood hazard area and dune protections by exempting two-family houses and duplexes, thereby greatly increasing the number of people in harm’s way; exempting marinas from infill standards, allowing wetlands and shellfish beds to be filled in to connect docks; allowing for new hotels and commercial developments at marinas as well as resort recreational uses on piers; not requiring an analysis for drinking water supply and sewer capacity; and not considering non-point source pollution. (22, 48, 87, 102, 120, 122, 146, 151, 163)

24. COMMENT: The rules include a new “public good” waiver that would allow permits to be issued to projects that do not meet standards or would impact coastal resources. There is concern that this provision will allow inappropriate projects to move forward in vulnerable locations along the coast. Accordingly, this proposed provision should not be adopted.

The exemptions for the construction of two single-family homes and duplexes from CAFRA and the flood hazard regulations and dune protections; the exemptions for marinas and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

other commercial developments; the allowance of commercial developments on the landward side of secondary dunes, a sea wall, or paved road; the changes allowing for recreational uses on piers as well as making it easier to construct piers and build on them; the exemption from buffers on agricultural land; and the rule changes regarding dredging and dredged material promote inappropriate growth in vulnerable areas and should not be allowed. These exemptions will allow growth in environmentally sensitive areas and habitat, and will impact natural features such as wetlands. The mitigation proposed to address these impacts will not account for the loss of natural resources incurred by project construction. Further, the waiver and exemptions will allow for the destruction of shellfish beds, sea grasses and submerged aquatic vegetation. The rules allow for more grading and destruction of dunes. The proposed changes will also allow for high density development in flood hazard areas and even within 150 feet of waterways. (146)

RESPONSE TO COMMENTS 23 AND 24: The rules do not contain a “public good waiver.” While the rules allow for development to occur under specific circumstances, the rules do not “waive” protection of coastal resources. CAFRA recognizes the economic benefits of the coastal area and does not prohibit development in the CAFRA area. Instead, CAFRA recognizes that development will occur and requires that when development occurs, it be conducted in a manner protective of the State’s sensitive coastal resources.

The amendments do not exempt the construction of two single-family homes from the CZM rules’ flood hazard area and dune rules. Rather, the amendments change the type of permit required for this activity. The amendments do not provide exemptions for marinas. The rules allow for the expansion of existing marinas and the construction of new marinas within shellfish

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

habitat in limited situations provided the development meets specific requirements that are intended to be protective of the shellfish resource. These amendments do not allow for the destruction of submerged vegetation habitat. The amendments also permit the construction of restaurants at a new or existing marina provided certain conditions are met. These conditions are intended to ensure that the marina will continue to provide marina services to support the recreational boating industry, protect water quality, and ensure public access continues to be provided. The amendments do not allow for commercial developments to be located on the landward side of a secondary dune, sea wall, or paved road. The amendments do not change the standards for construction of piers and the construction of recreational uses on them nor do the amendments exempt agricultural lands from buffers.

Safe navigation is critical to the State's recreational and commercial boating industry and marine commerce. The changes relating to dredging and dredged material management are intended to ensure safe navigation by providing clarity and flexibility in determining what types of activities are considered new and maintenance dredging; introducing a new type of dredging, environmental dredging; promoting the State's policy of encouraging the beneficial use of dredged material; and protecting existing dredged material management areas so that these areas will be available for future use.

The changes relating to mitigation are intended to ensure the State's tidal wetland mitigation program reflects current science and better align them with the standards currently used elsewhere in the United States.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

25. COMMENT: Upon review of the draft rule, it is recommended that the Department consider adding a permit-by-rule, general permit-by-certification or general permit for the repair, replacement, renovation, or reconstruction of any dock, wharf, pier, bulkhead, or building associated with commercial fisheries, in the same location and size as the existing structure, provided the existing structure legally existed prior to January 1, 1981, appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or the existing structure received a waterfront development permit after the date of the photograph . The omission of commercial dock reconstruction from the Waterfront Development Law requires that the commercial sector obtain an individual permit for in-kind dock construction. This requirement is overly burdensome to projects which simply entail reconstruction of existing authorized structures if existing structures are approved or grandfathered. Safeguards could be incorporated into this approval through permit criteria or conditions. (83, 156)

RESPONSE: The permit-by-rule, general permit-by-certification, or general permit requested by the commenters to be applicable to a dock, wharf, pier, bulkhead, or building associated with commercial fisheries would result in reduced review by the Department of the repair, replacement, renovation, or reconstruction of this broad range of structures based upon the same criteria that is used to determine whether a permit is needed for similar activities associated with structures used solely for residential and/or recreational uses in accordance with N.J.A.C. 7:7-2.4(d)7 and 8 that implement the Waterfront Development Law at N.J.S.A. 12:5-3b (P.L. 1981,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

c. 315, commonly referred to as the Zane amendment). This provision exempts certain recreational docks and structures from the need for a waterfront development permit and compliance with the applicable CZM rules.

The Department agrees that conceptually situations may exist where the repair, replacement, renovation, or reconstruction of a commercial dock in the same size and location will have minimal environmental impacts. However, in contrast to residential and/or recreational structures falling under N.J.A.C. 7:7-2.4(d)7 and 8, the scope of commercial fishing operations occurring at the docks, wharfs, piers, bulkheads, or other structures referenced by the commenters can vary and may include the operation of equipment adjacent to the bulkhead, vessel fueling, and other related activities in close proximity to the structures to be repaired, replaced, renovated, or reconstructed. With the range of activities that can occur at these commercial facilities in close proximity to the structures to be repaired, etc. comes a greater range of potential impacts, including potential contamination issues that must be addressed to ensure that an activity such as the in-kind, in-place replacement of a bulkhead does not result in release of contaminants to the waterbody. Accordingly, before proposing a general permit-by-certification or general permit for such activities, the Department must fully consider the impacts associated with such activities, determine if approval through anything other than an individual permit might be appropriate in specific, limited circumstances, and, if it is determined that lesser review than that provided through the individual permit process would be appropriate for some portion of these commercial structures, determine what conditions and limitations must be applicable to ensure replacement of such a structure will not result in significant environmental impacts.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

26. COMMENT: The consolidation of the Coastal Permit Program Rules and the CZM rules into one chapter and other changes indicated as intended to further encourage appropriate redevelopment of more resilient coastal communities are opposed. The congressional intent of the Coastal Zone Management Act and the mission of the Coastal Zone Management Program are to ensure the conservation and responsible use of our nation's coastal and ocean resources. Unfortunately, New Jersey's Coastal Program rules as proposed are designed to encourage and facilitate development and redevelopment and not to ensure the conservation and responsible use of our nation's coastal resources. Therefore, these rules should not be merged and the CZM rules should not be degraded. (1)

RESPONSE: As explained at N.J.A.C. 7:7-1.1(d), the CZM rules address a wide range of land and water types, current and potential land and water uses, and natural, cultural, social, and economic resources in the coastal zone. The CZM rules are the means to address competing and conflicting interests in the coastal areas. This balancing reflects that coastal management involves consideration of a broad range of concerns in contrast to other resource management programs which are more limited in scope. Further, as explained in the Response to Comments 23 and 24, CAFRA recognizes the economic benefits of the coastal area and does not prohibit development in the CAFRA area. Instead, CAFRA recognizes that development will occur and requires that, when development occurs, it be conducted in a manner protective of the State's sensitive coastal resources. As explained previously, the overall goal of this proposal is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules' requirements can be processed in the most efficient manner possible, both for the applicant and the Department.

27. COMMENT: While there are many positive procedural changes proposed, additional changes to the rules governing the use, development, and protection of the State's coastal resources should be implemented to better achieve the goals and purposes outlined in the proposal. The Department is urged to expeditiously draft substantive changes to its coastal rules as the regulated community is impacted by the current rules and policies through the development application and review process. Specifically, the Department should further examine for revision or elimination the following rules: shellfish habitat, N.J.A.C. 7:7-9.2; submerged vegetation habitat, N.J.A.C. 7:7-9.6; dunes, N.J.A.C. 7:7-9.16; coastal high hazard areas, N.J.A.C. 7:7-9.18; barrier island corridor, N.J.A.C. 7:7-9.20; bay island, N.J.A.C. 7:7-9.21; filled water's edge, N.J.A.C. 7:7-9.23; riparian zone, N.J.A.C. 7:7-9.26; wetlands, N.J.A.C. 7:7-9.27; wetland buffers, N.J.A.C. 7:7-9.28; coastal bluffs, N.J.A.C. 7:7-9.29; farmland conservation areas, N.J.A.C. 7:7-9.31; steep slopes, N.J.A.C. 7:7-9.32; historical and archaeological resources, N.J.A.C. 7:7-9.34; endangered or threatened wildlife and plant species habitats, N.J.A.C. 7:7-9.36; critical wildlife habitat, N.J.A.C. 7:7-9.37; special urban areas, N.J.A.C. 7:7-9.39; Pinelands National Reserve and Pinelands Protection Area, N.J.A.C. 7:7-9.42; geodetic control reference marks, N.J.A.C. 7:7-9.45; maintenance dredging, N.J.A.C. 7:7-12.6; new dredging, N.J.A.C. 7:7-12.7; requirements for non-porous and vegetative cover, N.J.A.C. 7:7-13 (regarding determination of density and impervious cover and centers); rule on location of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

linear development, N.J.A.C. 7:7-14.1; basic location rule, N.J.A.C. 7:7-14.2; secondary impacts, N.J.A.C. 7:7-14.3; housing, N.J.A.C. 7:7-15.2; coastal engineering, N.J.A.C. 7:7-15.11; high rise structures, N.J.A.C. 7:7-15.14; water quality, N.J.A.C. 7:7-16.3; surface water use, N.J.A.C. 7:7-16.4; groundwater use, N.J.A.C. 7:7-16.5; stormwater management, N.J.A.C. 7:7-16.6; vegetation, N.J.A.C. 7:7-16.7; air quality, N.J.A.C. 7:7-16.8; scenic resources and design, N.J.A.C. 7:7-16.10; buffers and compatibility of uses, N.J.A.C. 7:7-16.11; traffic, N.J.A.C. 7:7-16.12; subsurface sewerage disposal systems, N.J.A.C. 7:7-16.13; and solid and hazardous waste, N.J.A.C. 7:7-16.14.

The Department should recognize that New Jersey's coastline is highly developed and is not a pristine, undeveloped coastline. The rules should be re-crafted to provide a more balanced regulatory framework taking into account the existing development structure of New Jersey's coastal areas. This should include greater flexibility within the rules to differentiate between areas that are already developed from those that are not. This would also be in keeping with sound planning practices. (50)

RESPONSE: The consolidation of all of the coastal rules into a single chapter is part of the Department's effort to transform the operations of the land use permitting programs. As explained previously, the overall goal of this proposal is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules' requirements can be processed in the most efficient manner possible, both for the applicant and the Department. The standardization of the process for obtaining a permit

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

across the land use permitting programs will make it easier for applicants to understand and comply with the rules of each permitting program, especially when they must obtain more than one permit. Further, the alignment of the rules is intended to facilitate the electronic submittal of land use permit applications in the future.

This rulemaking also included limited amendments to the rules governing the use, development, and protection of the State's coastal resources relating to, among other things, marina development, dredging, recreational docks and piers, mitigation, and high rise structures.

While the commenter did not specify what changes should be made to the listed rule provisions, the Department attempts to identify any possible improvements needed in all its rules, obtain input from those impacted by its various programs, including the coastal program, and propose amendments determined to be appropriate to ensure that the Department's mission is achieved in as efficient a manner as possible. As part of that process, on September 8, 2014, the Department held a stakeholder meeting on the coastal rules to engage interested stakeholders. Based on the comments submitted on the rulemaking adopted herein, the Department sought input on the following topics: Coordination with the State Plan, Filled Water's Edge, Threatened and Endangered Species Habitat, Critical Wildlife Habitat, and the Dredging Technical Manual. As a result of the stakeholder meeting, seven stakeholder subcommittees were formed to address the following topics: Coordination with the State Plan, Filled Water's Edge, Threatened and Endangered Species Habitat, Critical Wildlife Habitat, the Dredging Technical Manual, Coastal hazard adaptation strategies and V-zones, the Long Branch redevelopment Zone Permit, and docks. To date, all stakeholder subcommittees have met at least once. Audio recordings of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

stakeholder subcommittee meetings are available at

<http://www.nj.gov/dep/workgroups/past.html>.

28. COMMENT: The Department needs to more aggressively examine its current policies and regulations to respond to the following issues: how to rebuild and build resilient communities, reducing risk from future storms; integrating restoration of declining habitats and protection of remaining natural resources; improving and integrating water quality protection measures into both future development and redevelopment, as well as aggressively working to address and reduce current pollution inputs to coastal waters. This current rule proposal is the first major regulatory reexamination effort by the Department following Superstorm Sandy. It presented the opportunity to address many of the problems with coastal development and management policy exposed by the storm, as well as to take action on the long standing, well known problems plaguing the coast. The proposal falls far short of those goals, even as it expresses that those were objectives of the rule proposal. (90)

29. COMMENT: This rule proposal is the first major revision and rewriting of the rules since Superstorm Sandy and these rules do not strengthen coastal protections or encourage more regional planning. These rules create more loopholes and waivers, which will weaken coastal protections. Especially of concern after Superstorm Sandy, the rule changes do not mention climate change or sea level rise and there are no programs for adaptation to, or mitigation of, sea level rise, nor for resiliency planning, or restoring natural systems. Allowing for more development in high hazards areas and flood hazard areas violates the Federal Emergency

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Management Agency's (FEMA) rules and the National Flood Insurance Program rules, putting more people and property in harm's way and jeopardizing flood insurance or causing significant increases in rates. These rules are not about helping people rebuild; the rules are about promoting more development. The rules will mean more pollution in our bays and estuaries, more loss of fisheries, more flooding and they will hurt New Jersey's \$29 billion tourism industry because people are not going to come to the beaches polluted by stormwater runoff.

Further, these rules do not result in more predictability, transparency, or eliminate red tape in the coastal permitting programs. Instead, these changes will promote sprawl along New Jersey's coast which will put more people and property in harm's way. The Department and Christie administration are urged to propose rules that strengthen coastal protections through climate adaptation planning, programs to enhance and restore natural systems while discouraging growth in high hazard areas, and policies to enhance water quality. (146)

RESPONSE TO COMMENTS 28 AND 29: This rulemaking is not the Department's first major proposal since Superstorm Sandy. In 2013, the Department adopted amendments, a repeal, and new rules to facilitate the rebuilding of more resilient coastal communities and coastal-related industries, and help facilitate the recovery of the coastal ecosystem. (See 45 N.J.R. 1141(a), May 6, 2013; and 45 N.J.R. 1696(a), July 15, 2013).

Since 2011, the New Jersey Coastal Management Program (NJCMP) developed two assessment tools to ensure that coastal communities have consistent and comprehensive guidance to assess their vulnerability and capacity for resilience. The Department, through the NJCMP, has also developed the Resilient Coastal Communities Initiative to further develop these tools

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

into a community-based planning program and has initiated a Sustainable and Resilient Communities Grant Program (see 47 N.J.R. 299(b)) to fund a comprehensive planning approach at the municipal level (See the Response to Comments 75 through 103). These initiatives will provide the necessary tools, guidance, and technical assistance for coastal resilience planning and will help inform future rulemaking.

30. COMMENT: The Department is proposing to lower the standards that have been in place since 1970. Although the current rules and statutes with regard to coastal issues may be flawed, the Department should not scrap them in favor of encouraging further development. This proposal will not bring the relief expected. The loopholes in CAFRA and the CZM rules need to be fixed. The Department must strengthen the rules governing the coast. (94)

RESPONSE: The Department has not lowered the standards for development within the coastal zone. As explained in the Response to Comments 17 and 18, the consolidation of all of the coastal rules into a single chapter is part of the Department's effort to transform the operations of the land use permitting programs. The focus of this rulemaking is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules' requirements can be processed in the most efficient manner possible, both for the applicant and the Department. The standardization of the process for obtaining a permit across the land use permitting programs will make it easier for applicants to understand and comply with the rules of each permitting program, especially when they must obtain more than

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

one permit. Further, the alignment of the rules is intended to facilitate the electronic submittal of land use permit applications in the future.

Under this adoption, the Department has amended the rules concerning marina development and dredging. These amendments are intended to assist marina owners as well as the boating community. Specifically, the amendments concerning marina development are intended to help maintain the economic viability of existing marinas and encourage the development of new ones in appropriate circumstances while minimizing environmental impacts. Marinas are an essential component of the State's waterfront communities, providing necessary infrastructure and services to the boating public. However, over the last several years, the State has seen a decrease in the money spent on recreational boating, as well as a decrease in the number of boat registrations. This in turn has resulted in a loss of jobs, revenue, and services at marina facilities, as well as the conversion of some marinas to non-water dependent uses. A marina facility or restaurant constructed at such a facility must also comply with current construction codes which will address flood resistant construction techniques.

Dredging is necessary to provide and maintain adequate water depths for the safe passage and berthing of recreational and commercial vessels. The amendments relating to dredging and dredged material management are intended to provide clarity and flexibility, as well as promote the State's policy of encouraging the beneficial use of dredged material.

31. COMMENT: The Department should reevaluate within a determined time frame, perhaps three years from adoption, the amended CZM rules and their implications that may result from the complete rule overhaul. (83, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department will continue to evaluate the CZM rules, including the amendments adopted at this time as they are implemented, and will propose amendments as necessary to ensure that the rules continue to be reasonable and proper for the purpose for which they were promulgated.

32. COMMENT: A table of contents should be added to the chapter for ease of reference. (50)

RESPONSE: The Department agrees that tables of contents do make navigating the rules easier and, accordingly, the published version of the Department's rules in the Administrative Code includes a table of contents as does the version posted on the Department's website.

33. COMMENT: Several commenters requested the comment period on the proposal be extended for various reasons. For example, commenters stated that the close of the comment period for the June 2, 2014, proposal on August 1, 2014, was not an appropriate amount of time given the size of the document. Some commenters requested the comment period be extended because the public hearings were scheduled in late June and early July when the summer season and vacations were underway. Other commenters stated that the 60-day public comment period was not an appropriate amount of time for the public to digest the sweeping rule overhaul. (7, 12, 13, 14, 15, 16, 17, 20, 27, 29, 31, 32, 46, 44, 49, 51, 52, 55, 62, 64, 71, 78, 80, 81, 86, 91, 95, 101, 105, 106, 108, 110, 113, 119, 130, 132, 138, 137, 143, 146, 147, 162)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

34. COMMENT: The Department should not be expediting the process to adopt these rules.

The rules are being pushed through without proper time for discussion. It appears to be an attempt to adopt them before the public notices. (73)

35. COMMENT: Additional public hearings should be held on the proposal. (31, 49, 55, 118)

36. COMMENT: The Department's motive in proposing the rules right before the July 4<sup>th</sup> holiday is suspect; the Department is not being transparent. (130)

RESPONSE TO COMMENTS 33 THROUGH 36: As indicated by the commenters, a 60-day public comment period was provided, consistent with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (APA). While the APA did not require a public hearing for this proposal, the Department held three public hearings, including one during evening hours, in different parts of the coastal zone, with hearings conducted in Long Branch, Trenton, and Tuckerton to increase accessibility to those affected by the rules. In addition to publication of the proposal in the New Jersey Register, the Department provided additional notice of the proposal on its website, to media outlets in the Statehouse, by e-mail to the Department's rulemaking listserv, and publicized the rulemaking by press release. Further, as explained in the Response to Comment 22, the Department conducted extensive stakeholder outreach in developing this proposal. As indicated above, a total of 19,947 individuals and agencies submitted comments, which are summarized and addressed in this adoption. Therefore, the Department believes that there was ample opportunity to provide comments and discuss the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rulemaking and does not believe that an additional period for public comment or additional public hearings would be likely to result in the Department receiving comments relevant to the proposed rule that raise issues or provide new information, data, or findings that were not previously raised or provided during the development of the proposed rule or during the 60-day comment period.

37. COMMENT: The Department held three public hearings, but did not answer any questions at these hearings. The Department should hold two additional question and answer sessions for the public to discuss the proposed changes. (7, 31, 49, 55, 80, 95)

38. COMMENT: The public hearing format is weird and results in a one-sided conversation. The Department should instead have question and answer sessions and at least give a presentation on the proposal. (51)

RESPONSE TO COMMENTS 37 AND 38: The Department makes every effort to try to ensure opportunities are provided for input with a reasonable limit on the scope of the response, recognizing that it is often not possible to respond to specific suggestions without having both the time to consider the suggestions or questions and having personnel with the necessary expertise to respond to a particular inquiry that may be received on a proposal that addresses as diverse issues as water quality, shellfish habitat and dredging, or the many other issues addressed by these rules, as referenced in the Response to Comment 40 below. The adoption document reflects both the Department's response to any specific suggestions made regarding the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

amendments proposed and the Department's response to any questions that arise either at the hearings or through written comment.

39. COMMENT: The public hearing process for rulemaking is a sham and that all of the testimony and recommendations provided on the rule cannot result in changes to the rule. The Department is prohibited from making substantive changes on adoption and can only make changes to punctuation. (158)

RESPONSE: In 2011, the APA and the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30, were amended to incorporate a process that allows a State agency to make substantial changes to a proposed rule upon the conclusion of the public comment period for a notice of proposal.

Under N.J.A.C. 1:30-6.3(b), a substantial change means any change to a proposed rule that would significantly: enlarge or curtail who and what will be affected by the proposed rules; change what is being prescribed, proscribed, or otherwise mandated by the rule; or enlarge or curtail the scope of the proposed rule and its burden on those affected by it. Where the agency determines it would be appropriate to make substantial changes upon adoption, notice of the changes must be published in the New Jersey Register to allow public consideration of and comment on the changes before adoption. This process has been utilized by the Department to make adjustments determined to be appropriate in past rulemakings (see, for example, 43 N.J.R. 772(a)).

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Additionally, changes can be made upon adoption that are not substantial without utilizing the notice of substantial change process. These changes include: spelling, punctuation, technical, and grammatical corrections; language or other changes, whose purpose and effect is to clarify the proposal; and changes that do not significantly enlarge or curtail the scope of the rule and its burden, enlarge or curtail who or what will be effected by the rule, or change what is being prescribed, proscribed, or mandated by the rule.

40. COMMENT: The rules are too lengthy and complicated for the average individual to assess how they will be impacted. The rules identified as “no change” should be spelled out for ease of understanding. (81)

RESPONSE: The rules reflect the complexity of issues affecting the coastal area and reflect the Department’s determination of protections necessary to adequately protect public health, safety, and the environment while allowing appropriate development to occur in the State’s coastal area. The rules address the protection of certain 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, such as prime fishing areas, coastal bluffs, and special hazard areas. The rules also contain requirements for specific types of development within water areas, such as boat ramps, filling, and vertical wake or wave attenuation structures. Further, the rules set forth standards for specific uses within the coastal zone such as transportation, ports and energy facilities. Finally, the rules also contain standards used in analyzing a proposed development’s impacts on the built and natural environment of the coastal

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

zone both at the site as well as to the surrounding region, including marine fish and fisheries, surface waters, and traffic.

With respect to the use of “no change,” the format used in rule proposals is that required under the APA and the Office of Administrative Law’s implementing rules. The format required is intended to provide adequate context for the reader to understand the changes being proposed. By reflecting that certain provisions that are part of a particular rule section, but not impacted by the change being proposed are not being changed, the required format allows the reader to concentrate on the changes proposed without having to read through non-impacted existing language.

41. COMMENT: The rules are extensive. (40)

RESPONSE: The coastal land and water areas of New Jersey are diverse. Accordingly, the CZM rules must address a wide range of land and water types (locations), current and potential land and water uses, and natural, cultural, social, and economic resources in the coastal zone. The consolidation of the CZM rules (the rules governing the use, development, and protection of the State’s coastal resources) with the Coastal Permit Program Rules (the rules governing the permitting process) results in a larger chapter. However, the Department believes that the consolidation of the rules into a single chapter will increase compliance with the rules.

42. COMMENT: The pages of text should be made more concise. Perhaps pictures and diagrams can be used more effectively to convey the message. (136)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: It is important that the text of the rule adequately explain what is required in terms sufficient to ensure that all those potentially subject to the rules, both professionals and those that may be making an application on their own behalf, are able to gain a clear understanding of what is required. The Department agrees that illustrations and/or diagrams can be helpful as an aid to understanding. Where the Department believes that an illustration will assist in ensuring that understanding, the rules contain illustrations and other mechanisms to supplement the rule text (see for example, Appendix A which illustrates the waterward side of a development pursuant to N.J.A.C. 7:7-1.5; Appendices B and C which illustrate an intervening development under CAFRA pursuant to N.J.A.C. 7:7-2.2(b)1; Appendix E which illustrates how the length of an infill single family dock under the shellfish rule is determined pursuant to N.J.A.C. 7:7-9.2(d)3ii; and Appendix F which illustrates the construction of a new commercial marina under the infill provision at N.J.A.C. 7:7-9.2(d)5).

43. COMMENT: Due to the nature of the New Jersey Turnpike Authority's construction and reconstruction projects, it is requested that the Department amend the proposed rules to exempt from CAFRA regulation the Garden State Parkway. The legislative purpose of CAFRA is to control and regulate the impacts of continuing development in the coastal area, while balancing the economic needs and aspirations of economic development. N.J.S.A. 13:19-2. These legislative goals do not apply in the context of Parkway construction, reconstruction, and enhancement projects because the reason for these projects is to accommodate growth that has been found acceptable by the Department. The need for expansion or enhancement of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Garden State Parkway is based upon the need for operational improvements to the roadway or its facilities, not for economic enhancement. This exemption should include all associated work related to Parkway projects, including ramp construction, and any local roadway improvements necessary to complete construction of the Parkway project. The decision concerning the acceptability of the development in the coastal area will have already been made by the Department, including any environmental impacts. To the extent that other environmental issues may be implicated in widening a highway, for example, flood hazard areas or wetlands, the improvements to the Parkway would be addressed under other environmental permitting programs.

If the Department cannot exempt the Garden State Parkway from CAFRA regulation, then consistent with the legislative purpose of CAFRA, the CAFRA boundary should be changed to the seaward boundary of the Parkway right-of-way.

If the Department cannot support the exemption of the Parkway from CAFRA regulation, the Department should promulgate a permit-by-rule for Parkway widening, reconstruction, and enhancement projects. Such activities are consistent with N.J.A.C. 7:7-7.1(c)1 and 2 as these activities are undertaken only after extensive analysis that concludes that the existing highway is insufficient such that the roadway warrants improvement. Parkway widening, reconstruction, and enhancement projects are typically required after development has already occurred within the area requiring service, or in other areas north or south of a stretch of highway within which congestion is experienced. By reducing congestion, the Authority also improves the environment by eliminating air impacts that are exacerbated by congestion. In the alternative, the Department

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

should allow widening, reconstruction and enhancement of, and the maintenance and expansion of the Parkway, under a general permit-by-certification or a general permit. (59)

RESPONSE: Under CAFRA, public highways are considered a public development (see definition of “public development” at N.J.S.A. 13:19-3) and are therefore subject to regulation under the CZM rules. As explained previously, the focus of this rulemaking is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules’ requirements can be processed in the most efficient manner possible, both for the applicant and the Department.

It should be noted that CAFRA at N.J.S.A. 13:19-5.2.e exempts from permitting requirements certain services provided, within the existing public right-of-way, by any governmental entity which involve: (1) the routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways; (2) public highway lane widening, intersection, and shoulder improvement projects which do not increase the number of travel lanes; or (3) public highway signing, lighting, guiderail, and other nonintrusive safety projects. Additionally, CAFRA at N.J.S.A. 13:19-5.2.b exempts from regulation the reconstruction of any development that is damaged or destroyed, in whole or in part, by fire, storm, natural hazard, or act of God, provided that such reconstruction is in compliance with existing requirements or codes of municipal, State, and Federal law. Accordingly, should reconstruction be necessary as a result of an event such as Superstorm Sandy, such reconstruction may proceed without a permit provided all of the requirements are complied with.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

44. COMMENT: The rules make it easier to dredge and dump the dredged material. The rules also designate dredged material as clean fill even if it is not. (146)

RESPONSE: Safe navigation is critical to the State's recreational and commercial boating industry and marine commerce. Dredging is necessary to provide and maintain adequate water depths for the safe passage and berthing of recreational and commercial vessels; to facilitate the removal of contaminants from a water area as part of a remediation plan; and for the purpose of installing submerged pipelines or cables. To facilitate safe navigation by focusing on the significance of dredging, the adopted amendments and new rules provide clarity and flexibility in determining what types of activities are considered new and maintenance dredging; introduce a new type of dredging, environmental dredging; promote the State's policy of encouraging the beneficial use of dredged material; and protect existing dredged material management areas so that these areas will be available for future use. Failure to maintain navigational depths creates a hazard to all boating traffic and can impede growth of, or actually reduce, commercial and recreational activities in coastal communities. Similarly, failure to maintain adequate water depths at marinas may impede recreational boating opportunities.

The rules do not designate dredged material as "clean fill." Where the use of dredged material as fill is acceptable, the rules specifically require that the dredged material meet the criteria for structural or non-structural fill material and its management in accordance with Appendix G. In order for dredged material to be used as fill, it must meet the criteria for structural or non-structural fill set forth in Chapter V of Appendix G. Dredged material that

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

meets the criteria for structural or non-structural fill will be of the appropriate grain size and chemical composition to be used as backfill.

45. COMMENT: The rules should be subject to Legislative oversight and oversight by the Federal government as these rules are making things worse not better. (146)

RESPONSE: Under CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970, the Department is authorized to adopt rules to implement those statutes and the adopted rules are consistent with the Department's authority.

Section 306(e) of the Federal Coastal Zone Management Act (CZMA), 16 U.S.C. § 1455(e), and Federal regulations at 15 C.F.R. 923.80-923.84 require states with Federally approved coastal management programs to submit any changes or amendments to their coastal management programs to the National Oceanic and Atmospheric Administration's (NOAA) Office for Coastal Management in order to determine if the coastal management program, after the change, remains approvable. The Department consults with the Office for Coastal Management on a case-by-case basis depending upon the scope and subject of the proposed change.

46. COMMENT: The proposed rules may conflict with the Federal requirements putting communities which are participating in the National Flood Insurance Program's (NFIP) community rating system at risk of consequences. (62)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: A municipality's participation in the NFIP is voluntary and is in no way affected by the requirements of the CZM rules, which are adopted independently of municipal ordinances. Additionally, N.J.A.C. 7:7-9.25(f)3 requires that all development within flood hazard areas conform with the Federal flood reduction standards, 44 CFR Part 60, Requirements for Land Management and Use, which sets forth minimum requirements for communities wishing to participate in the NFIP.

47. COMMENT: Under Section 309 of the Federal CZMA, the Department must submit a report every two years about the state of the coast. Historically, that document had to address coastal hazards and rated them as a high priority, citing inappropriate and over development as factors increasing the magnitude of risk to property. Information such as this needs to be in the rules; the Department needs to tell the truth. (158)

RESPONSE: The Federal CZMA was enacted in 1972 to address the increasing stresses on the nation's coastal areas. The statute creates a voluntary partnership between Federal and state government to reduce conflicts between land and water uses in the coastal zone and conserve coastal resources. The goal is to provide for both responsible development in coastal areas and conservation of coastal resources. Subsequent amendments to the Act established a coastal zone enhancement grants program to encourage states to develop changes that would enhance their coastal management programs in one or more of nine enhancement areas. The nine coastal zone enhancement areas are: aquaculture, coastal hazards, cumulative and secondary impacts, energy and government facility siting, marine debris, ocean resources, public access, special area

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

management plans, and wetlands. Each state participating in this program must evaluate its coastal management program in these nine enhancement areas every five years through a process known as a Section 309 Assessment. The Assessment determines the extent to which problems and opportunities for program enhancement exist; determines the effectiveness of existing efforts to address those problems for each of the nine areas listed above; and identifies priority needs for program enhancement. In addition, each state must develop a strategy, which is a comprehensive multi-year statement of goals to address high priority needs identified in the assessment for improving the State's coastal management program. In addition to stating clear goals, the strategy also lays out methods for achieving those goals that are designated to lead to one or more program changes which may include, for example, changes to the coastal management program's enforceable policies (regulatory changes.) The Department is currently developing its 2016-2020 Section 309 Assessment and Strategy. The 2011-2015 assessment and strategy are posted on the Coastal Management Program's website at [http://www.nj.gov/dep/cmp/czm\\_309.html](http://www.nj.gov/dep/cmp/czm_309.html). The Coastal Management Program's Draft 309 Assessment and Strategy for 2016-2020 will be posted on the Coastal Management Program's website for public review and comment in early summer 2015. A 30-day public comment period will be held on the draft Assessment and Strategy.

48. COMMENT: These rules are an embarrassment to the Department. Under the 2002 Big Map initiative, the Department attempted to make things smarter, better, cheaper, efficient, and protected. The underlying rationale for the Big Map was the landscape analysis of the actual environmental resources on the ground, the capacity of the water resource, the capacity of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

infrastructure to support development, and the existing development patterns. All of this information and data layers were brought together to streamline, consolidate, and strengthen the Department's rules. This proposal is the exact opposite. It supports the Governor's Executive Orders Nos.2 and 3 which are intended to roll back regulations.

The Department needs to perform a cumulative impact analysis which considers impacts to the Barnegat Bay, water availability, and forest preservation. (158)

RESPONSE: The Big Map initiative was based on the application of the Department's comprehensive environmental data through GIS mapping. The Department continues to collect and develop environmental data that are used daily to inform regulatory and planning decisions. Under the Federal CZMA's Section 309 Enhancement Program, State coastal management programs are encouraged to strengthen and improve their Federally-approved coastal management programs in one or more of nine areas: wetlands, coastal hazards, public access, marine debris, cumulative and secondary impacts, special area management plans, ocean and Great Lake resources, energy and governmental facility siting, and aquaculture.

The Department's comprehensive environmental data and GIS mapping are a key component of the NJCMP's cumulative and secondary impact strategy. Under this strategy, the Department is working to establish a comprehensive planning program to work with coastal municipalities to identify cumulative and secondary impacts of development, and implement resource protection measures to minimize these impacts. As explained in the Response to Comments 75 through 103, on January 20, 2015, the Department published a request for proposal for its Sustainable and Resilient Coastal Communities Grant Program (see 47 N.J.R.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

299(b)). This funding opportunity seeks to fund a pilot comprehensive planning approach that will identify municipal actions in response to coastal hazards and protection of New Jersey's coastal resources while meeting the needs of the community.

49. COMMENT: Some of the proposed amendments go well beyond administrative consolidation, and these significant substantive changes to the rules will actually weaken coastal protection, permit increased coastal development in sensitive areas, and impair water quality. Changing the rules to encourage more dredging in natural areas, increased development in flood-prone regions, and sacrificing public participation by replacing the requirement for a public hearing when any changes are proposed to general permits, permits-by-rule, and general permits-by-certification with only a requirement for a public comment period, and the decrease in Department review through the establishment of permits-by-rule and general permits-by-certification, in the name of administrative streamlining are all steps that contradict the purported purpose of the CZM rules. (109, 162)

RESPONSE: The amendments, repeals and new rules do not weaken coastal protections. As explained in the Response to Comment 23 and 24, the amendments and new rules relating to dredging and dredged material management are intended to facilitate safe navigation. Failure to maintain navigational depths creates a hazard to all boating traffic and can impede growth of, or actually reduce, commercial and recreational activities in coastal communities. Similarly, failure to maintain adequate water depths at marinas may impede recreational boating opportunities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Marinas, by virtue of the services they provide, are a water-dependent development that must be located along the water's edge. While the rules allow additional marina development, any such development must also comply with current construction codes which will address flood resistant construction techniques.

The adopted amendments and new rules contain standards to address water quality. For example, the amendments allowing for the expansion of existing marinas and the construction of new "infill" marinas in shellfish habitat require a minimum water depth at mean low water, prohibit dredging associated with the construction and use of the marina, and require pumpouts and restrooms. The incorporation of portions of the dredging technical manual into the CZM rules as Appendix G strengthens the water quality testing requirements by making them regulatory requirements.

The adoption of a new type of permit, general permits-by-certification, does not eliminate public participation. To promulgate new general permits-by-certification, the Department must adhere to the requirements set forth at N.J.A.C. 7:7-3.2 for issuing by rulemaking general permits-by-certification, which includes publication of a notice of rule proposed in the New Jersey Register and consideration of public comment. Further, in accordance with N.J.A.C. 7:7-23.3, Additional application requirements for an authorization under a general permit-by-certification, public notice of the application for authorization under the general permit-by-certification is required in accordance with N.J.A.C. 7:7-24, Requirements for applicant to provide public notice of an application.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

### **Marina development**

50. COMMENT: The rule changes are supported. The creation of a streamlined permitting process with flexibility in property use is important and is supportive of sailing in general. (77)

51. COMMENT: The existing CZM rules have prevented many projects that were sensible, and offered environmental improvements or upgrades that were needed to allow an aging and unsupported marine infrastructure to move forward. The proposed changes finally represent a reasonable and balanced approach in protecting New Jersey's natural resources that address decades of permitting issues, red tape, and restrictive and unnecessary rules and regulations.

Further, the adoption of these rules and the efforts of the Department to streamline and amend the CZM rules for existing marinas to perform needed maintenance, conduct infrastructure improvements, add restaurants, and allow for the development of new marinas are strongly supported. The Department is commended for recognizing the need to make these changes to ensure the economic viability and sustainability of the recreational boating industry in New Jersey. (28)

52. COMMENT: The fact that the Department recognizes the importance of marinas and their economic contributions is appreciated. Boating is a significant part of New Jersey's economy. The economic impact of boating supports approximately 18,000 jobs and two billion dollars in spending. Recreational marinas are the backbone of the industry and are an essential part of New Jersey's waterfront communities. Marinas provide the access and services needed to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

recreate and enjoy the waterways. Marinas provide boat slips, public boat ramps, fuel, fishing access, supplies, restaurants, boat maintenance, and more. (160)

53. COMMENT: This rulemaking has been needed for two decades as the current regulations as enforced have strangled the positive development of critical marine recreational and commercial waterfront access and have all but eliminated critical facility maintenance. This proposal should be supported by all who support public access to New Jersey's waterways. (18)

54. COMMENT: Many of the amendments in this proposal are reasonable and balanced. They constitute a positive step that will eliminate unnecessary red tape and streamline a complicated and burdensome permitting process. The amendments facilitate much of the work that is needed now to ensure the future health, recovery, and growth of the recreational boating industry in New Jersey, and that growth will enhance access to the water, providing more opportunities for residents and visitors to enjoy New Jersey's natural resources. (11)

55. COMMENT: The changes to the rules pertaining to marina development and expansion are supported. These changes will make it easier for marina owners to make the changes needed to improve their marinas without having to go through expensive permitting processes which have prevented marina owners from making such changes in the past. (60, 61)

56. COMMENT: The rule changes pertaining to marina development, marina expansion, dredging, and dredged material management are supported. These changes are needed to ensure

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

future health and growth of the recreational boating industry in New Jersey. The fact that the Department recognizes the importance of these businesses and their economic contributions is appreciated. (3, 23, 67, 70, 79, 93, 103, 111, 112, 131, 141, 144, 148, 152, 160)

57. COMMENT: The Department's recognition of the importance of marinas and their economic contributions to the State is appreciated. The best experiences in development, particularly in regards to marina development, were when there was a partnership with State officials and the rules clearly explained everyone's respective responsibilities. The proposed rules are exactly what is needed in New Jersey. (152)

58. COMMENT: As a business owner that relies on the waterfront facilities of his clients, the commenter supports this rulemaking and appreciates the work the Department is doing. (159)

59. COMMENT: The simplified rules will help in keeping the cost of marina slip rental affordable to the boat owner. (148)

60. COMMENT: The recognition by the Department of the importance of marinas and their economic contributions is appreciated. Current regulations and costs of obtaining permits are threatening the existence of marinas in the State and will continue to negatively impact these businesses if marina owners do not receive relief from the regulatory process. (111, 112, 131)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

61. COMMENT: The commenter stated that he has over 60 years on the waters of New Jersey and starting in the 1970s witnessed the destruction of many marinas as they were converted to condos and townhouses. There is a need to encourage marina expansions and dredging activities to bring economic health to the marina industry. Marinas provide public access to the water. There have been considerable challenges since Superstorm Sandy; the proposed changes make a lot of sense and help to cut through unnecessary red tape. (98)

62. COMMENT: The proposed rules show that the State understands that the coastal rules need to be changed to permit the marina industry to recover from Sandy and to move forward in declining marine and tourism industries. (56)

63. COMMENT: Marinas depend on a clean environment. Boaters do not want to use polluted waters and, since most of them fish and crab, they want these resources to be available in ample supply. There have been many changes in Barnegat Bay over the past 48 years. Water quality improved after the regional sewer plants were built, and then slowly degraded to the point where swimming is difficult due to the Sea Nettles. Fishing and crabbing have also declined due to the loss of eelgrass and the advancement of sea lettuce. Most marinas do their best to keep the waters clean and viable. The proposed rule changes will help marinas to continue to protect New Jersey's valuable resource by making it easier to stay in business. (60)

64. COMMENT: The persons who testified at the public hearing on the rule proposal that was held on July 9, 2014, at the Jacques Cousteau National Estuarine Research Reserve in Tuckerton

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

did not understand the current state of the marina industry in New Jersey and the effects of the coastal rules on preventing the expansion of the marina industry and the continued operation of existing marinas. While the proposed amendments do not go far enough, they are a good start. The fact that the Department recognizes that if changes are not made the marina industry will continue to fail is a good start to fixing the problem. (58)

65. COMMENT: The changes to the coastal rules are supported. The changes are needed to help the growth of recreational boating in New Jersey and the Department is applauded for recognizing the needed changes. (19)

66. COMMENT: Recreational boating is an important pastime where people can spend time enjoying nature, fishing, clamming, hunting, cruising, swimming, or water sports. The Public Trust Doctrine guarantees all New Jersey residents a right to these activities, and marinas are a critical component for boating and related Public Trust activities. However, because the great majority of Barnegat Bay is shellfish habitat, expanding an existing marina or constructing a new one is extremely difficult under the current rules. The proposed changes not only help to ensure the preservation of boating in New Jersey but allow marinas and marine businesses to become more economically viable and sustainable, thereby encouraging and promoting Public Trust protected activities without a significant adverse impact on shellfish habitat.

These marina-related amendments are a much needed and positive step in the right direction that is long overdue. Not only will they eliminate unnecessary red tape and streamline a complicated and burdensome permitting process; they facilitate much of the work that is

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

needed now to ensure the future health, recovery, and growth of the recreational boating industry in New Jersey; growth that will enhance access to the water providing more opportunities for residents and visitors to enjoy our natural resources. (150)

RESPONSE TO COMMENTS 50 THROUGH 66: The Department acknowledges these comments in support of the rules.

67. COMMENT: Current regulations and costs of obtaining permits are threatening the existence of marinas in the State and will continue to negatively impact these businesses if marina owners do not receive some relief from the regulatory process and the costs associated with submitting an application. For example, the commenters stated that their marina continues to fill in from runoff from towns emptying into their marina basin. Along with this runoff is contamination in the sediment from various pollutants. As owners, they bear the burden and responsibility of not only dredging this material with limited access to disposal areas but are responsible for obtaining the necessary permits. (111, 112, 131)

RESPONSE: Through the 2013 emergency rulemaking and concurrent proposal, the Department amended the rules to include mechanisms to allow marina owners to rebuild quickly, better, with more resiliency, and in a manner that is cost effective and economically viable. As explained previously, the focus of this rulemaking is to transform the operations of the coastal, freshwater wetlands, and flood hazard area permitting programs, safeguarding the important resources protected by these programs while ensuring that review of activities that comply with the rules'

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

requirements can be processed in the most efficient manner possible, both for the applicant and the Department. Under this adoption, the Department has amended the rules to maintain the economic viability of existing marinas and encourages the development of new marinas in appropriate circumstances while minimizing environmental impacts.

The Department encourages communities to engage in stormwater management planning to reduce stormwater runoff into their local waterbodies. The Department's standards and requirements for stormwater management are found in the Stormwater Management Rules, N.J.A.C. 7:8.

68. COMMENT: New Jersey relies on marinas to maintain the very important boating and fishing industries in the State. It's a tough business for operators; very expensive and constrained by excessive regulations. Marina owners need help to prevail. (47)

RESPONSE: As a water-dependent use, marinas are an essential component of the State's waterfront communities, providing necessary infrastructure and services to the boating public. The Department recognizes that over the last several years the State has seen a decrease in the money spent on recreational boating as well as a decrease in the number of boat registrations. This in turn has resulted in a loss of jobs, revenue, and services at marina facilities, as well as the conversion of some marinas to non-water dependent uses. Through the amendments adopted herein and through the emergency rulemaking and concurrent proposal in 2013, the Department has amended the rules to assist marinas in their recovery after Superstorm Sandy and to help

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

maintain the economic viability of existing marinas and encourage the development of new ones in appropriate circumstances while minimizing environmental impacts.

69. COMMENT: The proposed rules allow marina owners to develop more easily with less regulation. The rules would allow for the construction of restaurants, piers, and commercial establishments over sensitive areas without any regard for the environmental impact. (72)

RESPONSE: As stated in the proposal at 46 N.J.R. 1052, the amendments to the rules concerning marinas are intended to preserve existing marinas, make them economically viable, and assist in their continued recovery from Superstorm Sandy. To preserve existing marinas and the necessary services they provide, encourage new marinas, and ensure there is a sufficient amount of boat slips available to the public, expansion of existing commercial marinas and construction of new “infill” marinas in limited situations is acceptable within shellfish habitat. Mitigation for the impacts of these developments on the marine ecosystem and shellfish habitat through the minimization of the areas covered by structures, the use of non-polluting materials, the prohibition of dredging, and the provision of a monetary contribution to the Department’s dedicated account for shellfish habitat mitigation is required. Further, allowing for the construction of a restaurant at a new or existing marina facility that provides dockage for 25 or more dockage units consisting of either dry dock storage or wet slips will expand the public’s opportunity for both visual and physical access and will provide marina facilities with a year-round use making them more economically viable, while assuring that marina functions continue

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

to be provided. The rules require that the restaurant be located upland of the mean high water line and sets forth setback requirements for the structure.

In addition to complying with the resort and recreational rule, N.J.A.C. 7:7-15.3, the construction of a new marina, expansion of an existing marina, or construction of a restaurant at a marina must comply with all other applicable CZM rules, including special area rules. The construction of a restaurant at a marina must also comply with all Federal, State, and local requirements.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Barnegat Bay and Governor Christie's Action Plan**

70. COMMENT: Coastal ecosystems are fundamentally different in their services, processes, and values from other riparian and freshwater wetlands, and thus the rules associated with their protection may not be reducible to fit into a "one-size-fits-all" framework. The amendments do not adequately take into account the realities of sea level rise, and the potential hazards to human property and life that it entails. This is troubling given the State's recent experience with extreme weather events. Additionally, the Department-wide effort over the past five years to restore, rehabilitate, and protect important natural communities within coastal ecosystems, in particular the Barnegat Bay, would be undermined in the long-term by a number of the proposed changes to these rules, and appears at cross-purposes with the Governor's initiative to protect and restore the Barnegat Bay. (54)

71. COMMENT: The proposal does nothing to address the Governor's number one environmental priority: his Barnegat Bay Ten-Point Management Plan that preceded Superstorm Sandy. The proposal does nothing to address the underlying flaws with the existing regulatory regime that has allowed the Barnegat Bay to be on the verge of ecological collapse. (158)

RESPONSE TO COMMENTS 70 AND 71: The Department does not agree that the adopted rules are at cross-purposes with the Governor's Barnegat Bay Plan. Any land use management system must make hard choices about where growth should be encouraged, which areas will be fully protected and which will become at least partially degraded, which the current system does. These degraded areas are offset by development restrictions and very low impervious cover

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

allowances in other, more sensitive areas. The Department's use of impervious cover limits on a site-by-site basis within a designated area, when considered collectively, will result in regional protections. A further benefit of the CZM rules is that regulated development is required to meet stringent best management practices designed to minimize impacts on water quality.

The Department continues to work with local governments along the coast to develop plans and regulations that protect sensitive coastal resources and establish resource protection standards equivalent to those in the CZM rules for development that is not subject to Department review and approval.

Further, the Department has formed seven stakeholder subcommittees to address topics that apply to the Barnegat Bay. These topics include coordination with the State Plan, filled water's edge, threatened and endangered species habitat, critical wildlife habitat, the dredging technical manual, coastal hazard adaptation strategies and V-zones, and docks. The recommendations from these subcommittees will inform future rulemaking actions.

72. COMMENT: The rules fail to address solutions to the problems that were well identified before Superstorm Sandy: stormwater pollution, the loss of fisheries, and impacts to the coastal bay systems. The loss of shellfish and shellfish habitat has plagued the Barnegat Bay. The Governor and DEP Commissioner have both promoted restoring the Barnegat Bay as priorities of their administrations. The new rules allowing for new marinas and the expansion of existing marinas in shellfish habitat will advance the loss of this resource which is currently under stress. Fundamentally, it comes down to trading the interest of one industry for the interests of another industry. The rules are not well thought out in this regard. The changes to the definition of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

impervious cover and the exemption of single-family houses and duplexes from some low impact development approaches will only undermine the efforts to restore the Bay. Oversight to manage the impacts of single-family homes is short-sighted, particularly when there is no robust program at the municipal level to manage stormwater and its effects on water quality. Instead of addressing the difficult challenges that are facing the coast, the Department through this rule avoids the issue and its responsibility. (32, 62, 130)

RESPONSE: The adopted amendments reflect an effort by the Department to balance competing interests associated with the diversity of uses and users in and around the shore area while protecting the shore ecosystem. The Department, through the amendments to the shellfish habitat rule, is allowing the expansion of existing marinas and construction of new “infill” marinas in limited circumstances. The Department recognizes that there are existing marinas located within shellfish habitat. Rather than prohibiting the expansion of these marinas, the Department, in an effort to preserve these existing water dependent uses, is allowing for their expansion in limited circumstances, recognizing that the marina infrastructure already exists and that the shellfish growing waters within the area of the existing marina are classified as prohibited. Further, with respect to the construction of new marinas in limited “infill” marinas, the development of the infill criteria was predicated upon a realization that there are existing impacts in areas possessing a concentration of commercial marinas such that the marine ecosystem within the surrounding area has been affected by their operation. While the construction of a new commercial marina within shellfish habitat in an infill situation will result in the downgrading of the shellfish growing water classification to prohibited for shellfish

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

harvesting where the structures are located and boats moored, the habitat will continue to exist.

In addition to limiting the number of locations and situations under which an existing marina may be expanded and a new marina constructed, the rule amendments require adequate water depths, the use of non-polluting materials, and a monetary contribution to the Department's dedicated account for shellfish habitat mitigation ensuring that adverse impacts to the shellfish resource are minimized and habitat improvements are promoted in areas outside of the impacted area through the use of the mitigation funds. The Department's Marine Fisheries Administration, utilizing funding from the Department's dedicated account for shellfish habitat mitigation, is coordinating shellfish habitat enhancement and restoration efforts in the Barnegat Bay. (See the Response to Comment 364).

The amendments to N.J.A.C. 7:7-13.1(d)1 that exclude the development of one or two single family homes or duplexes from the impervious cover and vegetative cover requirements of Subchapter 13 are not anticipated to have a significant impact on the coastal environment, including the ongoing efforts to improve the Barnegat Bay ecosystem, because the amount of impervious cover on these sites will be limited by the lot size, presence of any special areas, and local zoning requirements. Additionally, the application of other requirements from the rules will ensure that impacts from this development are addressed. For example, the general permit and the housing use rule contain standards that are intended to address stormwater runoff associated with the dwelling. Potential adverse impacts due to stormwater runoff are additionally addressed by municipalities, as required by local ordinances and the general permits issued to municipalities under the Department's Municipal Stormwater Regulation Program, for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

all projects that increase impervious surface by at least 0.25 acres or which disturb at least one acre of land.

73. COMMENT: The Department's continuation of the impervious cover percentages is against the weight of evidence the Department should have learned over the years. The coastal ecology is degraded due to the pattern of development. It is widely accepted that a watershed that is more than 10 percent impervious cover is impaired and once that impervious coverage reaches 25 percent the watershed is severely impaired. The coverages that the Department proposes to continue are unsustainable and counter to any attempts to improve the coastal ecology. For example, several sub-basins in the Barnegat Bay watershed are considered severely impaired as they have the following levels of impervious coverage: 42 percent in the North Branch of Metedeconk River; 25 percent in Toms River and 23 percent in the Mill Creek sub-basin. These impervious coverage percentages place the sub-basins into the classification of severely impaired. If the State is serious in its efforts and desire to address the health of the Barnegat Bay and the coastal ecology, reduced impervious coverage limits must be set. Continuing the impervious coverage percentages is also counter to the State's Seven Part Plan to improve the Barnegat Bay.

Further, the Department should not issue rules that would violate the requirements of CAFRA. Under N.J.S.A. 13:19-10, the Department can only issue permits that do not result in "air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments." (See N.J.S.A. 13:19-10) According to New Jersey's Integrated Water Quality Monitoring and Assessment Report, a significant portion of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

New Jersey's waters do not meet various water quality standards. As has been noted numerous times, the Barnegat Bay is severely impacted from non-point water pollution caused by the pattern of development in the coastal region. One of the points of the Governor's plan is to adopt more rigorous water quality standards. High levels of impervious coverage will thwart this goal. If the Department is prohibited from issuing permits that will further degrade the water quality, its rules should acknowledge the current state of health of these waters and set out regulations that will prevent further degradation and set a course for water quality improvement.

(118)

74. COMMENT: Every increase in development in the Barnegat Bay watershed must be carefully planned to have minimal, if any, impact on water quality. Barnegat Bay's Watershed is largely encompassed by coastal planning area 2, which currently allows 30 percent impervious cover on the site. Some areas that have additional State approvals allow impervious cover of up to 80 percent, which is comparable to pavement coverage in urban cities such as Hoboken.

The Department must acknowledge and address water quality issues caused by overdevelopment of the watershed and inadequate management of stormwater as evidenced by the last 10 years of regulation. At current, Barnegat Bay does not have much of a fighting chance and these rules do nothing to change that. (62)

RESPONSE TO COMMENTS 73 AND 74: The impervious cover limits established in the rules enable the Department to achieve a number of longstanding policy objectives in the CAFRA area, including protection of environmentally sensitive areas, agricultural lands, and open space,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

more efficient use of infrastructure, concentration of development, and protection of water and air sheds.

The Department has historically used impervious cover as a surrogate for development density as a way to ensure that CAFRA regulated development in the coastal zone is protective of natural resources and the health and welfare of our citizens. The framework established under N.J.S.A. 13:19-10 limits development in those areas that are the most environmentally sensitive and fragile and encourages development of compatible land uses within a comprehensive environmental design strategy. Furthering this approach, the Department in 2000 adopted a land classification system that establishes impervious cover limits based on location, presence of natural resources and infrastructure availability. This approach is based on the premise that impervious cover is a superior measure for gauging the impacts of growth, compared to population density, dwelling units, or other factors.

In developing this impervious cover approach, the Department reviewed many studies, including “Impervious Surface Coverage: The Emergence of a Key Environmental Indicator” (Arnold C. L., and C.J. Gibbons, 1996, Journal of the American Planning Association) and “The Importance of Imperviousness” (T.R. Schuler, 1994, Watershed Protection Techniques). These studies conclude that as impervious cover increases, degradation of surface and ground water resources increases. The Department acknowledges the results of these studies and the fact that some coastal watersheds have high cumulative impervious cover. However, the location of growth areas is based overwhelmingly on existing historic settlement patterns, respecting local and regional planning objectives, as well as public infrastructure priorities.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The studies reviewed describe impervious cover impacts on a regional or watershed basis, but should not be used in place of real data. The Department has assessed the actual impairment status of the Barnegat Bay and its sub-watersheds using data collected in these areas as part of the biennial water quality assessment required under the Clean Water Act. Under this required assessment process, the Department determines if surface water quality standards are attained and associated designated uses are supported (for example, primary recreation, aquatic life, drinking water). The results can be found in the Integrated Report prepared for each assessment cycle at <http://www.state.nj.us/dep/wms/bwqsa/generalinfo.htm>. An additional off year assessment for the Barnegat Bay and drainage area was prepared in 2013, found at [http://www.nj.gov/dep/barnegatbay/docs/barnegat\\_bay\\_interim\\_assessment\\_06\\_26\\_2014.pdf](http://www.nj.gov/dep/barnegatbay/docs/barnegat_bay_interim_assessment_06_26_2014.pdf). The results of these assessments show the sub-watersheds wherein one or more of the designated uses are not met. For the open waters of the bay, the Department is in the process of developing the means to interpret the narrative nutrient criteria that apply in Barnegat Bay, as part of Governor Christie's Barnegat Bay Action Plan. The Department recognizes the importance of Barnegat Bay and the need to understand the relative importance of various stressors affecting the bay, including, but not limited to, water quality, in order to formulate effective management strategies to restore the Bay. Toward this end, the Department has funded several scientific studies to fill data gaps and to develop a water quality model that will define the relationship between pollutant loads and water quality. The goal is to identify water quality thresholds key to supporting the health of the various plant and animal communities that are the basis of a healthy ecology in the bay, revise water quality criteria to reflect these healthy levels, and use the water

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

quality model to determine load reductions by source that would be needed to achieve these healthy levels.

Any land use management system must make hard choices about where growth should be encouraged, which areas will be fully protected and which will become at least partially degraded, which the current system does. These degraded areas are offset by development restrictions and very low impervious cover allowances in other, more sensitive areas. The Department's use of impervious cover limits on a site by site basis within a designated area, when considered collectively, will result in regional protections.

It should be noted that the Department's regulation of development on the coast covers a relatively small portion, as most development in coastal municipalities falls below the regulatory thresholds. The Department continues to work with local governments along the coast to develop plans and regulations that protect sensitive coastal resources and establish resource protection standards equivalent to those in the CZM rules.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Resiliency, adaptation, and rebuilding after Superstorm Sandy**

75. COMMENT: The stated objectives of reducing risk to public safety, health, and environment and encouraging redevelopment of more resilient coastal communities are supported. However, the proposed rules are a missed opportunity to incorporate long-term protection to people, property, and coastal resources from adverse impacts of sea level rise by not including more stringent standards for protection and preservation of waterfront areas, for building elevation, and for development setbacks from dunes and tidal waters. Please identify where, specifically, such regulatory enhancements have been proposed, or explain why the Department ignored this important issue?

The rule does not go far enough to factor in the lessons learned from Superstorm Sandy or achieve the legislative intent to protect and preserve the coastal area in the context of future storm hazard vulnerability. An opportunity to put in place an adaptive sea level rise and climate change coastal zone management plan that speaks to both natural resources and the built environment has largely been missed in this iteration of rulemaking. The Department is urged to amend the proposal to include safeguards for communities and natural resources that emphasize true resiliency based on a thorough analysis of the impacts of Sandy, and a coast-wide vulnerability assessment that factors in projected sea level rise and more severe storms in the future. In the process, the Department should facilitate a transparent process that includes a wide range of stakeholders. The basis for such a process is readily available from both within the Department itself, as well as a range of established and accomplished institutions within the State with a long history of partnering with the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department's Office of Coastal Management partnered with the New Jersey Sea Grant Consortium and others through the National Sea Grant Coastal Communities Climate Adaptation Initiative to pilot the Coastal Community Vulnerability Assessment Protocol (CCVAP) in four coastal communities in New Jersey. The final reports for the pilot projects are located on the Department's website and a link to the National Oceanic and Atmospheric Administration, Coastal Services Newsletter article featuring these products is located at - <http://www.csc.noaa.gov/magazine/2012/02/article2.html>. These local pilot studies carefully factored built environment, natural environment, and social vulnerability to produce and present a coastal vulnerability index, and then used future sea level rise scenarios for calculation of a future coastal vulnerability index. However, there is no evidence that application of a coastal vulnerability assessment, flood and storm surge mapping, and resilience planning tools informed the construction of this chapter to the detriment of the stated objective of integrating across Departmental planning, management and regulatory programs. Further, the State of New Jersey in preparing its "Action Plan" to receive funding from the US Department of Housing and Urban Development (HUD) under the disaster relief funding associated with Superstorm Sandy represented that the State had prepared studies of damage patterns, including identifying areas of repetitive damage, flood vulnerability, and other storm related information. The HUD funding required that the State utilize it toward reducing future vulnerability, and that certain principles be integrated into State decision making, including projections and incorporation of sea level rise and other climate change related considerations. There is no evidence that this rule reflects those obligations.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

A fundamental purpose of the CZM rules is to “provide the basic policy direction for planning actions undertaken by the Department in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal CZMA.” This objective has not been achieved by this rule-making proposal.

The feasibility of such actions is well demonstrated in “An Analysis of NJ Climate Adaptation Alliance Coastal Recommendations Relative to Recent Programs and Legislation for Climate Adaptation in Delaware, Maryland, and New York” prepared by the New Jersey Climate Change Adaptation Alliance, and submitted into the record as part of the public comment on this proposal. The fundamental soundness of several of these policies is reflected in the fact that they are present across the region (except in New Jersey): The recommendations include: (1) State agencies should incorporate measures to adapt to flood heights and sea level rise in siting and design of projects for construction of new and reconstruction of substantially damaged structures and infrastructure. Projects shall be sited to avoid and minimize flood risks. (Delaware Executive Order); (2) State agencies should take steps to incorporate “coast smart practices” into architecture, engineering, construction and design manuals, planning programs, regulatory programs, permitting, review procedures, disaster planning and response, capital budgeting, and state grant and loan programs. (Maryland Climate Change and Coast Smart Construction Infrastructure Siting and Design Guidelines- January 2014); and (3) the state should require that any municipality that receives state assistance demonstrate that future physical climate risk (sea level rise and/or surge and/or flooding) has been considered for which state assistance is being provided. (Legislation pending before Governor of New York). The Department is urged to evaluate these findings for potential use. (33, 90, 154)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

76. COMMENT: Sea level rise, driven by global climate change and by geological, climatic, and human factors particular to our region, poses a growing risk to New Jersey, threatening property, infrastructure, ecosystems, and livelihoods. Intensifying development in increasingly vulnerable coastal areas will magnify this risk. The proposed rules do not consider the effects of sea level rise; incorporating sea level rise into the permitting process is critical if it is to meet its goal of not putting the inhabitants of the New Jersey shore at risk. The Department should address this issue when revising the rules.

Half of the housing stock in northern New Jersey is about 50 years old, and approximately one-sixth is over 80 years old. Construction that takes place today has the potential to place shore residents in harm's way for much of the rest of this century. Failure to incorporate sea level rise in permitting coastal development is not consistent with sound risk management.

In addition, rules that encourage further development in areas that will become increasingly vulnerable to flooding over the course of the century will be costly in both economic and human terms. The Department is strongly urged to revise the rules taking into consideration the effects of sea level rise on flood hazard areas. The commenters provided citations to reports/studies that they assert support their position see Kenneth G. Miller et al., "A Geological Perspective on Sea-Level Rise and Its Impacts along the U.S. Mid-Atlantic Coast," *Earth's Future* 1 (2013): 3–18, doi:10.1002/2013EF000135; John Church and Neil White, "Sea-Level Rise from the Late 19th to the Early 21st Century," *Surveys in Geophysics* 32, no. 4 (2011): 585–602, doi:10.1007/s10712-011-9119-1; ; and Trevor Houser et al., *American*

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

*Climate Prospectus: Economic Risks in the United States* (Rhodium Group, 2014),

<http://www.climateprospectus.org/>. (76, 96)

77. COMMENT: The proposed rule revisions and amendments do not explicitly take sea level rise and broader climate change concerns (for example, increases in storm frequency and intensity) into account. In addition, some of the proposed changes appear to promote more development in the coastal zone. As a result, these changes potentially place more people and coastal communities in harm's way and at economic risk. Further, some of the proposed changes clearly weaken protection of critical resources in the Barnegat Bay (for example, shellfish and submerged aquatic vegetation). Further, the rules appear to be less protective of human communities and the bay's critical natural resources than the existing rules. (54)

78. COMMENT: The commenter stated that she is stunned and horrified at how building has proceeded in the wake of Superstorm Sandy. It appears that we have learned nothing from Sandy and Katrina. We need to stop increased development in hazardous coastal areas which is insanity and, like much irresponsible action, endangers families and communities so that a few can prosper.

We need a serious, thoughtful look at options for development and retreat to manage our coast so that it's protected from disaster. There is little that moves the State forward in this regard and that it's just a recycling of "We'll rebuild" and "we'll replenish the beaches!" Defiance and ignorance will be disastrous. (147)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

79. COMMENT: The amended rules fail to capitalize on the lessons learned from Superstorm Sandy by taking into account the well-documented New Jersey specific predictors and imminent impacts of sea level rise and increased extreme weather events. In the wake of Superstorm Sandy, there is an opportunity to capitalize on lessons learned and encourage practices that promote resiliency, preserve natural coastal buffers, employ technologies and policies that improve water quality, and increase public participation. While the need to rebuild resilient coastal communities is provided in the introduction to the proposed rule changes, the rules themselves fall short of these goals. Of particular concern, the proposed streamlined rules do not take sea level rise, increased extreme weather events, or resiliency into account in setting a roadmap for future coastal development. In fact, in over 1,000 pages of coastal rules, it is never explained how resiliency and the anticipated effects of sea level rise are accounted for in the updated rules. The policies that are promoted through the proposed rules serve to increase urbanization and sprawl in sensitive coastal areas, which will negatively affect water quality, coastal flooding, and community safety. Since these rules do not accomplish the above goals, the rules should not be adopted until the DEP has undertaken meaningful dialogue with stakeholders to craft changes that better protect coastal inhabitants, sensitive natural resources, and water quality. (109, 162)

80. COMMENT: The consolidation and changes to the rules present a key opportunity to apply lessons from Superstorm Sandy in helping New Jersey become better prepared for future storms. The rules must integrate acknowledged future risks from rising sea levels and climate change so that all future development and infrastructure investments make people safer, rather than putting

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

them in harm's way. Superstorm Sandy was the most recent and most destructive example of the future storms New Jersey will certainly face.

The current rules do not acknowledge the increase in sea level rise that will continue into the future. The National Oceanic and Atmospheric Administration's recently published Sea Level Rise and Nuisance Flood Frequency Changes around the United States clearly demonstrates how flooding now occurs more frequently during high tides, causing road closures and damage to buildings and infrastructure. This flooding will become more pronounced and frequent in the coming decades, and increasingly large areas will be flooded.

Instead, the rule proposal allows more development to occur in areas that are vulnerable to flooding; for example, an expansion from one single-family or duplex dwelling to two single-family or duplex dwellings. This expansion is inconsistent with the original intent of the general permit adopted in 1993, and will result in more development in vulnerable areas; will reduce waterfront setbacks; and will increase impacts to coastal dunes. Another example allows for non-water-dependent uses, such as restaurants, at marinas. This allowance will detract from the existing, limited water-dependent uses and will affect unfavorably the availability of water-dependent uses within the coastal zone. The new rule proposal also allows non-water-dependent restaurants to be set back just 15 feet from the mean high-water line of bulkheaded shorelines, which will cause more development in tidal zones, further limit public access along waterfronts, and lead to future marina expansion into sensitive marine ecologic habits, in direct conflict with the DEP's duty to protect and preserve coastal areas.

The Department must rewrite these rules in such a way as to incorporate long term protection of people, property, and coastal resources from adverse impacts of sea level rise. The

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rules should include more stringent standards of preservation of waterfront areas, higher building elevation requirements, and greater development setbacks from dunes and tidal waters. (143)

81. COMMENT: The proposed rule changes do not incorporate lessons learned from the devastation to New Jersey coastal communities from Superstorm Sandy in 2012. The storm displaced more than 116,000 New Jersey residents and damaged or destroyed 346,000 homes causing \$29.4 billion in damage. (The Economic and Fiscal Impacts of Hurricane Sandy in New Jersey. Mantell et al. Rutgers Regional Report. Issue paper Number 34. January 2013. <http://www.Policy.rutgers.edu/reports/rrr/RRR34jan13.pdf>)

The proposed rule changes are also silent on future threats from climate change. For example, hurricanes are predicted to become stronger due to warming temperatures. (Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaption. Intergovernmental Panel on Climate Change. 2012. <http://ipcc-wg2.gov/SREX/>) Stronger storms coupled with rising sea levels along the New Jersey shore (predicted to be 10 inches by 2030 and 18 inches by 2050) will put New Jersey residents, property, and coastal communities in increasingly hazardous situations. It is currently estimated that \$80.8 million worth of residential, \$12.1 million of commercial, and \$2.4 million worth of industrial lands in New Jersey coastal areas are exposed to moderate, high, or extreme levels of flooding. (New Jersey Coastal Flood Exposure Assessment. Lathrop, R. Bognar, J., and Buenaventura, E. 2014. Grant F. Walton Center for Remote Sensing and Spatial Analysis, Rutgers University, New Brunswick, NJ.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Instead of taking a step back and learning from Sandy, the Department is pushing ahead with rule changes that began prior to the storm. These rule changes call for increased development along the shore and not less. Specifically, the Department reviewed the standards of N.J.A.C. 7:7-6.4(e), (f), and (g) which set forth the acceptability conditions for the development of a single-family home or duplex on a dune, coastal bluff, or within a coastal high hazard area or erosion hazard area and determined them appropriate for the construction of two single-family homes or duplexes. The Department is also proposing to allow the construction of one or two single-family homes or duplexes within an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body. (7, 80)

82. COMMENT: New Jersey has already seen the effects of climate change and will continue to see changes in sea level rise and increased storm surges for decades to come. Heavy precipitation events in the northeastern United States have increased dramatically in the past two decades, occurring more than twice as often in recent years than during the past century. This trend is expected to continue and will undoubtedly lead to increased floods within the region.

New Jersey's sea levels are also rising faster than the global average. According to the Georgetown Climate Center, New Jersey's coast will have experienced a 10 inch sea level rise by 2030 and a 1.5-foot rise by 2050. As a result, the damages felt from floods will nearly double. In addition, by removing beaches and dunes, one is removing natural barriers that would prevent against storm surges. As a result, New Jersey's densely populated coast will undoubtedly face substantial increases in coastal flooding, erosion, and property damage. Floods that occurred only once every 100 years are now occurring every four years due to these factors.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department's new rules do not work in any way to adapt to these inevitable changes. (72, 107)

83. COMMENT: The rules do not take into account the importance of adapting to climate change and increased storm surges. Instead, the rules eliminate vital protections of the coast by allowing for more high-density development on already hazardous land. The Department's lack of attention to climate change coincides with the State's repeated climate inaction. For example, New Jersey has pulled out of the Regional Green House Gas initiative, which has effectively reduced carbon emissions in the State since it was adopted.

The rules in no way take into account what we have learned from recent evidence of climate change. Instead, the rules work to deregulate and increase sprawl and development over coastal regions. By allowing for development in these areas, New Jersey residents are not only being put at risk, but are being set up for a greater financial burden when another Superstorm hits.

The Department has chosen fast and expansive development over smart regulation. We should take this opportunity after Superstorm Sandy to try and protect our coast, restore natural systems, and improve resilience against future storm surges and sea level rise. (72)

84. COMMENT: According to the "Risky Business Project" discussed in the Press of Atlantic City on June 25, 2014, it is anticipated that the damages to communities along the shore in New Jersey will rise by 200 percent by 2100 due to sea level rise. This translates into about \$1.4 to 3.7 billion additional each year in damage. There is no evidence that the Department utilized

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

vulnerability studies or studies on repetitive damage which the administration has represented to the Federal government have been developed in response to the storm. Further, there is not evidence that these studies were used in the development of the rule.

Under this proposal, the high density development designations are maintained throughout areas that Superstorm Sandy showed were vulnerable and which incurred a lot of damage. The rules have not been rethought, despite the evidence that Sandy put in front of us. Further, the rules do not change the intensity of growth and in fact, the expansion of some of the general permits and other policies will expand the allowable development putting more people and homes at risk. The rationale that the Department provided in the proposal that the changes are of minimal impact and are likely to have very little cost whether ecologically to the coast, environment or society and the State as a whole, was demonstrated to be untrue as evidenced by the events of Superstorm Sandy. The vulnerabilities that were realized as a result of the storm were built one house at a time and that is the way it ought to be fixed, something which the Department has not taken to heart under the development of this rule.

The rules do not contain new regulations or changes to the existing regulations to enhance the natural parts of the shore's natural systems, coastal systems (dunes, beaches, and wetlands) which provided extra protection and resiliency from the storm. Where the damage from Superstorm Sandy occurred are the areas where the special areas were not adequately managed. The Department needs to go back and rethink how it is managing these special areas with the goal to increase protection and resiliency.

The rules do not reexamine the appropriateness of re-establishing infrastructure in high hazard areas that have been destroyed during Superstorm Sandy. It is one thing to understand

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

that New Jersey is wrestling with the legacy of the historical coastal development patterns prior to the NJCMP, but it's another thing to turn a blind eye when there is an opportunity to change the rules and make new decisions and policies in the aftermath of Superstorm Sandy.

Finally, the rules continue to put residents at risk and will continue to put future taxpayers on the hook for damages by the storm. Even the Governor acknowledges that there is not enough money available to make all the necessary repairs. (32, 62, 130)

85. COMMENT: The rules are a missed opportunity to address climate change and sea level rise. Instead of utilizing the rules as an opportunity to promote actions towards retreat and restore which foster resiliency by increasing natural shorelines, protecting the coastal environment, public health, and safety, and the economy in the process; the Department under these rules continues the mistakes of the past and is now forcing them into the future. (62)

86. COMMENT: New Jersey should be acting on its responsibility to protect New Jersey residents and property from the devastating losses incurred during hurricanes and major storm events such as Irene and Sandy. No longer can the effects of climate change and sea level rise be questioned. Stronger regulations are necessary now to keep people and property out of harm's way when facing future catastrophes. Weakening the regulations is unconscionable when people are still rebuilding from Superstorm Sandy. (22, 48, 87, 102, 120, 122, 151,163)

87. COMMENT: The proposed changes do not address the impacts from Superstorm Sandy, sea level rise, or storm surges. Instead, the rules move New Jersey in the wrong direction by

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

allowing high density developments in some of the most high hazard areas of the State. For example, Mystic Island, Tuckerton, Eagleswood, and Mantoloking in Ocean County are all growth centers. Other centers include some of the areas that have seen the highest levels of sea level rise and coastal erosion such as: Fortesque, Sea Breeze, and Gandy's Beach in Cumberland County; Port Republic in Atlantic County; the Villas, Rio Grande, Sea Isle City, and South Dennis in Cape May County; and Belmar, Union Beach, and Keansburg in Monmouth County. In addition, growth and high density development are being promoted in communities that are looking for buyouts.

An analysis of vacant land and non-porous cover densities permitted under CAFRA shows that in Ocean County the population could be increased by 400,000 people. Further, in Cape May County, the same analysis would result in a doubling of the year round population. However, no water or sewer capacity analysis were undertaken to accommodate this influx.

The rules do not lessen development impacts in environmentally sensitive areas, areas vulnerable to sea level rise, or limit impervious cover to improve water quality. Instead of fixing CAFRA, eliminating loopholes, limiting impervious cover, and restoring and rebuilding natural systems, these rules are further rolling back standards. There is nothing in the rules about resiliency or restoring natural systems like dunes and wetlands. There are no environmental standards for managing stormwater, to require green building codes or roofs, or to prohibit use of tropical woods on boardwalks. There is nothing about restoration of natural areas or limiting of impervious cover. The rules are not about building better or smarter, they are about trying to rebuild the past and maybe elevate. The rules are not going to make us more resilient from the next storm. (130, 146)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

88. COMMENT: It is scary to think that the people who the citizens are supposed to rely upon to protect New Jersey's most vulnerable environs would consider these rule changes which are completely devoid of any consideration for the effects of climate change and sea level rise.

There needs to be a long-term solution to address these issues. (5)

89. COMMENT: The proposed changes to the CZM rules do not accurately consider the impact of new development on the environment and the impact of the environment on new development. Superstorm Sandy, while devastating, provided New Jersey a valuable lesson. Humans cannot alter the coast without consequence. With the current state of the ocean and the coast, making coastal development easier is not wise. Sea level is rising and storms will continue to occur. Instead of trying to conquer the coast, we need to take the lessons learned from recent events to heart. Developers need to be responsible for their actions with strict oversight, the opposite of the proposed general permits-by-certification. The time to end the love affair with unrestricted coastal development with no regard to the environmental consequences is now, however, this proposal is a step in the wrong direction. (27)

90. COMMENT: It is very troubling that the proposed changes do not help coastal communities address climate change and rising sea levels. (75)

91. COMMENT: Instead of taking this opportunity to address New Jersey's extreme vulnerability to climate change, rising sea levels, and intensifying storm severity, the proposed

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rule amendments continue to allow excessive development in vulnerable, inappropriate areas.

(68)

92. COMMENT: The proposed coastal rules are designed to appeal to the lowest common denominator of intelligence in the State and to the short-sighted greed of developers and engineers. The rules will expose the entire population of the shore to unacceptable and unnecessary risks in the name of ideological delusion. (8)

93. COMMENT: Keeping the status quo with how we manage our coastal lifestyle is only fodder to future disasters given that we do not take into account the scourge of Superstorm Sandy and other nor'easters that have ravaged New Jersey's coast and our residents' personal property while economically devastating Federal, State, and personal funds. Keeping the status quo is a mistake from which we have learned nothing. We should rethink our approach and act according to what nature will ultimately dictate not man-made policies based on greed. (20)

94. COMMENT: The rule changes do not incorporate lessons learned from the devastation to New Jersey coastal communities from Superstorm Sandy as they call for increased development in hazardous coastal areas. (4, 12, 13, 15, 17, 20, 24, 25, 31, 34, 35, 37, 39, 44, 49, 51, 55, 64, 78, 85, 89, 91, 94, 95, 101, 105, 108, 110, 135, 137, 138, 139, 142, 157)

95. COMMENT: This proposal does not consider the lessons learned from the Halloween storm 1991, the Christmas storm 1992, Hurricane Irene 2011, and Superstorm Sandy 2012. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

taxpayers will end up paying for insurance claims when another disaster hits the New Jersey coast. (128)

96. COMMENT: The State received billions of dollars to respond to the devastation from Superstorm Sandy. The State through these rules is sending a national message that “we don’t get it.” Instead of fixing the underlying problems Sandy exposed, these rules are allowing more development through the promotion of marinas and dredging along the coast in vulnerable locations increasing the needed bail out from new storms. In addition, the State is allowing more development without oversight from the Department and without meaningful public input. (158)

97. COMMENT: All the post-Sandy hype of “stronger than the storm” was annoying; we are not stronger than the storm. A similar logic is being applied to the rule changes which make it easier to develop New Jersey’s vulnerable coasts and important wetlands. Why would the Department deliberately put people in harm’s way, or create more of a burden on New Jersey’s already overburdened taxpayers as they will be paying for this short-sighted plan to ease restrictions by ignoring New Jersey’s sinking coasts and the science of climate change? (115)

98. COMMENT: The proposed rule changes do not take into account climate change, future storms, or rises in sea level along the New Jersey shore, which is a recipe for future disasters. (12, 13, 17, 20, 31, 35, 38, 44, 49, 57, 55, 64, 78, 84, 85, 91, 95, 99, 100, 101, 105, 105, 108, 110, 132, 135, 138, 139, 137, 142, 157, 161)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

99. COMMENT: The new rules should be put on a referendum to be voted on by the public.

The people who pay when tragedies like Superstorm Sandy hit should decide what is best for the coast. Change is needed to protect New Jersey's endangered ecosystem and the effects of climate change need to be realized and addressed. (9)

100. COMMENT: The commenter's family has lived in Ocean City for 29 years and sustained a lot of damage from Superstorm Sandy. Further development along the coastal waters is opposed. We are not taking into account climate change, more severe storms, and rising seas. Instead of continuing with development, we should conserve what we have left and deny any future permits for construction along the shore. FEMA will not be able to keep up with the claims for damage and rebuilding in the future. (133)

101. COMMENT: As we rebuild, it's critical that we rebuild the shore in a sustainable way that protects the shore's waters and environment, and limits flooding and other serious effects of future storms. Elected officials should: protect the shore's greatest asset, its beaches and waters; restore, preserve, and maintain the shore's parks, open spaces, and wetlands; rebuild using green, energy-efficient building technology; and repower the shore with clean renewable energy. The shore should be made sustainable for the future and New Jersey should be a model for the nation by protecting our environment, communities, and the shore for future generations. (164, 165)

102. COMMENT: Despite a mounting sense of urgency among a growing consensus of climate scientists that the planet is heating up dangerously, which is already causing sea level rise,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

warming of the oceans, and consequent increase in the frequency and severity of storms, such as Superstorm Sandy which devastated much of the New Jersey coast line, there is no mention of this overarching factor in any of the regulatory changes proposed by the Department. This omission is more than puzzling; it is potentially tragic for current and future residents or users of New Jersey's coastal resources. Has the Department shifted its position on global warming and is denying the existence of global warming? If so, the Department should explain its reasoning for rejecting and disregarding the impacts of global climate change such that the public will have an opportunity to evaluate the Department's position and appropriately respond. If this omission is a negligent oversight, it is imperative that this proposal be withdrawn and new draft regulations drafted and published which explicitly recognize the reality and inevitability of sea level rise, coastal flooding increases, and more frequent and severe storms and storm surges.

(118)

103. COMMENT: The Department is urged to amend this proposal to include safeguards for communities and natural resources that emphasize true resiliency based on a thorough analysis of the impacts of Sandy, and a coast-wide vulnerability assessment that factors in projected sea level rise and more extreme storms in the future. In the process, the Department should facilitate a transparent process that includes a wide range of stakeholders. (33, 154)

RESPONSE TO COMMENTS 75 THROUGH 103: The Department appreciates the comments and agrees that New Jersey must rebuild in a sustainable and resilient manner that protects our citizens and resources and appropriately takes into account impacts from severe weather events.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

However, given the complexity of the issues facing redevelopment, these rules cannot alone address every concern raised by the commenters. Rather, these rules are designed to work in tandem with other State and local rules to ensure that redevelopment in coastal communities is undertaken in a sustainable and resilient manner. While these rules do address certain rebuilding activities in our coastal area and do take measures to simplify the permitting and review process, these rules are not intended to be the Department's or the State's sole response to recovery from Superstorm Sandy nor our sole means to protect our residents and resources from coastal storms. Many efforts are ongoing throughout the State and in the various other Departments.

The Department has already undertaken emergency rulemakings to amend the FHACA Rules (N.J.A.C. 7:13) (see 45 N.J.R. 360(a) and 1104(a)), and to amend the Coastal Permit Program rules and the Coastal Zone Management (CZM) rules (see 45 N.J.R. 1141(a) and 1696(a)) to ensure that construction conforms to FEMA's most current mapped flood elevations and to make it easier for citizens and local governments to rebuild in a resilient manner. The effect of these emergency rulemakings is to ensure, in part, that rebuilding is undertaken in a manner consistent with the latest scientific standards as applied by FEMA. Further, because the Department's flood elevation standards require that the lowest floor of buildings be constructed at least one foot above flood elevations in areas subject to tidal flooding, the Department has appropriately accounted for the possibility of impacts from future flood events that may be greater than the currently predicted levels depicted by FEMA's flood mapping. Because the CZM rules' flood hazard area rule at N.J.A.C. 7:7-9.25(f) requires that development in flood hazard areas comply with the Flood Hazard Area Control Act and the implementing rules, these amendments were incorporated into the CZM rules in 2013.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

With respect to the coastal rules, the Department's emergency regulations also promote coastal smart practices by removing regulatory obstacles to build living shorelines. Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of vegetation, sand, or other structural and organic materials. By encouraging living shorelines, the Department is both protecting our citizens from storm events and flooding while enhancing our ecological systems by creating more wetland and shallow habitat.

The Department has also been engaged in a comprehensive beach and dune construction project for the New Jersey oceanfront. This is the first time the State is planning to have a beach and dune shore protection system constructed in every ocean front community. To date, repairs to eight projects have been completed, two projects are underway, and five additional projects are anticipated to be completed in the next two years. When completed, the Federal government and New Jersey will have spent over one billion dollars for a comprehensive coastal protection system.

Observations made in a study by Richard Stockton College of New Jersey (Stockton) based on the New Jersey beach profile data shows severe beach erosion along the New Jersey coast. The Department has reviewed three reports by Stockton dated November 13, 2012, December 5, 2012, and December 12, 2012, that assessed the performance of beaches and dunes that are part of New Jersey's Beach Profile Network. The New Jersey Beach Profile Network consists of over 100 beach profile sites along the entire shoreline, including the Raritan and Delaware Bays (see <http://intraweb.stockton.edu/eyos/page.cfm?siteID=149&pageID=4>). The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

reports indicate that municipalities with an engineered dune system or a wide and well developed natural beach and dune system had less damage than those without such protections.

The Department also realizes that not every previous development decision should be defended by engineering projects designed to protect it. Some developments are in areas that are too vulnerable to storms and flooding. For this reason the Department, using its existing Blue Acres Program, has committed \$300 million to purchase 1,300 storm-damaged homes. This Program, launched in May 2013, buys homes from willing sellers at pre-Sandy market values and gives participants the chance to rebuild their lives after the devastation of a storm outside flood-prone areas. Structures are demolished and the properties are converted to open space. The program was designed to incorporate areas that flood frequently, as well as homes damaged by Sandy.

In order to help protect our residents from future storms, the Department has developed an elevation program so that homeowners can raise the level of their homes above predicted flood levels. See <http://www.nj.gov/dep/special/hurricane-sandy/hmgrp.htm>. This program is in addition to the Department of Community Affairs' more comprehensive rebuild and recovery program.

The Department has also committed close to one billion dollars to rebuild resilient drinking and wastewater projects, is engaged with the United States Department of Housing and Urban Development (HUD) in "Rebuild by Design" to build two regional flood control projects, and is competing for further grants from HUD in its National Resilience Competition. See [http://www.nj.gov/dep/watersupply/dws\\_loans.html](http://www.nj.gov/dep/watersupply/dws_loans.html); <http://www.state.nj.us/dep/floodhazard/rbd-meadowlands.htm>; and <http://www.state.nj.us/dep/floodhazard/rbd-hudsonriver.htm>. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department has also participated in efforts to restore damaged natural resources in Cape May in order to protect the annual shore bird migration. See

[http://www.nap.usace.army.mil/Missions/Factsheets/FactSheetArticleView/tabid/4694/Article/49](http://www.nap.usace.army.mil/Missions/Factsheets/FactSheetArticleView/tabid/4694/Article/490785/new-jersey-shore-protection-lower-cape-may-meadows-cape-may-point-nj.aspx)

[0785/new-jersey-shore-protection-lower-cape-may-meadows-cape-may-point-nj.aspx](http://www.nap.usace.army.mil/Missions/Factsheets/FactSheetArticleView/tabid/4694/Article/490785/new-jersey-shore-protection-lower-cape-may-meadows-cape-may-point-nj.aspx) for up to date information on this ongoing project. The Department is currently involved in many coastal engineering efforts to promote coastal resiliency and restore valuable coastal habitats. See

<http://www.state.nj.us/dep/shoreprotection/projects.htm>.

The NJCMP has focused on the need for resiliency to coastal hazards since 2011, when it developed two assessment tools to ensure that coastal communities have consistent and comprehensive guidance to assess their vulnerability and capacity for resilience. The Coastal Community Vulnerability Assessment and Mapping Protocol was developed to guide communities through the development of an assessment to characterize the vulnerability of buildings, infrastructure, facilities and other important community resources such as public access locations and facilities, while the Getting to Resilience (GTR) questionnaire was assembled to assist local decision-makers review and characterize their existing planning, response, and recovery efforts to identify opportunities to support community resilience. Staff has piloted these assessment tools in multiple coastal municipalities.

Post-Sandy, the Department, working with its partners and with funding from the National Oceanic and Atmospheric Administration, has developed the Resilient Coastal Communities Initiative to further develop these tools into a community-based planning program that will identify and expand the use of existing management tools and develop and apply new

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

approaches to coastal hazards. These efforts are intended to inform more effective Department policies, regulations, and planning.

It is the Department's intent to work with coastal communities to plan for Post-Sandy realities, including sea level rise and the potential for increased storm events. To that effect, the Department has contacted 239 coastal municipalities with an invitation to participate in the Resilient Coastal Communities Initiative. Currently working with more than 75 municipalities, the Department and its partners, the National Oceanic and Atmospheric Administration, New Jersey Resiliency Network, New Jersey Future, Rutgers University, Jacques Cousteau National Estuarine Research Reserve, New Jersey Sea Grant Consortium, and Monmouth University, are working with communities conducting the GTR exercise and preparing vulnerability assessments. These will result in the development of municipal resiliency plans that encourage practices that promote resiliency to sea level rise and storm events.

The Department is also preparing a web-based manual for coastal municipalities that will identify appropriate planning responses, tools, and best management practices, providing them the guidance and technical assistance needed to make informed decisions on mitigation and adaption measures. Department staff will then work with local officials to develop community-specific response actions and develop and implement strategies that reduce risk and vulnerability to coastal hazards such as flooding, storm surges, and sea level rise, and provide the necessary tools, guidance and technical assistance for coastal resilience planning.

To further promote and encourage resilient and sustainable communities along New Jersey's coast, the Department is also developing a comprehensive municipal planning program that will combine resiliency with responsible economic development and growth management.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

To that end, on January 20, 2015, the Department published a request for proposal for its Sustainable and Resilient Coastal Communities Grant Program (see 47 N.J.R. 299(b)). This funding opportunity seeks to fund a pilot comprehensive planning approach that will identify municipal actions in response to coastal hazards and protection of New Jersey's coastal resources while meeting the needs of the community. Anticipated deliverables of this grant program include recommendations for a planning and public process for coastal community long range viability that incorporates local needs and objectives; locally identified specific areas for growth and conservation; reduced cumulative and secondary impacts; strengthened coastal resource protections; and more resilient adaptable communities. The recommendations could also assist in the systematic identification of successful mitigation strategies and local actions that in turn encourage additional participation by other municipalities. The Grant Program will expand New Jersey's current resiliency and adaptation efforts by extending support for comprehensive municipal planning and the incorporation of resiliency strategies which could in turn inform the center designation process.

Further, with respect to general permit 4 - construction of one or two single-family homes or duplexes, N.J.A.C. 7:7-6.4, it has been the Department's experience that the lots to which the general permit will apply are typically, but not always, bulkheaded small lots located within existing residential back bay areas and of a size that would preclude intense waterfront developments such as marinas. Typically, these lots are already disturbed and, in some instances, may have an existing single-family home on the lot which will be replaced with two single-family homes. The Department believes that the standards set forth in the permit are protective of both the public and environment.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

104. COMMENT: This rule proposal is coming forward without a coastal management plan. During the legislative hearings that looked at the impacts of Superstorm Sandy, former DEP Commissioner Mauriello testified and there were subsequent discussions of revisiting the 1979 coastal management plan. There was also pending legislation concerning the formation of a Coastal Commission that would provide a regional approach to development along the coast. This Commission would have not resulted in the footprint of development that we now have under CAFRA with all of its loopholes. There is no plan for the coast.

There is no climate change adaptation plan which is crazy in light of the damage New Jersey suffered as a result of Superstorm Sandy. New Jersey is the only State in the northeast without such a plan. The State should be looking at New York's plan.

Further, the State's hazard mitigation plan which has just been revised does not look at any of the impacts from Sandy.

Finally, the State Development and Redevelopment Plan has been rescinded by the Governor and replaced with a strategic economic development plan. How can the Department's rules continue with impervious coverage requirements that promote development in centers without any kind of planning analysis? (158)

RESPONSE: Concerted coastal management efforts began in New Jersey in 1970 with the passage of the Wetlands Act of 1970, followed by CAFRA in 1973. In response to the 1972 passage of the Federal CZMA, New Jersey developed and gained Federal approval of the NJCMP, which addresses the complex coastal ecosystem as a whole, integrating goals and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

standards for protection and enhancement of natural resources, for appropriate land uses and development, and for public access to and use of coastal resources. The program, which was first approved in 1978, brought together the above laws as well as the Waterfront Development Law, the Public Trust Doctrine for access to and use of State-owned tidelands, and the regulatory activities of the New Jersey Meadowlands Commission. These laws were integrated through a set of overarching policies to guide implementation of the NJCMP. The regulatory authority of the NJCMP has evolved over the years through amendments to the CZM rules and Coastal Permit Program Rules. In addition, the Freshwater Wetlands Protection Act (FWPA) and implementing rules have been incorporated into the Program. Since the inception of the NJCMP, there have been sweeping reforms to the coastal regulations, policies, and administration of the program in response to increased growth in the coastal areas and pressures on our coastal resources.

While the State does not have a State-wide adaption plan, as explained in the Response to Comments 75 through 103, since 2011 the NJCMP has focused on developing a community-based planning program that will identify and expand the use of existing management tools, and develop and apply new approaches to coastal hazards. These efforts are intended to inform more effective Department policies, regulations, and planning. Further, through the 2013 coastal rulemaking, the Department is implementing some actions similar to those being implemented by New Jersey's neighboring States, including New York, to address adaptation and the promotion of resilient coastal communities. For example, the amendments allow for soft buffers through the establishment of living shorelines. (See the Response to Comment 108)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The State Hazard Mitigation Plan does consider impacts from Superstorm Sandy. In fact, the Executive Summary of the Plan contains a discussion of the impacts of Superstorm Sandy on New Jersey. Further, the introduction to the plan notes that Superstorm Sandy recovery efforts were still ongoing at the time of this 2014 Plan update and, therefore, the Plan will need to be updated as more information and data becomes available.

In 2000, the Department determined that the land management and classification system in the State Development and Redevelopment Plan was the most appropriate way to achieve the CAFRA goal of encouraging compact development while protecting sensitive coastal resources. The Department believes that the basis of the coastal planning areas and CAFRA and coastal centers and the assumptions made in delineating them remain valid. Since 2000, many coastal municipalities have sought and obtained approval of changes to the CAFRA planning map based on best available information and a coordinated State and local planning process. Further, as explained previously, the Department has initiated a new stakeholder process to discuss changes to the CZM rules governing the use, development, and protection of the State's coastal resources. As part of this effort, the Department has established seven stakeholder subcommittees, one of which is focused on the coordination of the CZM rules with the State Development and Redevelopment Plan.

105. COMMENT: What science is the Department basing its decisions on with respect to climate change and sea level rise? The Department needs to cite specific literature, reports, and plans. This proposal is based on assertions not science. (158)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: As stated previously, the focus of this rulemaking is the transformation of the land use permitting programs and the alignment of the rules governing the permitting process across the coastal, freshwater wetlands, and flood hazard area permitting programs. The rules additionally require development within flood hazard areas to meet the requirements of the FHACA Rules, which ensures that the best available data is used to determine flood elevations, and requires the lowest floor of buildings to be elevated at least one foot above the design flood elevation or, for non-residential buildings that cannot feasibly be elevated, to be suitably flood proofed in accordance with New Jersey's Uniform Construction Code. The reliance on best available data, which utilizes the highest and most recent FEMA flood elevations, and the added one foot of freeboard for floor elevations anticipates that flood elevations can increase over time.

106. COMMENT: The commenter submitted “An Analysis of NJ Climate Adaptation in Delaware, Maryland and New York” prepared by the New Jersey Climate Adaptation Alliance (NJCAA) dated July 2014 for consideration by the Department with regard to the Coastal Permit Program rule proposal. This analysis identifies adaptation programs and policies of states in the region that are consistent with one or more of the individual recommendations pertinent to coastal resources and risks proposed by the NJCAA in Preparing New Jersey for Climate Change: Policy Considerations from the New Jersey Climate Adaptation Alliance, edited by Matt Campo, Marjorie Kaplan, Jeanne Herb. New Brunswick, New Jersey; Rutgers University. Available at:[http://njadapt.rutgers.edu/component/docman/doc\\_download/120-resilience-preparing-new-jersey-for-climate-change-policy-considerations?Itemid=](http://njadapt.rutgers.edu/component/docman/doc_download/120-resilience-preparing-new-jersey-for-climate-change-policy-considerations?Itemid=). (63)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: As part of the 2013 coastal emergency rulemaking and concurrent proposal, the Department adopted amendments to both the Coastal Permit Program Rules and CZM rules to facilitate the rebuilding of more resilient coastal communities and coastal-related industry, and help facilitate the recovery of the coastal ecosystem. Through these amendments, the Department is implementing actions similar to those being implemented by New Jersey's neighboring States to address adaptation and the promotion of resilient coastal communities. For example, the regulatory amendments allow for the establishment of living shorelines which are a means to assist in restoring special areas that have been lost and can be designed to adapt to changing environmental conditions.

Further, the CZM rules incorporate measures to adapt to flood heights and sea level rise in the siting and design of projects. In 2013, the Department adopted amendments to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 relating to the construction and reconstruction of buildings in flood hazard areas based on the most recent and reliable flood elevation data (see 45 N.J.R. 360(a), January 24, 2013, and 45 N.J.R. 1104(a), May 6, 2013). The amendments enable the use of the best available flood elevation data to determine the flood hazard area design flood elevation for a given site, including FEMA's recently released advisory flood maps and subsequently released preliminary maps for New Jersey's coast. The amendments also incorporate FEMA mapping issued as final (effective) that is developed in partnership with the Department and depict the Department's flood hazard area design flood elevation and floodway limit; allow flood proofing measures to be used instead of elevating structures in certain, limited situations; and ensure consistency between the Department's standards for elevating buildings in flood hazard areas with the building standards of the Uniform Construction Code promulgated

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

by the Department of Community Affairs at N.J.A.C. 5:23. The CZM rules' flood hazard area rule at N.J.A.C. 7:7-9.25(f) requires that development in flood hazard areas comply with the Flood Hazard Area Control Act and the implementing rules at N.J.A.C. 7:13.

Finally, through the Section 309 Enhancement Program assessment and strategy, the Department is considering the recommendations in Preparing New Jersey for Climate Change: Policy Considerations from the New Jersey Climate Adaptation Alliance and the actions of neighboring States. The Department has also initiated a new stakeholder process in response to comments received on this proposal, including a subcommittee focused on addressing adaptation, resiliency, and V zone issues.

107. COMMENT: How can any development be approved along the ocean after Superstorm Sandy? In Holgate, there were 28 homes destroyed, most of which were within 300 feet of the ocean. Houses should not be constructed on dunes. (155)

RESPONSE: The construction of a single-family home must comply with the dune special area rule unless the development is either located on the landward slope of a secondary or tertiary dune or a dune that is isolated from a beach or a dune system by a paved public road, public seawall, or public bulkhead that existed on July 19, 1993 in which specific conditions must be met. The Department believes that a single-family home constructed in these limited instances will not result in a significant adverse long-term impact on the natural functioning of the beach and dune system.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

108. COMMENT: The Department should follow the examples of New York which is responding to Superstorm Sandy and rising sea levels resiliently through encouraging soft buffers and reducing encroachment into the littoral zone. Further, the proposed amendments appear to discourage pervious cover and encourage hard cover and pavement that will exacerbate flooding from future storms. (130)

RESPONSE: Through the 2013 emergency rulemaking and concurrent proposal, the Department is implementing some actions similar to those being implemented by New Jersey's neighboring States, including New York, to address adaptation and the promotion of resilient coastal communities. For example, the amendments allow for soft buffers through the establishment of living shorelines. Tidal wetlands are a major component of the coastal ecosystem that provide multiple ecosystem services, as well as a first defense against storm surge. As the State rebuilds after Superstorm Sandy and seeks to become more resilient and do so in an ecologically beneficial manner, it is important to allow options, such as living shorelines, to be used as a shore protection measure. Putting provisions for living shorelines in place provides greater flexibility with respect to rebuilding a more resilient, diverse, and environmentally protective shoreline. Living shorelines are a means to assist in restoring special areas that have been lost and can be designed to adapt to changing environmental conditions.

The rules do not discourage the use of pervious or porous cover. Porous cover, such as permeable pavers and pavements, when properly maintained, provide additional stormwater management benefits. For this reason, the Department's Stormwater Management rules at N.J.A.C. 7:8 and associated Best Management Practice Manual provide incentives to use these

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

materials as a means of reducing runoff volumes, promoting groundwater recharge, and removing suspended solids from runoff. The manual is available at

[http://njstormwater.org/bmp\\_manual2.htm](http://njstormwater.org/bmp_manual2.htm).

109. COMMENT: The rules mention the FHACA Rules and the emergency rule that adopted FEMA advisory base flood elevations that, according to the Department, was the best available elevation data. The statement that the best available data was used is challenged. Elevations should not be considered alone; the aerial extent of the flooding also needs to be considered when building in flood hazard zones. (158)

RESPONSE: The January 24, 2013, emergency amendments to the FHACA Rules require the use of the best available flood elevation when calculating the flood hazard area design flood elevation. The best available flood elevation data is that based upon the most recent information provided by FEMA and the Department, unless the applicant opts to calculate flood elevations using site-specific data. The FHACA Rules define the “flood hazard area” to be the “land, and the space above that land, which lies below the flood hazard area design flood elevation.”

Therefore, wherever the best available data provides a higher flood elevation, thus indicating that more land lies below the flood hazard area design flood elevation than previously mapped, the aerial extent of the flood hazard area regulated by the Department is automatically expanded.

110. COMMENT: Whether the New Jersey shore is already over-developed and whether any further development permits should be issued should be examined and given more time for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

discussion by the public. Further discussion and comments from residents and qualified experts is needed. (21)

RESPONSE: Any land use management system must make hard choices about where growth should be encouraged, which areas will be fully protected and which will become at least partially degraded, which the current system does. The Department continues to work with local governments along the coast to develop plans and regulations that protect sensitive coastal resources and establish resource protection standards equivalent to those in the CZM rules for development that is not subject to Department review and approval. Further, the Department has formed seven stakeholder subcommittees to address coordination with the State Plan, filled water's edge, threatened and endangered species habitat, critical wildlife habitat, the dredging technical manual, coastal hazard adaptation strategies and V-zones, the Long Branch Redevelopment Zone Permit, and docks. The recommendations from these subcommittees will inform future rulemaking actions.

111. COMMENT: There is nothing in these rules that addresses or even acknowledges climate change. Independent of the Federal requirements to address and mitigate climate change, New Jersey and the Department have an independent obligation to insure that its rules address Climate Change. Under CAFRA, the Department is forbidden from issuing permits that exceed "air emissions ... in excess of the existing dilution, assimilative and recovery capacities of the air and water environments." (See N.J.S.A. 13:19-10.) The environment has already reached a point where it can no longer assimilate and recover from additional development. Additional

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

development will result in increased air emissions of greenhouse gases. The Department is obligated to review the impacts of these rules on climate change. What review and analysis has the Department undertaken?

Further, the same section of CAFRA requires the issuance of a permit only if the application is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare. These rules continue and exacerbate the risks to the public. For example, the rules allow increased development along flood hazard areas, see proposed N.J.A.C. 7:7-9.25(d). Given the level of sea level rise predicted, this proposal is contrary to statutory requirements. (118)

RESPONSE: The CZM rules reflect the legislative policies and intent contained in CAFRA, and specifically includes the findings required by N.J.S.A. 13:19-10 at N.J.A.C. 7:7-1.4. The CZM rules also contain specific rules addressing water quality and air quality. (See N.J.A.C. 7:7-16.3 and 16.8.) Further, the standards of N.J.S.A. 13:19-11, which addresses public safety, health, safety, and welfare, and the protection of private property, wildlife, marine fisheries and the natural environment, are incorporated into N.J.A.C. 7:7-14.2, the basic location rule.

112. COMMENT: Making it easier to develop along the coast is foolish. CAFRA was initially intended to limit and regulate development by establishing specific criteria. Unfortunately, CAFRA was neither strong nor limiting of development. In this post-Sandy world where we have seen the devastating impact of poor coastal planning, it is absurd to make development

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

easier. More development will only cost taxpayers and benefit developers. Obtaining a permit for development in regions of potential risk should be virtually impossible. (127)

113. COMMENT: There should be no development in the coastal zone. (36)

114. COMMENT: To call for more development on the coastline is short sighted, selfish, greedy, and a poor use of the public's trust given to the State's decision makers. (89)

115. COMMENT: Any new rules addressing development in the coastal zone should make it harder to develop. Eliminate any development in the coastal zone. (30)

116. COMMENT: The second half of the 20<sup>th</sup> century has seen an explosion of coastal development which has compromised the coastlines by devastating wildlife habitat and ecologically sensitive environments that protect the coast and waterways. This rule proposal provides exclusionary practices for the wealthy to develop along New Jersey's coastlines and destroy ecosystems and cause abuses to public access to public lands held in trust for the people of the United States. Superstorm Sandy showed that until we can build resiliently and buffer against storms; a moratorium is needed on all development to protect these most sensitive areas. Why is the Department making it easier for development to continue to cause costly environmental damage to our coastal zone? The changes to the CZM rules and Coastal Permit Program Rules only benefit the wealthy and make it easier for developers, and set the State back

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

150 years. The rules need to be changed in a manner that will serve a public that has lost trust in their governing bodies. (52)

RESPONSE TO COMMENTS 112 THROUGH 116: CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970 do not prohibit all development in the coastal zone. Rather, these statutes recognize that development will occur, and require that when it does occur, the development be conducted in a manner that is protective of the State's coastal resources. For example, CAFRA also exempts from regulation at N.J.S.A. 13:19-5.2.c, the enlargement of any development if the development does not result in the enlargement of the footprint of the development or an increase in the number of dwelling units.

This rulemaking does not favor any particular income level or allow destruction of ecosystems or abuses of public access rights. Instead, the consolidated rules continue to require that any regulated activity proposed within the coastal zone must comply with all applicable CZM rules, including the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule at N.J.A.C. 7:7-16.9.

117. COMMENT: Why are these rules needed; who will benefit from additional development? The focus should be on ensuring that the ocean does not breach into the Bay again. Controlling development and building dunes has proven to be the most effective way to limit damage potential. (106)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The CZM rules are necessary as they set forth the rules governing the use, development, and protection of the State's coastal resources, as well as the rules governing the permitting process.

The amendments to the rules governing the use, development, and protection of the State's coastal resources focus on preserving existing marinas and the services they provide and making them economically viable by providing them with a year-round use and are intended to facilitate safe navigation.

The dunes rule, N.J.A.C. 7:7-9.16, beaches rule, N.J.A.C. 7:7-9.22, and beach and dune maintenance standards, N.J.A.C. 7:7-10, recognize the importance of beach and dune systems as a storm protection measure. Dunes are dynamic natural features that help protect lives and property adjacent landward areas, and buffer barrier islands and spits from the effects of major natural coastal hazards, such as hurricanes, storms, flooding, and erosion.

The Department has reviewed three reports by Richard Stockton College dated November 13, 2012, December 5, 2012, and December 12, 2012, that assessed the performance of beaches and dunes that are part of New Jersey's Beach Profile Network after Superstorm Sandy. The New Jersey Beach Profile Network consists of over 100 beach profile sites along the entire shoreline, including the Raritan and Delaware Bays (see <http://intraweb.stockton.edu/eyos/page.cfm?siteID=149&pageID=4>). The reports indicate that municipalities with an engineered dune system or a wide and well developed natural beach and dune system had less damage than those without such protections. Therefore, in 2013, the Department adopted amendments to the CZM rules and Coastal Permit Program Rules that facilitate the establishment, management, and maintenance of a beach and dune system along the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

developed shoreline. These amendments make it easier for municipalities to maintain engineered dune systems. Specifically, the amendments allow for the maintenance of engineered beaches and dunes to the design template, and allow for the removal of accumulated sand beneath a boardwalk, as well as placement of temporary sand fencing during the winter months. A permit-by-rule at N.J.A.C. 7:7-7.2(a)16 was also added for the placement of sand fencing to create or sustain a dune. These measures will assist in protecting coastal communities from severe damage from storms.

118. COMMENT: Looking back to 1970 at the time when the Federal CZMA was enacted, New Jersey's coastal communities in Ocean County began to grow exponentially. These very same locations were devastated by Superstorm Sandy. The CZM rules and CAFRA were enacted to protect the residents of the shore communities as well as properties.

To weaken the existing statutes and rules to allow development without proper oversight will encourage a shift in population towards these sensitive regions and will bring irreparable harm to watersheds, safe drinking water, infrastructure such as sewer lines, and wildlife. These areas can ill afford more impervious coverage and more pollution.

Sea level rise is a very real threat to southern New Jersey. It is estimated that much of the flood plains of the eastern section along Highway 9 and around the Delaware Bay will disappear. According to NOAA's coastal flood hazard forecast, the people who would be encouraged to move to floodplain areas and thus being put in harm's way are those 65 years old with an income at the poverty level. Many evacuation shelters, such as schools, firehouses, and police stations,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

are already in flood prone locations, especially in Cape May and Cumberland Counties, and as a result may not serve the public need in an emergency situation.

Increased impervious coverage will increase the magnitude of the impacts associated with coastal storms such as Superstorm Sandy and Hurricane Katrina; whereas wetlands and forested areas will weaken these impacts. The Department should not make the same mistakes that Louisiana made. Strengthen CAFRA and the CZM rules, correct loopholes, and discourage any future attempt to circumvent the laws that are in place to protect the lives of New Jersey's residents, property and wildlife. When New Jersey's coast is impacted by the next major storm with weaker laws in place, the country's taxpayers may not want to pay for the damage. (94)

119. COMMENT: Please do not allow loopholes or relaxation of New Jersey's coastal protections. If the State purports "We are stronger than the Storm," then it must back this up with rigorous enforcement of existing measures to protect New Jersey's coastline from future storm damage; not relaxing the measures already in place. (53)

RESPONSE TO COMMENTS 118 AND 119: The adopted amendments, repeals, and new rules do not weaken the coastal protections afforded under the CZM rules. For further description of the protections provided by these rules and other Department rules, including the FHACA Rules, see the Responses to Comments 75 through 103, 109, 121, 272, and 283. Through the NJCMP's Coastal Community Vulnerability Assessment and Mapping Protocol, Getting to Resilience questionnaire, Resilient Coastal Communities Initiative, and Sustainable and Resilient Coastal Communities Grant Program, the Department is providing coastal municipalities with

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

comprehensive planning approaches that will inform the development of municipal resiliency plans that encourage practices that promote resiliency to sea level rise and storm events. (See the Response to Comments 75 through 103 for a detailed explanation of these initiatives) Ultimately, the lessons learned from the implementation of these initiatives will inform regulatory changes.

120. COMMENT: On July 1, 2013, the Department published a notice of readoption of the Coastal Zone Management Rules, N.J.A.C. 7:7E without change indicating that there will be no change in the State's coastal policy for at least seven years. However, on June 2, 2014, the Department proposed a massive controversial rewrite of the rules that were previously determined to be acceptable in 2013. This proposal overturns 40 years of coastal land use policy and promotes additional development along the shore while ignoring climate change, sea level rise, and the lessons of Sandy. What changed between 2013 and 2014? (39)

RESPONSE: Pursuant to the APA at N.J.S.A. 52:14B-5.1, the CZM rules were scheduled to expire on July 7, 2013, unless the Department took action to keep the chapter in place. Absent such action, upon expiration of the CZM rules, all the protections provided by those rules would cease to have any effect with it being necessary for the Department to initiate new rulemaking to implement standards to ensure that the protections envisioned by CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970 were being achieved. Protections proposed in such rulemaking would only be effective upon publication of the adoption of that rulemaking with no standards in place until that occurred. As indicated in the notice of readoption

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

referenced by the commenter, at the time the CZM rules were scheduled to expire, the Department had adopted emergency amendments to facilitate expeditious rebuilding of more resilient coastal communities and coastal related industries in the wake of Superstorm Sandy and was in the process of adopting the concurrent proposal necessary to keep those emergency amendments in place. Further, as referenced in the Response to Comment 42, the Department had initiated stakeholder outreach to determine what further changes might be appropriate, with extensive outreach ultimately leading to this proposal. While these efforts were being made, it became necessary to readopt both the CZM rules and, later, the CPP rules (see 46 N.J.R. 2405(c)) to avoid their expiration. In accordance with Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1.c, the Department readopted the rules in order to ensure that the rules and the protections they provide were not allowed to expire. Readoption of the rules in no way indicates that the rules will remain unchanged for seven years or any other period; indeed such a commitment would be contrary to the Department's duty to protect public safety and the environment and to make adjustments determined to be necessary both through the Department's ongoing implementation of the rules and in response to events such as Superstorm Sandy.

121. COMMENT: The consolidation and simplification of the rules is supported; however, there is concern with respect to increased development in high risk areas. Public safety, property protection, and reducing risk which strengthens local and State economies are paramount. This position is also supported by the New Jersey Legislature through the enactment of CAFRA, at N.J.A.C. 13:19-2, and the Wetlands Act of 1970 at N.J.S.A. 13:9A-1 and 2. The legislative intent of these laws is violated by intensifying density and uses in coastal high hazard areas. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

proposed rules do not consider increased risk in coastal development in the impact assessment, whether to the financial interests of local, State, or Federal taxpayers and to the NFIP and other disaster assistance programs well utilized after Superstorm Sandy.

The proposed rules are inappropriate after the lessons learned from Superstorm Sandy and the lack of integration of future conditions such as sea level rise is reckless in a regulation proposed at this time. The rules need to be reflective of the realities of sea level rise and the storm damage that happened as a result of Superstorm Sandy. Expansion of water dependent uses, easing infill oversight, and revising setbacks from water bodies are intensifying risk.

The extension of permits previously issued and individual permits that allow building on piers waterward of the mean high water line are opposed as these permits are in violation of the building codes and the NFIP. Further, the redevelopment of Atlantic City and the Hudson River Waterfront must be accomplished thoughtfully to minimize flood risk. (96)

RESPONSE: The Department acknowledges the comment in support of the consolidation and simplification of the rules. The coastal high hazard area rule, N.J.A.C. 7:7-9.18, discourages commercial development except for beach use and tourism oriented development, which is conditionally acceptable. Beach use and tourism oriented development are subject to storm damage, but enhance the public use and enjoyment of the beach and ocean. The coastal high hazard area rule additionally prohibits residential development, including hotels and motels, except for the construction of single-family homes and duplexes that meet the standards at N.J.A.C. 7:7-15.2(e) or (f) or development in Atlantic City that meets the Atlantic City special

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

area rule and is development on or over the existing ocean piers; pilings necessary to support development on or over the piers; and development on or over the Boardwalk.

Single-family homes and duplexes may be developed in some coastal high hazard areas where extensive development has already occurred. Infill single-family homes or duplexes are found to be acceptable provided the infill sites are developed to the degree currently existing in the area because such development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of quantity and intensity of development that will be permitted.

The standards for development in Atlantic City were developed in recognition of the casino referendum (Public Question Number 1, 1976 General Election) authorizing casino development in the City. The CZM rules recognize and accommodate the unique circumstances of casino-oriented development. Although there is some risk to development and people located on an ocean pier in a major storm, any development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management, in accordance with the Atlantic City Emergency Operation Plan approved by the New Jersey State Police, Office of Emergency Management. Further, such development would only be allowed if it is inconsistent with the FEMA-approved flood damage prevention ordinance of Atlantic City if the development was specifically granted a waiver by FEMA. In addition, development must receive a waiver from FEMA to allow the construction of residential development on the piers, which may be inconsistent with the FEMA-approved flood damage prevention ordinance of Atlantic City. Additionally, Federal flood insurance is not available for structures located seaward of the mean high water line.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

It should be noted that the National Flood Insurance Program (NFIP) does allow some development in V zones and that the CZM rules are more stringent in V zones than the minimum standards set by NFIP. As explained below, FEMA encourages communities that participate in the NFIP to adopt higher standards. A coastal municipality may choose to adopt regulations that are more stringent than those of the CZM rules. The Department's authority for regulating development within flood hazard areas comes solely from State statute, specifically N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 13:1D-29 et seq., and 13:1D-1 et seq. The FHACA Rules are not promulgated under the authority of, or in order to implement, comply with, or participate in any program established under Federal law or under a State statute that incorporates or refers to Federal laws, Federal standards, or Federal requirements.

Further, the coastal high hazard area rule, N.J.A.C. 7:7-9.18, does not preclude compliance with FEMA's requirements as FEMA's regulations do not address the siting of developments; rather, FEMA addresses construction and development standards in 100-year flood plains that must be adopted by a municipality participating in the NFIP.

122. COMMENT: The taxpayers will be footing the bill if coastal redevelopment is not done correctly. There is not enough money after Superstorm Sandy to rebuild houses. Some of the State's mortgage and finance agency programs have run out of money. There are more applications than the money available to get the job done. (81)

RESPONSE: New Jersey has begun to implement the Blue Acres Program, in which the Department acquires flood-damaged or flood-prone properties from willing sellers for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

conservation and recreation purposes. More information can be found at

[www.nj.gov/dep/greenacres/blue\\_flood\\_ac.html](http://www.nj.gov/dep/greenacres/blue_flood_ac.html). Following Superstorm Sandy, the State allocated approximately \$300 million in recovery funding toward purchasing homes from willing sellers in repetitive flood loss and flood-prone areas, and converting the land to open space. The program removes families from harm's way, while also creating natural buffers against future severe weather events. The State of New Jersey also implements other techniques, such as the use of dredged material to nourish beaches and the establishment of living shorelines, to make communities more resistant to future severe weather events.

123. COMMENT: While the State is continuing to recover from Superstorm Sandy, the Department proposes to dilute oversight on development rather than mitigate the loss of marshland and undeveloped areas making the coast even more vulnerable. Why? (92)

RESPONSE: The Department has not diluted its oversight of development. Any development subject to CAFRA, the Waterfront Development Law, or Wetlands Act of 1970 must comply with the appropriate CZM rules. Tidal wetlands are a major component of the coastal ecosystem that provide multiple ecosystem services, as well as a first defense against storm surge. To address the loss of tidal wetlands, the State is looking to natural solutions as a shore protection measure. In this vein, in 2013, the Department amended the CZM rules and Coastal Permit Program Rules to allow for the establishment of living shorelines. As further discussed in the Response to Comments 75 through 103, living shorelines are a shoreline management practice

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats.

124. COMMENT: The proposed rule changes ignore the Department's own recommendations with respect to climate change as contained in its 2009 Report to the Legislature "Meeting New Jersey's 2020 Greenhouse Gas Limit: New Jersey's Global Warming Response Act Recommendations Report." This report outlines a plan to implement the State's Global Warming Response Act, and acknowledges that nearly all the impacts of climate change, from rising temperatures to sea level rise, jeopardize our coastal ecosystems and threaten New Jersey's unique agricultural industries. The report recommends that the State develop adaptation strategies to minimize climate-related risks to public health, the environment, and the economy and be proactive in fostering adaptive capacity in the built environment and public health infrastructure Statewide to respond to climate change. Why is the Department ignoring this Act in the CZM proposal? (39)

RESPONSE: The Department recognizes that coastal communities need to adapt to changing conditions and adopted regulatory amendments to facilitate the rebuilding after Superstorm Sandy in a more resilient manner and has taken action to assist in achieving that goal. For example, the emergency amendments to the Flood Hazard Area Control Act Rules (see 45 N.J.R. 360(a), January 24, 2013, and 45 N.J.R. 1104(a), May 6, 2013) ensure that the best available flood elevation data is used to determine the flood hazard area design flood elevation for a given site, including FEMA's advisory flood maps and subsequently released preliminary maps for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

New Jersey's coast, which include revised A and V-Zone limits. As another example, the emergency amendments to the coastal rules allow for the establishment of living shorelines as a resiliency tool to assist communities in reducing their vulnerabilities to future storms.

Further, as previously referenced, since 2011, the NJCMP has developed two assessment tools to ensure that coastal communities have consistent and comprehensive guidance to assess their vulnerability and capacity for resilience. Through the NJCMP, the Department has also developed the Resilient Coastal Communities Initiative to further develop these tools into a community-based planning program. The NJCMP has also initiated a Sustainable and Resilient Communities Grant Program to fund a comprehensive planning approach at the municipal level. These initiatives will provide the necessary tools, guidance, and technical assistance for coastal resilience planning.

125. COMMENT: The proposed rules must take into account climate change, future storms, and rises in sea level along the New Jersey coast. The rules encourage the development of real property in coastal zones that are subject to periodic and severe flooding that consequently will suffer substantial damage due to hurricanes, nor'easters, and rising sea levels. Without these considerations, the State is destined to repeat the destruction wrought by Superstorm Sandy. Despite this destruction, the rule changes call for increased development in hazardous coastal areas.

New Jersey needs to look at the actions taken by the Netherlands, as it is a country particularly vulnerable to rising sea levels, like New Jersey. The Dutch have understood the inevitability of change and how society must work with nature for effective strategies. See

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

“State of the World 2012,” by Erik Assadourian. New Jersey, like the Netherlands, must be focused on the long-term public interest and not the short-term private interests of the real estate developers. The proposed rules focus only on the interests of real estate developments in New Jersey and not the long-term public interest of its citizens living along the coast. (14)

RESPONSE: Chapter 2 of the book State of the World 2012:Moving Toward Sustainable Prosperity written by Erik Assadourian promotes “degrowth” instead of increasing development, sustainability, connected communities, and changing of the habit of overconsumption. In this chapter, Assadourian praises the Netherlands’ 200-year climate change adaptation plan and its spending \$1 billion per year to achieve adaptation in the face of predicted climate and sea level changes. One of the central concepts implemented by the Dutch embodying Assadourian’s idea of “degrowth” is the “Room for the River Program.” Under this program, the government is, among other actions, moving residents located within the flood plains of the Rhine, the Meuse, the Waal, and the Ijssel rivers in rural farming areas to higher ground, so that the flood plains and rivers can be expanded, and damage to people and property minimized.

New Jersey has begun to implement a similar program through the Blue Acres Program, in which the Department acquires flood-damaged or flood-prone properties from willing sellers for conservation and recreation purposes. More information can be found at [http://www.nj.gov/dep/greenacres/blue\\_flood\\_ac.html](http://www.nj.gov/dep/greenacres/blue_flood_ac.html). The State of New Jersey also implements other techniques employed by the Dutch as adaptation measures such as the use of dredged material to nourish beaches and the establishment of living shorelines to make them more resistant to storms and sea level rise.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

### **Wetlands protection**

126. COMMENT: While hurricanes can't be stopped, development can be limited in areas prone to flooding and storm surges from the Atlantic Ocean and its bays. Wetlands should be protected and restored as they act as buffers from future storms. Do not allow the filling of wetlands.

(161)

127. COMMENT: Wetlands are needed to filter the water, provide habitat, and to keep the water clean for tourists (fishing, swimming, crabbing, clamming). Without wetlands the tourists would stop coming. New Jersey needs buffers for superstorms, not condos; and cleaner water, not more sewage going into the water. Do not adopt this draconian rule. Your children's lives and livelihoods depend on it. (24, 25)

128. COMMENT: The State does not need more development along the coastline, it needs smarter development. The Department should be doing all that it can to preserve the wetlands along the coast as they are the State's greatest and most reliable defense against flooding and future storms. The destruction of wetlands has led to flooding problems in places like Long Beach Island where the water has nowhere to go but on the island since much of the wetlands have been removed.

Developers cannot take control of how the Jersey shore is rebuilt; it must be a collaborative effort with the government and citizens. We should be doing everything we can to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

improve the situation including adhering to the new flood hazard regulations, maintaining wetlands, and not allowing for development to take a fast track. (73)

129. COMMENT: The proposed rules permit the filling of wetlands without appropriate environmental permitting and review. (14)

130. COMMENT: Do not destroy our coasts and wetlands. We only have one planet and New Jersey is part of that planet. (153)

131. COMMENT: Any further development in New Jersey's wetlands should not be allowed. Has the Department learned nothing from Superstorm Sandy? (6)

132. COMMENT: Please leave the wetlands and coast alone. We do not need or want more development and need rules to protect these areas. (123)

133. COMMENT: Keeping the natural barrier along the State's coast is important for the welfare and protection of existing properties, as well as living things, as this barrier slows the damage from storms. (69)

134. COMMENT: It is risky to build in wetlands, both for the people who want to live there and the natural environment they are replacing. A healthy, naturally vegetated coastal zone needs to be protected because it provides the important service of protecting humans. (65)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE TO COMMENTS 126 THROUGH 134: The adopted amendments, repeals, and new rules do not allow the filling of wetlands to create developable land. Development proposed within tidal wetlands must comply with the CZM rules' wetland rule, N.J.A.C. 7:7-9.27, and development proposed within freshwater wetlands must comply with the FWPA Rules, N.J.A.C. 7:7A. Both the CZM rules' wetlands rule and the FWPA Rules protect wetlands and ensure that impacts to wetlands are mitigated through minimization or compensation.

135. COMMENT: The use of outdated State Development and Redevelopment Plan materials that ignore current realities of sea level rise and increased probabilities of damaging storm surges and other environmental hazards makes neither intellectual nor moral sense. The rules make no allowance for climate change, and no allowance for depletion of water resources. (8)

136. COMMENT: The Department is using outdated State Plan mapping that does not include the latest information on threatened and endangered species, C1 waters and buffers, or flood mapping, and contains no information on sea level rise and storm surges, which threaten the South Jersey Bayshore region and its residents. The Department should rely on science and use of the most current planning and mapping tools available for its regulations. The Department must also offer programs that will move towards resiliency, adaptation of our natural systems and sustainable processes necessary to protect New Jersey's water supply, infrastructure and residents. (22, 48, 87, 102, 120, 122, 146, 151, 163)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

137. COMMENT: CAFRA bases the amount of development that is allowed on a site based on whether the site is located in a coastal planning area or center as shown on the CAFRA Map. That mapping allows the intensity of development based on the amount of impervious cover. It allows extremely high density development in some of the most vulnerable high hazard areas of New Jersey. In urban areas, it is 90 percent non-porous cover, in regional centers it's 80 percent, planning area 1 is 70 percent (20 units plus per acre), medium density planning area 3, 40 percent (10 to 12 units per acre), and coastal sewer service areas, 30 percent (about eight to 10 units per acre). The areas that were under water during Superstorm Sandy are now slated for more development and growth. The regulations should be based on the most recent mapping from FEMA, NOAA, and Rutgers to take into account storm surges and sea level rise. (130, 146)

RESPONSE TO COMMENTS 135 THROUGH 137: In 2000, the Department determined that the land management and classification system in the State Development and Redevelopment Plan was the most appropriate way to achieve the CAFRA goal of encouraging compact development while protecting sensitive coastal resources. The Department believes that the basis of the coastal planning areas and CAFRA and coastal centers and the assumptions made in delineating them remain valid. Since 2000, many coastal municipalities have sought and obtained approval of changes to the CAFRA planning map based on best available information and a coordinated State and local planning process.

The Department's Resilient Coastal Communities Initiative is assisting New Jersey communities to become more resilient to coastal hazards by providing them with the appropriate tools, information, guidance, and technical assistance needed to make informed decisions on

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

mitigation and adaptation measures. Through this initiative, the Department is actively engaged with coastal municipalities to develop and implement strategies that reduce risk and vulnerability to coastal hazards such as flooding, storm surges, and sea level rise, and provide the necessary tools, guidance, and technical assistance for coastal resilience planning.

In order to protect groundwater quality, the Department reviews proposed developments in accordance with all applicable location rules, use rules, and resource rules, including the groundwater use rule at N.J.A.C. 7:7-16.5. This provision requires that an applicant's proposed coastal development demonstrate that the anticipated groundwater demand of the development, alone and in conjunction with the other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, and will not significantly decrease the base flow of adjacent water sources. Groundwater withdrawals must not exceed the aquifer's safe yield. For the purposes of making these demonstrations, an applicant must show that, if the proposed development is to be served by a public water system, it will be served by an approved water purveyor. Or, if a proposed development is to be served by wells using 100,000 gallons per day or more, the development would require a water allocation permit. The water allocation permit review process evaluates whether there is a sufficient groundwater supply to support the proposed diversion. The decisions on a CAFRA permit thus rely in part on decisions made under the water allocation regulatory program, which considers all applicable rules on groundwater withdrawal and water diversion privileges and addresses issues related to salt water intrusion and aquifer recharge.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

As explained previously, the Department has initiated a new stakeholder process to discuss changes to the CZM rules governing the use, development, and protection of the State's coastal resources. As part of this effort, the Department has established seven stakeholder subcommittees, one of which is focused on the coordination of the CZM rules with the State Development and Redevelopment Plan.

138. COMMENT: The Department should use its existing authority and regulations to establish larger buffer zones adjacent to tidal wetlands. These larger buffers would not only reduce risk from storm hazards, but establish “retreat zones” to allow for tidal wetlands to accommodate increased sea level rise. The Grant F. Walton Center for Remote Sensing & Spatial Analysis at Rutgers University, in partnership with the American Littoral Society, examined the potential effects of sea level rise on coastal habitats. The results of their study are presented in the report *Vulnerability of New Jersey's Coastal Habitats to Sea Level Rise*

<http://crssa.rutgers.edu/projects/coastal/sealevel/>. (90)

139. COMMENT: The Department has invested significant resources over decades to adopt Estuary Comprehensive Conservation and Management Plans focused on the Hudson/Raritan Estuary System, NJ Back Bay environments, and the Delaware River and Bay, some of which have explicit policies focused on retreat zones for tidal wetlands. (See Action Plan H7 of Delaware Estuary CCMP adopted in 1996—“Develop Measures to Protect Shorelines and Littoral Habitats that are Threatened by Sea Level Change.”) These concepts should be incorporated into the fabric of this rule. (33, 154)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE TO COMMENT 138 AND 139: In accordance with N.J.A.C. 7:7-9.28(b), freshwater wetlands continue to be regulated through the FWPA Rules and, where a buffer is established to a coastal wetland, development in the buffer continues to be prohibited with limited exception in accordance with N.J.A.C. 7:7-9.28(c); other than changes in cross-references to reflect the consolidation of the two subchapters, these protections were not changed in any way in this rulemaking.

140. COMMENT: There are no substantive amendments to infrastructure reconstruction policies or utilization of natural infrastructure to make people, infrastructure, and natural systems less vulnerable. For example, the public facility rule at N.J.A.C. 7:7-15.6 should be revised to include provisions for factoring storm surge or sea level rise into the siting and construction of new or expanded public facilities. As another example, under the coastal engineering rule at N.J.A.C. 7:7-15.11, bulkheads in V zones are acceptable provided they are designed to withstand wave run up forces. This amendment references the Shore Protection Fund design standards, but fails to factor sea level rise as part of these important public policy design standards. It is recommended that these standards be revised to reflect future risk in this type of high hazard area. (33, 90, 154)

141. COMMENT: The proposed rules and the development they allow are too static to properly protect a dynamic coastline. Further, the provisions reducing Departmental oversight of development are not justified as no dynamic and resilient standards have been created.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Infrastructure should be designed to exceed historical worst-case scenarios and go beyond historical standards. (10)

RESPONSE TO COMMENTS 140 AND 141: The CZM rules are not static. The Department has amended both the CZM rules and Coastal Permit Program Rules multiple times since 2005 to address emerging issues such as public access, the findings of the Pews Ocean Commission and the U.S. Commission on Ocean Policy concerning the state of the nation's oceans, renewable energy technologies, and the recovery from Superstorm Sandy. In response to the comments received on this rulemaking, the Department has initiated a new stakeholder process to analyze the following topics: coordination with the State Development and Redevelopment Plan, filled water's edge, threatened and endangered species habitat, critical wildlife habitat, the dredging technical manual, coastal hazard adaptation strategies and v zones, the Long Branch Redevelopment Zone Permit, and docks.

The Department has considered and will continue to consider the effect of storms such as Superstorm Sandy on public infrastructure. The NJCMP in 2011 developed the Coastal Community Vulnerability Assessment and Mapping Protocol to guide communities through the development of an assessment to characterize the vulnerability of buildings, infrastructure, facilities, and other important community resources such as public access locations and facilities, while the Getting to Resilience questionnaire was assembled to assist local decision-makers review and characterize their existing planning, response, and recovery efforts to identify opportunities to support community resilience. Staff has piloted these assessment tools in multiple coastal municipalities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Post-Sandy, the Department, working with its partners and with funding from the National Oceanic and Atmospheric Administration, has developed the Resilient Coastal Communities Initiative to further develop these tools into a community-based planning program that will identify and expand the use of existing management tools and develop and apply new approaches to coastal hazards. These efforts are intended to inform more effective Department policies, regulations, and planning.

142. COMMENT: Including building elevation design standards in the rule will not in and of itself produce resilient coastal communities. The proposed rule does not reflect use of vulnerability assessments, repetitive damage data assessments, or sea level rise projections to spatially assess storm surge and inundation relative to risk. The Department's flood hazard mitigation planning program is working with FEMA and utilizing new Risk MAP tools to engage local governments in environmentally sensitive and risk based planning. These initiatives need to be integrated with this rulemaking to protect and preserve coastal resources as intended by New Jersey coastal laws that form the basis of this rule promulgation. (33, 154)

143. COMMENT: Including building elevation design standards in the rule will not in and of itself produce resilient coastal communities. The proposed rule does not reflect use of vulnerability assessments, repetitive damage data assessments, or sea level rise projections to spatially assess storm surge and inundation relative to risk. The Department's flood hazard mitigation planning program is working with FEMA and utilizing new Risk MAP tools to engage local governments in environmentally sensitive and risk based planning. These initiatives

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

need to be integrated with this rulemaking to protect and preserve coastal resources as intended by New Jersey coastal laws that form the basis of this rule promulgation. (33, 154)

RESPONSE TO COMMENTS 142 AND 143: The Department agrees that producing resilient coastal communities is an essential goal of the CZM rules, of which establishing appropriate building elevation design standards in flood hazard areas are an important component.

Adequately elevating buildings significantly reduces flood risks for occupants, minimizes flood insurance costs, lowers flood damage potential and associated loss of property, and reduces community reliance on emergency personnel during a flood event. To further promote resilient coastal communities in New Jersey, the Department has additionally established the Resilient Coastal Communities Initiative to focus on and implement tools and plans to create communities that are more resilient to coastal hazards. The Department, working with its partners (National Oceanic and Atmospheric Administration, New Jersey Resiliency Network, New Jersey Future, Rutgers University, Jacques Cousteau National Estuarine Research Reserve, New Jersey Sea Grant Consortium, and Monmouth University), has established the Resilient Coastal Communities Initiative to develop these tools into a community-based planning program that identifies and expands the use of existing management tools and develop and apply new approaches to coastal hazards and build them into local plans and regulations. The Department is in contact with New Jersey's 239 coastal municipalities, asking them to participate in the Resilient Coastal Communities Initiative. The Department and its partners are currently working with more than 75 municipalities, conducting the resiliency exercises and preparing vulnerability

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

assessments. These will result in the development of municipal resiliency plans and regulations that lead to resiliency to sea level rise and storm events.

144. COMMENT: The rules do not sufficiently promote or incentivize the use of natural systems or green infrastructure to buffer sensitive coastal areas against future storms. While living shorelines are specified as allowable and beneficial developments in a wetland area, bulkhead replacement is proposed through a new permit-by-certification process. As a permit-by-certification can be obtained simply by filling in an online checklist (with little regulatory oversight), status quo rebuilding is encouraged over an opportunity to replace hard structures with naturally resilient systems or improved technologies (proposed N.J.A.C. 7:7-5.1). (109, 162)

145. COMMENT: The continuation of the general permits for bulkheading will undermine efforts to promote the use of living shorelines because it is the “path of least regulatory resistance.” The environmental impacts of bulkheading are well documented, and the Department has recognized the need for a different approach to managing shoreline erosion through its adoption of the general permit for habitat restoration and use of living shorelines. Yet the continuation of the general permits, without limitation or more focused application, will perpetuate the existing and ongoing problems created by destruction of shallow water habitats through hardening shorelines. Replacement of bulkheads should, at the very least, follow the coastal engineering hierarchy requiring an evaluation of alternatives prior to permitting the hard solution.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

There is an opportunity to incentivize natural shore protection structures that attenuate wave energy while contributing to the biologic integrity of filled water's edge sites. In the re-alignment spirit of this rule, the Department should look for opportunities to integrate across planning and regulatory functions, and green and grey infrastructure tools to incentivize property owners to build environmentally sensitive, win-win shore protection structures. The provisions establishing a general permit for the establishment of living shorelines are supported, and should act as a stepping-stone to facilitating the increased use of living shorelines as an alternative to bulkheads where appropriate.

Further, the hierarchy in shore protection/storm damage reduction measures (N.J.A.C. 7:7-15.11) that calls for non-structural vegetative measures (green infrastructure), then hybrid (green and gray infrastructure) measures, then structural protection is supported. This approach should be applied to all coastal development activities, including the replacement of existing bulkheads. (33, 54, 90, 154)

RESPONSE TO COMMENTS 144 AND 145: While the Department adopted a new coastal engineering rule in 2013, the new rule continued the standards from the repealed rule with changes to the organization of the rule and changes to emphasize and clarify the Department's shore protection and/or storm damage reduction priorities and facilitate a more resilient shoreline. Although a hierarchy of the shore protection and storm damage measures that can be implemented has been included to make it clear that non-structural measures are considered first, the rule continues the standards for the maintenance or reconstruction of an existing bulkhead. Further, the Waterfront Development Law at N.J.S.A. 12:5-3b (P.L. 1981, c. 315, commonly

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

referred to as the Zane amendment) exempts certain recreational docks and structures, such as bulkheads, that legally existed prior to January 1, 1981, from the need to obtain a waterfront development permit. Therefore, a legally existing bulkhead constructed prior to January 1, 1981 can be replaced in the same location without a permit.

With respect to the new general permit-by-certification for the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing bulkhead, as indicated above, the Waterfront Development Law allows for the reconstruction of a legally existing bulkhead constructed prior to January 1, 1981, in-place. For those properties that qualify under this amendment to the Act, the general permit-by-certification need not be obtained, but could be used if desired to demonstrate to local officials that activities being undertaken are allowed. For residential bulkheads initially constructed since January 1, 1981, the general permit-by-certification recognizes that activities satisfying the criteria contained in the general permit-by-certification will have minimal environmental impact.

In 2013, the Department amended the Coastal Permit Program Rules and CZM rules to include provisions allowing for the establishment of living shorelines. Living shoreline activities are becoming a more common means of shoreline stabilization. In developing the rules regarding living shorelines, the Department reviewed the living shoreline programs of other Atlantic coast states. While the experiences of these states are helpful in developing a living shoreline program in New Jersey, there is also a need for New Jersey specific information, especially in light of the ice that covers New Jersey's bays and shorelines during the winter. Accordingly, the Department in 2013 adopted amendments to the coastal general permit for habitat creation and enhancement activities formerly codified at N.J.A.C. 7:7-7.29 to include

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

restoration and living shoreline activities. The intent of this change was to allow for research specific to New Jersey to be conducted by specific State and Federal agencies, as well as research activities conducted by a college or university. This research will help to inform future policies regarding the development of living shorelines in New Jersey.

Bulkheads and hardened shorelines have been the norm in New Jersey for decades and public acceptance of new natural shore protection measures is needed for a Living Shoreline Program to be successful in New Jersey. In recognition of the importance of living shorelines, the Department's Division of Coastal and Land Use Planning has formed a living shoreline program which is charged with promoting and developing living shorelines in New Jersey. Working with the Department's Living Shorelines Workgroup and external partners, staff of the Living Shoreline Program will coordinate and assist in living shoreline project development, design, permitting, and monitoring. In addition, as explained in the Response to Comments 75 through 103, the Department, through its Sustainable and Resilient Communities Program, is piloting a comprehensive planning approach that will identify municipal actions in response to coastal hazards and protection of New Jersey's coastal resources while meeting the needs of the community. One of the components of this comprehensive planning approach is the establishment of a municipal shoreline strategy that can be incorporated into the municipal master plan as an element or overlay zone, or integrated into existing elements based on model ordinances. This strategy will incorporate data from wind and wave energy, erosion history, shoreline topography, and bathymetry to develop a plan which would identify the preferred erosion control strategies, with a focus on the benefits of the shoreline mitigation projects for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

coastal resiliency and habitat creation. Such planning activities will assist in public acceptance of these types of shoreline protection measures and inform future regulatory changes.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 1. General Provisions**

### **N.J.A.C. 7:7-1.1 Purpose**

146. COMMENT: Proposed N.J.A.C. 7:7-1.1(c)4iv (existing N.J.A.C. 7:7E-1.1(c)4iv) states that one of the goals of the Coastal Management Program is to “manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredged material management practices and preserve historic dredged material placement sites.” While these regulatory pronouncements sound good, they are too generalized to provide adequate guidance or protection of the public interest or nearby residents, such as the residents adjacent to the Dock Road confined disposal facility (CDF) in Eagleswood, Ocean County. The mere promise of managing dredging activities “in an environmentally sound manner” is insufficient. Specific guidelines are needed, such as the explicit prohibition of siting a new CDF or reusing an existing CDF within close proximity of residential or recreational areas. (119)

RESPONSE: N.J.A.C. 7:7-1.1(c)1 through 8 set forth the NJCMP goals. As explained at N.J.A.C. 7:7-1.1(c), both the NJCMP and the CZM rules are founded on eight broad coastal goals. The coastal goals express results that the NJCMP strives to attain. Each coastal goal is accompanied by related policies that set forth the means to accomplish that particular goal. The supplemental goal of managing dredging in an environmentally sound manner, promoting environmentally sound and economically feasible dredged material management practices, and preserving historic dredged material placement sites supplement or support the coastal goal of sustained and revitalized water dependent uses.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department agrees that the coastal goals and supplemental policies are broad; however, the specificity requested by the commenter is not an appropriate aspect of the broad goals. As has been the case since the inception of the NJCMP, the CZM rules, Executive Orders, and Administrative Orders serve to provide the specificity that the commenter is seeking. The CZM rules are designed to provide the specific means to achieve the broad coastal goals.

147. COMMENT: The historical information proposed for deletion should remain in the rules to provide context for the NJCMP. (54)

RESPONSE: While the history of the establishment of the NJCMP in the late 1970s leading up to the Federal approval of the program in September 1980 is important, it is not regulatory and therefore, not appropriately located with the coastal regulations. This historical information is more appropriately located on the NJCMP's website, <http://www.state.nj.us/dep/cmp/index.html>.

#### **N.J.A.C. 7:7-1.2 Scope**

148. COMMENT: Proposed N.J.A.C. 7:7-1.2 deletes reference to specific Departmental programs, actions, and decisions where the CZM rules should apply. While DEP claims that the rationale for this deletion is that the existing language is "superfluous," this change will result in programmatic decisions that conflict with CZM rule provisions of the Federally-approved coastal management program and do not adequately protect coastal resources. The clear guidance provided by the existing language is not superfluous, rather it represents a commitment by the Department to make decisions and spend money in the coastal zone in a manner that is fully

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

protective of coastal resources consistent with the CZM rules. Additionally, this coordinating function is fundamental to the approach to coastal management that the State of New Jersey established when it sought approval of its program under the Federal CZMA; as such, this constitutes a major programmatic change to the Federally-approved coastal management program. It further runs counter to the principles espoused by the Christie Administration regarding the operation of State government by reducing the explicit policies and requirements to coordinate decision making and governmental programs. Rather than remove this provision, the Department should be utilizing and further articulating the jurisdictional coordination in this section to strengthen actual coordination in the implementation of its programs and decision-making. (90)

149. COMMENT: The management activities at N.J.A.C. 7:7E-1.2 should not be deleted, but should be updated and supplemented to include all activities to which the chapter applies. (54)

RESPONSE TO COMMENTS 148 AND 149: The Department deleted the listing of individual management activities previously codified at N.J.A.C. 7:7E-1.2(g)1 through 11 because the rules necessarily apply to any management action in or affecting the coastal zone, whether or not the particular Department element responsible for a management action is identified in this list and whether or not the type of action and statutory authority is shown in this list. This deletion does not change the Department's commitment to make decisions and spend money in the coastal zone in a manner that is fully protective of coastal resources consistent with the CZM rules nor

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

does it change the approach to coastal management that the State of New Jersey established when it sought approval of its program under the Federal CZMA.

150. COMMENT: Proposed N.J.A.C. 7:7-1.2(c) is in error and may be misleading to applicants proposing an activity within the 12-mile circle. Specifically, the majority in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008) decreed that Delaware may exercise governing authority over the construction, maintenance, and use of wharves and other improvements appurtenant to the shore, to the extent that they exceed ordinary and usual riparian uses. The majority also decreed that Delaware may prohibit unreasonable uses of the river and soil within Delaware territory. Consequently, New Jersey cannot unilaterally determine whether or not any or all of any particular proposed project, falls within ordinary and usual riparian rights for the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the shore, and whether the use is reasonable.

In addition, the use of the term “exclusive” is misleading because New Jersey cannot unilaterally make the riparian rights determination to the exclusion of Delaware and because Delaware retains its sovereignty regardless of any wharfing out over its territory.

Last, the state boundaries of New Jersey and Delaware within the 12-mile circle are fixed and decreed based on the mean low water line at the time in metes and bounds, in *State of New Jersey v. State of Delaware*, 295 U.S. 694(1935). (26, 66)

RESPONSE: On adoption, the Department is clarifying the provisions at N.J.A.C. 7:7-1.2, Scope, and N.J.A.C. 7:7-2.4, Waterfront development, with regard to New Jersey’s and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Delaware's respective rights to exercise authority over the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River within the 12-mile circle in order to ensure the provisions adhere to the Supreme Court's decree in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008).

To more closely track the Court's ruling, at N.J.A.C. 7:7-1.2(c), the Department is adding that the State of New Jersey exercises its rights "under its laws," is deleting the use of the term "exclusive" with respect to its governing authority, and substituting "low-water mark" for "mean low water line." For the same reason, the Department is adding N.J.A.C. 7:7-1.2(c)1, which provides that Delaware may, under its laws and subject to New Jersey's authority over riparian rights within the 12-mile circle as set forth by the U.S. Supreme Court, exercise certain authority over the same wharves and other improvements within the 12-mile circle, to the extent these activities exceed ordinary and usual riparian uses. Further, with respect to the boundaries of New Jersey and Delaware within the 12-mile circle, the Supreme Court's opinion and decree refers to the "mean low water mark" and thus the Department is replacing reference to the mean low water line" with "mean low water mark" consistent with the Supreme Court's decision.

The Department is modifying N.J.A.C. 7:7-2.4(a)4, which describes the waterfront area in the 12-mile circle, to clarify that New Jersey retains regulatory authority over the waterfront area landward of the 12-mile circle, as set forth at N.J.A.C. 7:7-2.4(a)2 and 3. In the provisions at N.J.A.C. 7:7-2.4(c), describing the development activities in the portion of the waterfront area at or waterward of the mean high water line that require a permit under these rules, the Department is modifying the language that had been proposed relating to activities within the 12-mile circle so that it tracks the language at N.J.A.C. 7:7-1.2(c) with respect to the Department's

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

regulatory jurisdiction in the portion of the waterfront area at or waterward of the 12-mile circle.

The Department is not adopting proposed N.J.A.C. 7:7-2.4(d)6, which was intended to describe activities needing a permit where the 12-mile circle constraints do not apply, as it is potentially confusing in view of the above-described changes on adoption that follow more precisely the Supreme Court's decree, which focused on those activities which may be regulated and each state's respective jurisdiction.

Last, the Department is making a related change in Subchapter 24, which contains the public notice requirements that permit applicants must meet. N.J.A.C. 7:7-24.3(b)7 is added on adoption to provide that if the site for which an application for a permit is submitted lies within the 12-mile circle or within 200 feet of the 12-mile circle, the applicant must provide notice of the application to the State of Delaware. The address to which the notice must be sent is included.

151. COMMENT: The rules should include procedures and a fee schedule for the submission of applications for water quality certifications. There are no formal procedures for applying for water quality certifications when other coastal permits are not required for a project (mainly in the New Jersey Meadowlands). As a result, significant additional costs occur. There is currently no basis for a fee in the coastal regulations, nor any formal fee schedule. However, the Department is charging fees similar to the waterfront development fee schedule. (50)

RESPONSE: In 2008, the Department adopted amendments to the CZM rules that clarified the application of the CZM rules in the review of coastal activities or developments within the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Hackensack Meadowlands District. (See 39 N.J.R. 725(a), March 5, 2007; 40 N.J.R. 1836(a), April 7, 2008.) Specifically, the Department reviews coastal activities and development proposed in wetlands in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, under the Federal Consistency provisions of the Federal CZMA, 16 U.S.C. §§ 1451 et seq., and for water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. Where development in wetlands in the District required a Federal permit from the United States Army Corps of Engineers (USACE), the Department must, pursuant to the Federal CZMA, concur that the proposed activity is consistent with the NJCMP before the USACE can issue a permit, and, where the proposed development in wetlands is the discharge of dredged or fill material, the Department must issue a water quality certificate (referred to as an individual or stand-alone water quality certificate) under the Federal Clean Water Act. The CZM rules establish the standards through which an application for a water quality certificate is reviewed.

Through this adoption, the Department has made it clear at N.J.A.C. 7:7-1.2(e) that the CZM rules apply to decisions on proposed activities that require a water quality certificate and included a new definition of the term at N.J.A.C. 7:7-1.5. Further, N.J.A.C. 7:7-23.6(f) makes it clear that an application for a waterfront development or coastal wetlands individual permit that proposes the discharge of dredged or fill material into waters of the United States constitutes an application for a State water quality certificate. The Department has also made it clear at N.J.A.C. 7:7-26.1(a) that the application review procedures contained within the subchapter apply to the review of water quality certificates. With respect to an application fee, it has been the Department's practice that where a waterfront development permit or coastal wetlands permit

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

application constitutes an application for a State water quality certificate, no application fee is charged for the review of the State water quality certificate. However, upon further review of the Department's application procedures and application fees in response to this comment, the Department has determined that further rulemaking would clarify the application submission procedures and serve to authorize application fees for the review of an individual water quality certificate in the Hackensack Meadowlands District.

152. COMMENT: Proposed N.J.A.C. 7:7-1.2(h) states that "this chapter shall provide the basic policy direction for planning actions undertaken by the Department in the coastal zone as the lead State agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act." However, the Department has missed an opportunity to integrate important planning concepts in the fabric of the regulatory framework of this rule. If this chapter is to provide the basic policy direction for planning actions laterally across State government and vertically across multiple levels of government, it needs substantial augmentation to fulfill the obligation to incorporate safeguards for communities and natural resources that emphasize true resiliency. (33, 154)

RESPONSE: As explained in the Response to Comments 75 through 103, through the NJCMP's Coastal Community Vulnerability Assessment and Mapping Protocol, Getting to Resilience questionnaire, Resilient Coastal Communities Initiative, and Sustainable and Resilient Coastal Communities Grant Program, the Department is providing coastal municipalities with comprehensive planning approaches that will inform the development of municipal resiliency

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

plans that encourage practices that promote resiliency to sea level rise and storm events.

Ultimately, the lessons learned from the implementation of these initiatives will inform regulatory changes.

#### **N.J.A.C. 7:7-1.4 Standards for evaluating permit applications**

153. COMMENT: Proposed N.J.A.C. 7:7-1.4(b) requires that findings be made under Section 10 of the Coastal Area Facility Review Act. The proposal should reflect that compliance with these rules automatically means compliance with Section 10. (50)

RESPONSE: In a decision by the Appellate Division of Superior Court in *In the Matter of the Protest of Coastal Permit Program Rules*, 354 N.J. Super. 293 (App. Div. 2002), the court held that the Department was required to amend the Coastal Permit Program rules, at N.J.A.C. 7:7-1.4. Specifically, the court directed the Department to amend the Coastal Permit Program rules to set forth the requirement that the Department cannot issue a CAFRA permit unless it first makes the findings required by Section 10 of CAFRA, N.J.S.A. 13:19-10. The Appellate Division held that the Department must make the findings required by N.J.S.A. 13:19-10 before it can issue a CAFRA permit, even if it concludes that the application otherwise meets the standards of the CZM rules. Accordingly, compliance with the CZM rules cannot be indicated to automatically constitute compliance with N.J.S.A. 13:19-10.

#### **N.J.A.C. 7:7-1.5 Definitions**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

154. COMMENT: The Department should modify the list of defined terms by adding and refining the definitions of: development, functioning bulkhead, educational facility, important vegetation, non-permit-by-rule, high ecological value mitigation, and mitigation success. (54)

RESPONSE: While the commenter suggests that definitions be added or modified, they did not provide specific suggestions as to how the terms should be defined. The Department notes that the rules do provide a definition for the term “development.” The definition of the term “educational facility” has been deleted since it is difficult to identify all types of educational facilities. Rather, the Department will apply the term in accordance with its generally understood meaning, as referring to elementary and secondary schools, as well as colleges, universities, and specialized schools, as indicated in the proposal at 46 N.J.R. 1060. While there is not a defined term “mitigation success,” specification of what is considered to be successful mitigation is specified in N.J.A.C. 7:7-17. Accordingly, definition of that term is unnecessary. The Department applies the generally understood meaning of “functional” when describing a functional bulkhead. A functional bulkhead is one that is currently operating as designed for its intended use and has been maintained in working order; whereas a non-functioning bulkhead would not be operating as designed. For example, where a bulkhead forms the barrier between land and water, the bulkhead would be considered functional if it keeps the water on the water side and the land on the land side. Accordingly, a definition of that term is unnecessary. The term “high ecological value mitigation” is not used in the rules. However, the term “high ecological value” is used at N.J.A.C. 7:7-17.5(e) to identify areas that are not appropriate for mitigation. Because mitigation is the replacement of functions and values lost as a result of an

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

impact to a resource, it is not appropriate to conduct mitigation in an area that already has high ecological benefits. The terms “non-permit-by-rule” and “important vegetation” are not used in the CZM rule text.

155. COMMENT: The proposed definition of “habitable structure” at N.J.A.C. 7:7-1.5 deletes the existing provision that the structure is “demonstrated to have been legally occupied” and replaces the language with the provision that the structure “could have been legally occupied” within the most recent five-year period. However, there is no information provided as to how such a determination that a structure “could have been legally occupied” will be made. In addition, the weakening of this definition will result in reconstruction of abandoned structures that otherwise would be considered as new development, and will result in potential adverse environmental impacts due to lack of regulation of those development activities. (90)

RESPONSE: The Department has not weakened the definition of “habitable” as suggested by the commenter. Rather, the Department has modified the definition in response to its experiences with rebuilding after Superstorm Sandy. The term “habitable” is used to distinguish between lawfully occupied or constructed structures or development and derelict structures or development for the purpose of determining the applicable standards for reconstruction or expansion. Under the emergency rulemaking and concurrent proposal to address the impacts of Superstorm Sandy, the Department modified the permit-by-rule for the reconstruction of a legally constructed residential or commercial development within the same footprint at N.J.A.C. 7:7-4.6 and adopted a new permit-by-rule for the expansion or relocation (with or without

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

expansion) of the footprint of a residential or commercial development landward or parallel to the mean high water line at N.J.A.C. 7:7-4.7. (See 45 N.J.R. 1141(a), May 6, 2013; 45 N.J.R. 1696(a), June 15, 2013.) To qualify for approval under these permits-by-rule, the development must have either been legally occupied or been capable of being legally occupied in the most recent five-year period. This requirement is intended to limit the applicability of these permits-by-rule to only development that is or could be used in the recent past while taking into account that, after a storm or other event rendering the structure uninhabitable, there may be some period before construction begins when the structure is not inhabited. In contrast, development that has not been recently occupied or is derelict is more appropriately subject to Department review. The Department has determined that it is appropriate to apply this standard when describing whether a structure or development is “habitable.” Accordingly, the Department replaced the definition of “habitable structure” with the definition of “habitable” for consistency and to make clear that a structure need not be legally occupied for the entire five-year period to be considered habitable under the rules. The new definition does not include the demonstration requirement currently contained in the definition of “habitable structure.” This change recognizes that, in the context of the above-referenced permits-by-rule, there is no application to the Department within which the applicant would be required to demonstrate occupancy during this period. Instead, the person acting under the permits-by-rule need only demonstrate that they qualify for the permit-by-rule if requested. In such a case, information that could be used to demonstrate whether a development or structure meets the definition of habitable include a certificate of occupancy issued by the local construction code official, pre- and post-storm aerial photography, and utility bills dated within the most recent five year period.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

156. COMMENT: The proposed changes to how dredged material is managed and the Department's promotion of the beneficial use of dredged material are encouraging. However, there is no definition of "beneficial use" in the document, which makes the proposed rules incomplete. It is requested that a definition be proposed and released for public comment. Dredged material for beneficial use must be properly characterized and meet strictly controlled chemical and physical criteria that protects or improves water quality or habitats. It is hoped that these changes will encourage the use of dredged material in projects that increase coastal resiliency, such as in the construction of living shorelines and other beach protection measures.

(162)

RESPONSE: The dredged material placement on land rule at N.J.A.C. 7:7-15.12(a) explains that dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Further, Chapter V, Use Alternatives, of Appendix G, discusses potential use alternatives, or beneficial uses, for dredged material. These include, but are not limited to, beach nourishment, structural and non-structural fill, habitat development, landfill cover, agricultural uses, and capping open water disposal sites. The suitability of dredged material for any of these uses is dependent upon the characteristics of the dredged material, particularly its grain size and the level of contamination. The Department uses the Residential Direct Contact Soil Remediation Standards, N.J.A.C. 7:26D, the Surface Water Quality Standards, N.J.A.C. 7:9B, and the Groundwater Quality Standards, N.J.A.C. 7:9C, to evaluate potential impacts of the beneficial use of the dredged material on public health and the environment. Chapter V

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

identifies the testing requirements applicable to each potential use of the dredged material; these requirements vary depending on the proposed beneficial use and site-specific conditions. For example, the testing requirements for the beneficial use of dredged material for beach nourishment includes grain size analysis of the dredged material and receiving beach as well as bulk chemistry analyses, whereas the testing requirements for the use of dredged material for agricultural uses include bulk chemistry analyses and in some cases leaching tests.

157. COMMENT: The Department is commended for encouraging increased beneficial use of dredged material and further deletion of its classification as a solid waste. It is hoped that these changes will encourage the use of dredged material in projects and increase coastal resiliency such as the construction of living shorelines and other beach protection measures. (109)

RESPONSE: The Department acknowledges this comment in support of the rule.

158. COMMENT: The proposed definition of “waters of the United States” is much too broad, especially as it pertains to the inclusion of all other waters which are or could be used as habitat by birds protected by the Migratory Bird treaties, as this would apply to only habitat for State-listed endangered and threatened species. To be considered “waters of the United States,” the bird species should be a Federally-listed species. Further, the definition should be updated to reflect the changes to the Federal definition which is currently under review by Federal agencies to comply with United States Supreme Court rulings. For example, the Supreme Court ruled that

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

migratory bird habitat is not sufficient to make an area “waters of the United States” and this has been removed from the definition by the Environmental Protection Agency and USACE. (50)

RESPONSE: The proposed definition of “waters of the United States” is the same as the definition in the FWPA Rules, at N.J.A.C. 7:7A-1.4. With respect to the migratory bird use, this is one factor among several factors set forth in the definition to be considered when determining whether a feature is a water of the United States. It is premature to revise the definition of the “waters of the United States” to be consistent with the proposed definition at 40 CFR 230.3, which was proposed in the Federal Register on April 21, 2014, and for which the public comment period closed on October 20, 2014, since it has yet to be adopted.

159. COMMENT: The proposed definition of “complete for review” should allow for the Department to relax application checklist requirements for purposes of determinations of administrative completeness at its discretion. (11, 50)

RESPONSE: Under the proposed definition, an application will be deemed “complete for review” once the Department has determined that the application is administratively and technically complete. “Administratively complete,” as proposed to be defined, means that all the information required on the application checklist has been submitted to the Department. The application requirements specified in the rules reflect the minimum information necessary to allow the Department to determine if the proposed activity complies with the requirements of the rules. To the extent that a particular item specified is not applicable to a specific application, the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

applicant may indicate that on the application. Accordingly, discretionary relaxation would not be either necessary or appropriate.

160. COMMENT: The definition of “excavation” should also mean the removal of sediment waterward of the spring high water line for the purpose of constructing a structure such as a foundation or footing. (50)

RESPONSE: The type of activity associated with the removal of material is not considered when determining whether the proposed activity is considered “excavation” or “dredging.” Areas located below the spring high water line are inundated by the tide twice monthly as a result of the new and full moons and are also considered under the CZM rules as intertidal subtidal shallows. Because these areas are flowed by the tide, it is appropriate to apply the standards for dredging to the removal material located below the spring high water line.

161. COMMENT: The definition of “impervious cover” is proposed to be changed to “non-porous cover.” This term is somewhat confusing because, according to the definition, porous paving is considered non-porous. Also, it is inconsistent with other land use regulations, such as the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 and the Stormwater Management Rules, N.J.A.C. 7:8, which still define the term “impervious surface.” (11, 50)

RESPONSE: The intent of the change in terminology was to eliminate confusion since other Department rules define “impervious” to mean a different set of surfaces. As noted by

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

commenters, the use of the term “non-porous” contradicts some of the types of surfaces identified in the definition. Accordingly, the Department has determined not to adopt the proposed replacement of the term “impervious cover” with “non-porous cover.”

On September 8, 2014, the Department’s Office of Policy Implementation held a stakeholder meeting to discuss further changes to the rules governing the development and use of the State’s coastal resources. Amongst the changes discussed was modifying the approach to determining the acceptable development intensity of a site and the impervious cover percentages and vegetative cover requirements for a site. A subcommittee was developed to discuss these issues. As part of this stakeholder process, it is anticipated that the term “impervious cover” will be evaluated.

162. COMMENT: The definition of non-porous cover includes materials that make up lawns plus crushed stone, compacted seashells, and other materials as porous. These are actually compacted soils and are not porous. The misclassification of these materials indicates that the rules were either not reviewed by soil professionals, or the findings of the professionals were deliberately ignored in the final preparation of the rules. (8)

163. COMMENT: The definition of non-porous, which excludes permeable pavers and pavements, does not advance the use of this proven technology to decrease stormwater runoff. With this exclusion, there is no incentive to use a product that is low impact and controls the runoff at the source. It is suggested that at least some credit be provided for developments that

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

use this method. The rules do provide minimum vegetation standards to offset pavement urban heat island effects. (136)

164. COMMENT: A vital aspect to managing stormwater and creasing flooding is an abundance of permeable surfaces. Such surfaces allow for water infiltration and produce less runoff. The proposed rules allow for lawns, crushed stone, and compacted seashells to be listed as porous surfaces. However, studies have shown that such surfaces are actually non-porous and thus would contribute to future flooding. If New Jersey wants to minimize stormwater runoff, it should consider modeling itself after Philadelphia. The city has created a stormwater utility which collects a small fee from Philadelphia residents to go towards green infrastructure that reduces flooding within the urban area. Such infrastructure includes stormwater tree trenches, stormwater planters, and pervious pavement. The proposed rules provide for no such innovative and proactive approaches to dealing with stormwater. Instead, the rules actively allow development that only increases the amount of flooding within coastal regions. (72)

165. COMMENT: The proposed definition of non-porous cover is contrary to science and good coastal policy. Under the proposal, grass lawns are not considered to be non-porous cover. All available research demonstrates that the grass lawns arising out of developments are on top of highly compacted soils. This high compaction results in the grass lawns acting more like paved surfaces than undisturbed virgin land cover. CAFRA requires that the regulations should be consistent and compatible with the natural laws governing the physical, chemical, and biological

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

environment of the coastal area (see N.J.S.A. 13:19-2.) Accordingly, the Department should not reclassify lawn as non-porous. (118)

166. COMMENT: The proposal would amend the definition of “non-porous” to include lawns, crushed stone, compacted seashells, and others as porous. Studies have shown that these materials are actually compacted soils and are not porous and should be excluded. Under this plan, the Barnegat Bay watershed could be 40 percent non-porous cover. When watersheds go over 30 percent, they are irreparably harmed and cannot be restored. (146)

RESPONSE TO COMMENTS 162 THROUGH 166: The Department uses impervious cover limits under the CZM rules to protect the coastal areas’ unique and environmentally sensitive resources. Based on past experiences, the Department recognizes that the amount of development and attendant impervious cover can change the character of an entire watershed and can adversely impact water quality and other natural resources. The Department agrees that permeable pavers and pavements, when properly maintained, can provide additional stormwater management benefits. For this reason, the Department’s Stormwater Management rules at N.J.A.C. 7:8, which the CZM rules require to be satisfied for stormwater impacts associated with major developments, and the associated Best Management Practice Manual provide incentives to use these materials as a means of reducing runoff volumes, promoting groundwater recharge, and removing suspended solids from runoff. The Stormwater BMP manual is available at [http://njstormwater.org/bmp\\_manual2.htm](http://njstormwater.org/bmp_manual2.htm).

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

However, permeable pavers and pavements are manmade structures that partially or completely cover the surface of the ground, which generally reduce infiltration to less than vegetated areas and require periodic maintenance to ensure that intended infiltration rates are being met. As the Department's intent under the CZM rules is to limit the use of structures and covers that either eliminate or substantially reduce absorption, it is not appropriate to classify permeable pavers and pavements, or other similar manmade structures, as non-porous.

While it is true that compaction of soils underlying vegetation, including lawns, can dramatically reduce absorption, property installed and maintained vegetative areas do provide these benefits, and it would not be appropriate to classify grass, lawns, and other vegetation as impervious. With respect to the commenters' concern regarding the compaction of lawn areas and subsequent runoff characteristics of such land, Chapter 2 of the Department's Stormwater Management Best Management Practices Manual encourages the use of "lighter-weight, rubber-tired construction equipment ... whenever possible, with their movements limited to a few repetitive routes," as a means of minimizing land disturbance and attendant compaction, and thus satisfying the low impact development requirement of the Department's Stormwater Management rules, N.J.A.C. 7:8. Further, with respect to a stormwater utility, the CZM rules contain rules that govern the use, development, and protection of coastal resources. Limiting or controlling stormwater runoff is addressed through the Department's Stormwater Management rules at N.J.A.C. 7:8, which the CZM rules require to be satisfied for stormwater impacts associated with major developments.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

167. COMMENT: The definition of “navigable” should mean “tidal waters that are” deep enough and wide enough to afford passage to watercraft, including canoes or kayaks, at high tide. (50)

RESPONSE: For the purposes of clarity, the Department is amending the definition of “navigable” on adoption to make it clear that “navigable” refers to “waters.” The qualifier “tidal” as proposed by the commenter is not necessary since it is clear from the definition that “navigable” pertains to tidal waters.

168. COMMENT: The definition of navigable is not accurate. Navigable waters are not navigable at low tide and inclusion of the mean high water line as the limit of navigable waters is only for that time when vessels can operate. (136)

RESPONSE: The definition of “navigable” as adopted means waters that are deep enough and wide enough to afford passage to watercraft, including canoes or kayaks, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area. This definition, is similar to the definition of navigable waters of the United States at 33 CFR 329.4. As defined under the Federal regulations, navigable waters of the United States are those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. Unlike the Federal law, the term “navigable” as used in the CZM rules does not apply solely to uses involving interstate

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

commerce or foreign commerce, but rather applies to all commercial and recreational boating activities and adjacent land uses. Therefore, the definition needs to be broad enough to apply to these varied uses in New Jersey's coastal zone. Therefore, the determination of navigability under the CZM rules is based upon passage of watercraft, including canoes and kayaks at high tide.

169. COMMENT: The list of qualifying municipalities referenced in the definition of that term should be made available on the Department's website or a link provided thereon. (136)

RESPONSE: The list of qualifying municipalities is established annually by the Department of Community Affairs and is available on its website at [www.nj.gov/dca/divisions/dlgs/resources/stateaidinfo.shtml](http://www.nj.gov/dca/divisions/dlgs/resources/stateaidinfo.shtml). As indicated in the definition, the Department makes available a copy of DCA's list on request through the means identified at N.J.A.C. 7:7-1.6. Because the list of qualifying municipalities changes on an annual basis and the Department wants to ensure that an individual has the most current listing, the Department has determined not to post the listing on the Department's website. The Division of Land Use Regulation's Technical Services Unit is responsible for addressing such requests and will respond within 24 hours of such request.

170. COMMENT: Access to the Tidelands aerials should be made easier for the public. These aerials should be available on line or made part of the GeoWeb Geographic Information System (GIS). (136)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department is assuming that the commenter is referring to the definition of “Tidelands Map” which was recodified from N.J.A.C. 7:7E-5.2 and amended to make it clear that the base map photography is dated 1977/78. The Bureau of Tidelands has its own profile on GeoWeb which is available at <http://www.nj.gov/dep/gis/geoweb splash.htm>. To access the tidelands profile, click on the profile tab. This profile provides GIS layers for New Jersey’s tidelands claim areas, tidelands maps, and head of tide. A person can search the layers by street address or block and lot to determine if there is a tidelands claim on a property.

171. COMMENT: The definition of “upland waterfront development area” refers to N.J.A.C. 7:7-2.4(a)3ii; however, that subparagraph does not use the defined term. Further, the language in the definition regarding the inland boundary of the upland waterfront development area should be revised to include language that addresses intervening development. Specifically, this subparagraph should clarify that in the context of parcels within 100-feet of the mean high water line that extend inland beyond the 100-foot limit, that if intervening structures or other features occur within the first 100-feet upland of the mean high water line, then the maximum waterfront development jurisdiction is 100-feet from the mean high water line even though the parcel boundary extends inland beyond the 100-foot limit. (50)

RESPONSE: N.J.A.C. 7:7-2.4 (a)3ii describes the upland area subject to regulation under the Waterfront Development Law. With the cross-reference to that subparagraph as describing the area to be considered the “upland waterfront development area” in the definition of that term, use

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

of that term in N.J.A.C. 7:7-2.4 (a)3ii is not necessary. Further, N.J.A.C. 7:7-2.4(a)3ii does not address intervening development. Intervening development is used in determining jurisdiction under CAFRA and is specifically identified in the statute (see N.J.S.A. 13:19-5.b(1)). The Department's upland jurisdiction under the Waterfront Development Law is limited to 500 feet and has been upheld by the courts in *Last Chance Development Partnership v Kean*, 119 N.J. 425 (1990) and in *New Jersey Builders Association v. NJ* (Docket No. A-984-90T1, November 30, 1982).

**N.J.A.C. 7:7-1.6 Forms, checklists, information; Department address and website**

172. COMMENT: Proposed N.J.A.C. 7:7-1.6(b)1 should be modified to refer to the Department's website for a mailing address. Recently, the Department has changed the mailing address for the Division of Land Use Regulation. However, since the address was codified in the rules, the Division was constrained by the regulatory provision specifying a different post office box until the Department changed the address through rulemaking. (50)

RESPONSE: The Division of Land Use Regulation's mailing address is included in the rule rather than direction to obtain the mailing address from the Department's website to ensure that the address is available to all members of the public, including those that do not have access to a computer. Should the Division of Land Use Regulation's mailing address change in the future, the Office of Administrative Law's rules allow for changes such as a change in a mailing address to be made by notice of administrative change, so any delay in modifying the address in the rules should be minimal.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

173. COMMENT: Under proposed N.J.A.C. 7:7-1.6(b)2, the term “courier service” should be clarified to include overnight mail service since a courier service may be deemed to be the same as a hand delivery. (50)

RESPONSE: The Department concurs with the commenter and on adoption is amending N.J.A.C. 7:7-1.6(b)2 to include overnight mail since the intent of this provision is to provide the public with the Department’s street address for deliveries other than by regular mail. In addition, the Department is amending N.J.A.C. 7:7-1.6(b)1 to replace “U.S. Postal Service delivery” with “regular mail” for consistency with N.J.A.C. 7:7-1.6(b)2.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 2. Applicability and Activities for which a Permit Is Required**

### **N.J.A.C. 7:7-2.3 Coastal wetlands**

174. COMMENT: Coastal wetland mapping is outdated and should not serve as the exclusive basis for coastal wetland jurisdictional determinations. Proposed N.J.A.C 7:7-2.3(c) should be revised to allow for utilization of the best available evidence for jurisdictional determinations, and procedures should be proposed to amend and update the coastal wetland maps to reflect actual field conditions. (11, 50)

RESPONSE: The Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., required the Commissioner to inventory and map the boundaries of all coastal wetlands within the State from the Raritan Bay south. As a result, in the early 1970s, the Department delineated areas which met the definition of “coastal wetland” pursuant to the Act. (See N.J.S.A. 13:9A-1.) The Act enables the Commissioner to adopt, amend, modify or repeal orders regulating, restricting, or prohibiting dredging, filling, removing, or otherwise altering, or polluting, coastal wetlands for the purposes of promoting the public safety, health, and welfare, and protecting public and private property, wildlife, and marine fisheries. (See N.J.S.A. 13:9A-2.) Because the coastal wetlands maps are promulgated by rule, the Department must undertake rulemaking in order to revise the maps. Property owners who believe that the coastal wetlands boundary as promulgated on the Coastal Wetlands Maps no longer reflects existing site conditions have the ability to petition the Department to revise the existing coastal wetlands boundary.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

175. COMMENT: N.J.A.C. 7:7-2.3 should be revised to clarify that coastal wetland jurisdiction under the rules is limited to actual wetland areas and does not extend to include broader water areas that lack coastal wetland vegetation. (11, 50)

RESPONSE: The Wetlands Act of 1970 defines coastal wetlands as “any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware Bay and Delaware River, Raritan Bay, Barnegat Bay, Sandy Hook Bay, Shrewsbury River including Navesink River, Shark River, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of one foot above local extreme high water, and upon which may grow, or is capable of growing, some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavender (*Limonium carelinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus Paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloe odorata*)” (see N.J.S.A. 13:9A-2). The Act at N.J.S.A. 13:9A-1.b required the Commissioner to make an inventory and maps including boundaries of all tidal wetlands within the State. As a result, in the early 1970s the Department delineated tidal wetlands by interpreting aerial photography and conducting

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

representative field inspections to verify the delineation. The Department has not historically regulated former mapped areas that are currently open water under N.J.A.C. 7:7-2.3 since these areas no longer meet the definition of a coastal wetland; specifically, these areas are not a bank, marsh, swamp, meadow, flat, or other low land subject to tidal action and they are not capable of growing the listed vegetation. However, where the mapped area is currently land during low tide, such as a mud flat, the Department considers these areas coastal mapped wetlands since, although devoid of vegetation, these are areas that are capable of growing the listed species and otherwise meet the definition set forth in the Act.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Subchapter 3. General Provisions for Permits-by-Rule, General Permits-by-Certification, and General Permits**

**N.J.A.C. 7:7-3.2 Standards for issuance, by rulemaking, of permits-by-rule, general permits-by-certification, and general permits**

176. COMMENT: The commenter does not support provisions establishing general permits believing that they are just a means to speed up Department operations with less staff. (15)

RESPONSE: A general permit is a permit adopted as a rule, under which the Department issues authorizations. Establishing general permits streamlines the permitting process for persons seeking to construct minor development which the Department has determined will cause only minimal environmental impacts, provided that the development is constructed in accordance with the conditions of the specific general permit.

177. COMMENT: Public participation in the regulatory process is crucial to protecting New Jersey's communities and environment. Proposed N.J.A.C. 7:7-3.2 eliminates the requirement that the Department conduct a public hearing when it promulgates permits-by-rule, general permits-by-certification, and general permits, replacing that requirement with a public comment period. Given the scope and magnitude of these permits, a public comment period does not provide adequate opportunity for substantive public input into Department decision making related to future proposals. (51, 90, 109, 162)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The APA, N.J.S.A. 52:14B-1 et seq., CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law do not require the Department hold a public hearing when it proposes rule changes regarding permits-by-rule, general permits, and general permits-by-certification. Accordingly, the amendments at N.J.A.C. 7:7-3.2(b)3, replace reference to providing an opportunity for a public hearing with reference to providing an opportunity for public comment. Consistent with the rulemaking provisions of the APA, the public will be able to submit written comments on any proposed changes to the rules governing these permits, and the Department will have the flexibility to hold a public hearing in the appropriate circumstance.

178. COMMENT: Proposed N.J.A.C. 7:7-3.2(a) provides that the DEP will publish each permit-by-rule, general permit-by-certification, or general permit, which means in the DEP Bulletin. Because the publication will be in the DEP Bulletin, members of the general public will likely never learn of the permit application until after construction has begun, when it is too late to challenge it. Actual notice to nearby property owners should be required. (118)

RESPONSE: N.J.A.C. 7:7-3.2(a) establishes the standards for issuance by rulemaking of permits-by-rule, general permits-by-certification, and general permits. Specifically, this subsection provides that the Department will, in accordance with the rulemaking provisions of the New Jersey APA, promulgate each permit-by-rule, general permit-by-certification, or general permit after publication of a notice of rule proposal in the New Jersey Register and consideration of public comment. In addition to publication of a notice of rule proposal in the New Jersey Register, notice of the proposal is published on the Department's website, and is provided

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

electronically to those requesting to receive notice of Department rulemaking actions. Further, notice of the proposed rulemaking is provided to news media maintaining a press office to cover the State House Complex, and to other media outlets.

Notice of an individual application for an authorization under a general permit-by-certification and general permit is required pursuant to N.J.A.C. 7:7-23.3 and 23.4, respectively, and specification of the form of public notice of an application that must be provided is set forth at N.J.A.C. 7:7-24. The recipients of public notice of an application for an authorization under a general permit-by-certification and general permit are set forth at N.J.A.C. 7:7-24.3 and include: the municipal clerk, construction code official, environmental commission or other government agency with similar responsibilities, and planning board of each municipality in which the site is located; the local Soil Conservation District, as applicable; and all owners of real property, including easement, located within 200 feet of the property boundary of the site. As explained in the Response to Comment 150 above, in appropriate circumstances for proposed activity within 200 feet of the area known as the 12-mile circle, notice is also required to be provided to the State of Delaware.

The Department believes that the adopted rules provide adequate notice and opportunity for comment both on the promulgation of permits-by-rule, general permits-by-certification, and general permits, and on individual applications for authorization under a general permit-by-certification or general permit.

179. COMMENT: The replacement of the term “hearing” with “comment” means that no public hearings will be held on an individual application for an authorization under a general permit-by-

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

certification or general permit. Shutting the public out of the process is seldom justified. In this case, the Department has provided no justification for what appears to be a full speed ahead effort to promote more rapid development of the coastal area, inevitably putting more public and private property and investment in harm's way. (118)

RESPONSE: As explained at 46 N.J.R. 1065, the Department replaced reference to providing an opportunity for a public hearing when it proposes rule changes regarding permits-by-rule, general permits, and general permits-by-certification with reference to providing an opportunity for public comment. Consistent with the rulemaking provisions of the APA, N.J.S.A. 52:14B-1 et seq., the public will be able to submit written comments on any proposed changes to the rules governing these permits, and the Department will have the flexibility to hold a public hearing in the appropriate circumstance. Prior to these amendments, the rules at N.J.A.C. 7:7-7.1(c)3 provided that once a general permit has been promulgated by the Department, the Department would not hold a public hearing on an individual application for an authorization under a general permit. Under this rulemaking, the Department has continued this provision at N.J.A.C. 7:7-3.2(b)3. Similarly, once the Department promulgates a general permit-by-certification, it will not hold a public hearing on an individual application for a general permit-by-certification.

180. COMMENT: The establishment of permits-by-rule and general permits-by-certification, while streamlining Departmental review, also decrease regulatory oversight on development in coastal areas. Some measure should be implemented to audit a portion of the permits issued, or provide some other method of ensuring that the conditions of the permits are actually being

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

followed as described. The consolidated rules must make clear that enforcement of these permit conditions is still under the Department's purview, even if the permits can be obtained without any regulatory review. (162)

181. COMMENT: In proposing new general permits-by-certification and permits-by rule, the Department has not explained how these will be enforced to ensure that adverse impacts to coastal resources are avoided, minimized, and/or mitigated. Has the Department evaluated the implementation of existing permits-by-rule to demonstrate that the agency has adequately enforced the provisions of these permits in the past? How many of these permits have been or will be audited by the Department's Bureau of Coastal and Land Use Enforcement to ensure compliance, since there is no formal review being conducted by DEP? Reduced scrutiny of coastal development by the Department will lead to increased adverse impacts to coastal resources and increased uncertainty among the regulated public.

Regarding new general permits-by-certification and permits-by-rule, how will local code enforcement officials be able to determine if all prior approvals have been obtained, as required by the Uniform Construction Code, prior to issuing the local building permits if there is no DEP record of approval/denial? Reduced scrutiny of coastal development by the Department will result in greater inconsistency between Department permitting and local construction permitting pursuant to the Uniform Construction Code. Since these rules will create a greater burden on local code enforcement officials, will the Department provide financial and/or staff support to assist communities with their resulting increased workloads? (90)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE TO COMMENTS 180 AND 181: A coastal permit, as defined at N.J.A.C. 7:7-1.5, means a permit or an authorization issued under the CZM rules pursuant to CAFRA, the Wetlands Act of 1970, or the Waterfront Development Law. Accordingly, a coastal permit includes permits-by-rule, authorizations under a general permit-by-certification, authorization under a general permit, and an individual permit. N.J.A.C. 7:7-27.2, Conditions that apply to all coastal permits, specifically subsection (b), provides that if a permittee undertakes any regulated activity authorized under a coastal permit, such action shall constitute the permittee's acceptance of the permit in its entirety, as well as the permittee's agreement to abide by the permit and all conditions therein. Further, N.J.A.C. 7:7-27.2(c)8 provides that any noncompliance with a permit constitutes a violation of the CZM rules and is grounds for enforcement action under N.J.A.C. 7:7-7.29.

Permits-by-rule and permits-by-certification are intended to authorize only regulated activities that have minimal environmental impact both individually and cumulatively. Moreover, because the regulated community must make an assessment as to the applicability of a permit-by-rule or a permit-by-certification, the activities authorized and the limits of authorization must be easily understood by the regulated community. This necessity is reflected in the types of activities that may be authorized by a permit-by-rule or general permit-by-certification. Therefore, less regulatory oversight is needed for authorization of activities complying with the limitations applicable to each permit-by-rule or general permit-by-certification to ensure the consistency of these activities. Projects with the potential for environmental consequences demand closer scrutiny and evaluation through the regulatory process, and the Department has determined that its staff resources are better utilized in this

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

capacity than processing permits for activities with minimal environmental impacts. The Department agrees that when the specific limitations of either a permit-by-rule or a permit-by-certification have been exceeded, the activity can no longer be assumed to have minimal environmental impact.

The Department will continue to use its enforcement powers to ensure that proper permits are secured for all regulated activities, including an individual permit when the scope of the activity exceeds the general permit, general permit-by-rule, or permit-by-rule authorization, that any violation is removed and the resource restored where appropriate, and that penalties are assessed in appropriate circumstances to discourage any future violations of the rules or permit conditions.

It is not possible to routinely audit permits-by-rule as suggested by the commenter because permits-by-rule do not require any notification to the Department. In the normal course of performing their investigations, DEP inspectors pass numerous construction sites. If the observed construction appears to exceed the threshold of an exempt activity or a permit-by-rule, the inspector will check the Department's database to determine whether proper permits have been issued. If no Department permit is reflected in the database, an investigation will be initiated and an enforcement action will be taken if a violation is confirmed. In addition to investigating complaints or inquiries received regarding whether particular activities impacting resources in the coastal area have been approved by the Department, the Department relies on construction officials to determine whether a permit-by-rule is applicable to a particular construction project. The Department has made available without charge to construction officials both training and written guidance concerning activities covered by permits-by-rule and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

will continue to provide that training and guidance. In the Department's experience, local construction officials have done a good job of identifying when formal CAFRA, waterfront development, and coastal wetlands permits are required. The Department will continue to investigate all complaints that it receives either from municipal officials or from private citizens.

Permits-by-certification do require a notification to the Department and therefore the Department does have the ability to more directly audit compliance with those permits. The Department will audit at least fifty permits-by-certification through standard compliance inspections in the first year of the program to assess compliance and take corrective action to either clarify the certification requirements if the audit reveals widespread misunderstanding and/or take enforcement action to bring projects into compliance.

182. COMMENT: The Department proposes to delete existing N.J.A.C. 7:7-3.2(g) which requires a review of each general permit every five years, thereby eliminating the opportunity for the public to evaluate whether the permits continue to adequately protect coastal resources and if the permits should be modified to better protect coastal resources. This change has the potential for continued authorization of regulated activities that, over time, may not provide adequate resource protection as required by CAFRA. (90)

RESPONSE: Under the prior rules, the review and reissuance by rulemaking of permits-by-rule and general permits was linked to the five-year sunset and readoption time frames in the APA. In 2011, the APA was amended to lengthen the sunset period to seven years and also established that rules can be readopted in certain circumstances without full rulemaking. Consistent with the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

flexibility regarding readopting rules that was incorporated into the APA, N.J.A.C. 7:7-3.2 will ensure that the rules governing permits-by-rule, general permits, and the new general permits-by-certification are amended as necessary based on the Department's experience administering the coastal permitting program, as well as in consideration of ongoing feedback from the public through, for example, stakeholder meetings and written public comment on pending applications for authorizations under a general permit.

**N.J.A.C. 7:7-3.5 Duration of an authorization under a general permit-by-certification**

183. COMMENT: Proposed N.J.A.C. 7:7-3.5(b) should allow for the extension of an authorization under a general permit-by-certification if the criteria to qualify for the general permit-by-certification continue to be satisfied at the end of the five-year term. (50)

RESPONSE: An authorization under a general permit-by-certification applies to a tightly circumscribed set of regulated activities (reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead and the construction of piers, docks, including jet ski ramps, pilings, and boatlifts, in man-made lagoons) that the Department has determined are simple and straightforward in nature and therefore easily able to be undertaken and completed within five years of the date of issuance of the authorization. In contrast, an authorization under a general permit applies to a wide variety of activities, including, for example, the construction of one or two single-family homes or duplexes which may require more than five years to complete. Therefore, the Department determined that if the activity is

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

not completed within the five-year term of the authorization under a general permit-by-certification, the person must apply again for authorization.

**N.J.A.C. 7:7-3.6 Duration of an authorization under a general permit for which an application was declared complete for review prior to (the effective date of these amendments)**

184. COMMENT: Proposed N.J.A.C. 7:7-3.6(e)1 provides for the continued validity of general permit authorizations for more than five years when certain construction takes place during the initial five-year period. N.J.A.C. 7:7-3.6(e)1 defines “construction” in a way that excludes site clearing. Site clearing should be recognized as a critical preliminary construction activity that, if performed, allows for continued validity of general permit authorizations. Site clearing activities that are conducted without Department authorization are subject to enforcement. Treating site clearing as an enforceable regulated activity is inconsistent with the Department’s refusal to recognize site clearing as a “construction activity” in the context of this subsection of the proposed rules. Additionally, the conservation restriction provisions of the proposal treat site clearing as an activity that precludes the potential future voiding of the conservation restriction, another inconsistency with the Department’s exclusion of site clearing activities from the definition of “construction.” (50)

RESPONSE: Through this rulemaking, the Department has changed the duration of an authorization under a general permit to five years from the date of issuance, except that an authorization may be extended one time for five years in accordance with N.J.A.C. 7:7-27.3. In

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

fairness to applicants whose application was declared complete for review prior to the effective date of these amendments, the duration of a general permit authorization is the same as what it would have been under prior N.J.A.C. 7:7-7.3(k), the content of which is continued at N.J.A.C. 7:7-3.6. For the purposes of the duration of approvals grandfathered under this provision, the Department has determined that construction as defined at N.J.A.C. 7:7-3.6(e)1 is appropriate. Because the determination of whether an activity authorized under a general permit may continue to completion without the need for a new permit, the Department determined that it is appropriate that a substantial portion of construction must have been commenced prior to the expiration date of the authorization. Therefore, the term construction, for the purposes of determining the duration of an general permit authorization under N.J.A.C. 7:7-3.6(e)1, excludes clearing of vegetation, bringing construction materials to the site, or the grading or other earth work associated with preparing a site for construction.

**N.J.A.C. 7:7-3.7 Duration of an authorization under a general permit for which an application is deemed complete for review on or after (the effective date of these amendments)**

185. COMMENT: The Department is commended for introducing the provision to allow general permit authorizations to be extended one time for five years. This provides additional time for the permittee to rely on Department approvals and significantly reduces the costs associated with applying for a new permit, should the permittee run into circumstances that result in delayed construction. (83, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rule.

**N.J.A.C. 7:7-3.8 Conditions applicable to a permit-by-rule, or to an authorization pursuant to a general permit-by-certification or a general permit**

186. COMMENT: Proposed N.J.A.C. 7:7-3.8(b), which gives the Department unlimited discretion to establish additional conditions on a case-by-case basis in the context of general permit authorizations, is too broad and has the potential to lead to differing conditions and results among applicants. Such a result would be in contravention of the APA and in conflict with the concept of approved categories of uses permissible under general permits. (50)

RESPONSE: N.J.A.C. 7:7-3.8 is the recodification of a longstanding CZM regulation which provides the Department with measured, but not unlimited, discretion to set needed additional conditions when issuing an authorization under a general permit. Consistent with the APA, the rule ensures that authorized regulated activities meet the requirements of the CZM rules, the enabling statutes, and the overall purposes of the program. The rule ensures that Department staff can properly balance potential conflicting goals and exercise professional judgment, when needed. See N.J.A.C. 7:7E-1.1 (c), (d), and (e).

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

#### **Subchapter 4. Permits-by-Rule**

#### **N.J.A.C. 7:7-4.21 Permit-by-rule 21 - application of pesticide within coastal wetlands to control invasive plant species**

187. COMMENT: Through the permit-by-rule, the Department is promoting the use of pesticides. The proposed permit-by-rule encourages pesticide applications on coastal wetlands without any cumulative limits and without analysis of the economic impact of the application. There needs to be an ecological-based analysis of the pesticide application. (158)

RESPONSE: The Department is not encouraging the use of pesticides through the adoption of this permit-by-rule. The management of invasive plant species in the coastal zone typically includes the application of pesticides (herbicides) in coastal wetlands. Invasive plant species may replace native species, clog waterways, degrade water quality, and impede recreation and navigation. The permit-by-rule is limited to 0.25 acres and requires an aquatic pesticide permit from the Department's Pesticide Control Program when conducted within waters of the State or waters of the United States. As indicated, the rule provides at N.J.A.C. 7:7-4.21(a)1 that the area to which the pesticides are applied cannot exceed a total area of one-quarter acre for the entire site. To further clarify that multiple one-quarter acre pesticide applications cannot be made to different portions of the site at different times of the year under this permit-by-rule, the Department is amending that paragraph on adoption to reinforce the one-quarter acre limitation and to eliminate the reference to disturbance of less than one-quarter acre as unnecessary since the paragraph already specifies that the one-quarter acre limitation is a maximum.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

188. COMMENT: The permit-by-rule and general permit for invasive species management through the application of pesticides are steps in the right direction with respect to wetlands enhancement and restoration work. The rules require a permit from the Department's pesticide program and that will ensure that pesticides are applied appropriately and properly. (116)

RESPONSE: The Department acknowledges this comment in support of the rules.

189. COMMENT: Regarding pesticide application in wetlands areas, it appears that the proposed consolidated rules create exemptions from Department review for projects covering an area below a predetermined threshold. How much Departmental oversight will such projects have, to ensure that these small scale pesticide application projects do not actually impact resources such as threatened and endangered species or their habitat? With respect to the applicability of the requirement for an aquatic pesticide permit for application of pesticides in a wetland area, will this permit be required for all applications of pesticides in wetlands areas? If not, in which situations would an aquatic pesticide permit not be required? (162)

190. COMMENT: Proposed new N.J.A.C. 7:7-4.21 allows for the application of pesticides in coastal wetlands without any Department review and the conditions of this permit-by-rule are not sufficient to protect the wetland resources (also proposed general permit 32 at N.J.A.C. 7:7-6.32). For example, N.J.S.A. 7:7-4.21(a)2 requires that the activities not adversely affect habitat for threatened or endangered wildlife or plant species; however, without a formal Department

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

review, how will the applicant make that determination and how will the Department ensure that, in fact, there are no adverse effects?

Also, condition N.J.A.C. 7:7-4.21(a)3 requires an additional DEP permit if the activities will take place in “waters of the United States” but, again, how will the applicant make that determination and how will the Department ensure that, in fact, the activities do not take place in waters of the United States, especially in the absence of such maps that define these waters? (90)

RESPONSE TO COMMENTS 189 AND 190: In order to qualify for the permit-by-rule, any activity in the waters of the State or waters of the United States must be conducted pursuant to an aquatic pesticide permit issued by the Department’s Pesticide Control Program. In accordance with N.J.A.C. 7:7-1.5, both waters of the State and waters of the United States include wetlands. Accordingly, any activity impacting wetlands under this permit-by-rule would be subject to the applicable requirements of the Pesticide Control Code, N.J.A.C. 7:30. Waters of the United States and waters of the State are defined at N.J.A.C. 7:7-1.5.

Under the Pesticide Control Code, a "restricted use pesticide" is any pesticide or pesticide use classified as such under the provisions of N.J.A.C. 7:30-2, or by the Administrator of the United States Environmental Protection Agency (see N.J.A.C. 7:30-1.2). With limited exception, all pesticides labeled for aquatic use are classified as restricted use pesticides in New Jersey (see N.J.A.C. 7:30-2.10(a)3). The purchase and application of a restricted use pesticide requires certification and licensing as a pesticide applicator. Under the Department’s Pesticide Control regulations at N.J.A.C. 7:30-9.3, the application of pesticides to an aquatic site requires an aquatic pesticide permit from the Department’s Pesticide Control Program, unless: the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

application is made to waters of the State which are not used as a source of potable water, the application is made to waters of the State which have no outlet, and the application is made to waters of the State which are bounded by land wholly owned or rented, and controlled, by one person; or the application is made to control mosquitoes or flies which then falls under the Pesticide Control Program's Mosquito/Fly Control Permit Program or the application is made to drainage ditches with no water flow, which are not used for any other purpose besides drainage.

Under N.J.A.C. 7:30, an aquatic pesticide means any pesticide that contains labeling instructions indicating that the pesticide is intended for use on aquatic sites, except for the following: pesticides labeled only for flushing down toilets or to be directly applied to water or sewer pipes, for use in controlling tree roots inside those pipes; pesticides labeled only for use in cooling towers; pesticides labeled only as algaecides for use in swimming pools, hot tubs, ornamental ponds, fountains, fish tanks, or water beds-these sites are an artificial, self-contained water with no inlet from or outlet to “natural” water and with label statements prohibiting such discharge; and algaecides labeled only for use in water treatment plants, wastewater treatment plants, or sewerage treatment plants. If a pesticide label contains both exempted and non-exempted aquatic uses, the pesticide shall still be considered an aquatic pesticide. An aquatic site means those areas meeting the definition of “waters of the State” or wetland.

Pesticides approved for use in the aquatic environment have been designed and tested to minimize impacts on that environment. The application of pesticides in accordance with an aquatic use permit issued by the Department’s Bureau of Licensing and Pesticide Operations should not adversely impact threatened or endangered species. As a condition of an aquatic pesticide permit, all applicators are required to contact appropriate Department programs,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

including the Natural Heritage Program to obtain information concerning threatened and endangered species, and the Bureau of Surface Water Permitting concerning discharges. Also, the signature and certification by the applicant on an application for an aquatic pesticide permit holds them responsible for being knowledgeable of all aspects of the site, before, during, and after any aquatic pesticide application. Accordingly, the requirement that the activities conducted under this permit-by-rule be conducted pursuant to an aquatic pesticide permit addresses the issues raised by the commenters through the requirements applicable to application under that permit pursuant to the Pesticide Control Code.

**N.J.A.C. 7:7-4.22 Permit-by-rule 22 – construction of a swimming pool, spa or hot tub and decking on a bulkheaded lot without wetlands**

191. COMMENT: This permit-by-rule is confusing. It appears that the swimming pool and associated deck is limited to 750 square feet; however, the example discusses the swimming pool itself and not the associated deck. Decks have been excluded for regulation in other coastal rules. Please clarify. (136)

RESPONSE: The commenter is correct; the construction of a deck at a single-family home is not subject to regulation under CAFRA (see N.J.A.C. 7:7-2.2(c)5). However, this permit-by-rule applies not only to residential developments, but to the construction of swimming pools at other developments such as marinas. The construction of decking surrounding the pool or hot tub when located at these types of developments is subject to CAFRA regulation. Therefore, for the purposes of clarity, the Department is amending this permit-by-rule on adoption to make it clear

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

that the construction of a patio or deck at a residential development is not included in the allowable coverage under the permit-by-rule since decking at a residential development is not regulated under CAFRA. Further, for clarity, the Department is also amending this permit-by-rule on adoption to provide examples of decking materials, such as wood or recycled plastic planking, concrete, or pavers.

192. COMMENT: The permit-by-rule for the construction of a swimming pool, spa, or hot tub and associated decking is supported. However, the scope of the permit-by-rule should be expanded to apply to non-bulkheaded lots. That stated rationale for this requirement is to avoid special area impacts. The other requirements and limitations of the permit-by-rule will protect special areas. An individual permit should not be required for the construction of a swimming pool and associated decking merely because it is proposed on a non-bulkheaded lot. (114)

RESPONSE: The Department acknowledges this comment in support of the rule. In accordance with N.J.A.C. 7:7-3.2(b)1, the Department will promulgate a permit-by-rule only if the Department determines that the proposed activity will cause only minimal adverse environmental impacts when performed separately, as well as have only minimal cumulative environmental impacts. To meet this standard, and because the Department does not review the construction of the swimming pool, spa, or hot tub under the permit-by-rule, the Department has limited the scope of this permit-by-rule to bulkheaded lots. The construction of an above ground swimming pool is also authorized under general permit 4 for the construction of one or two single-family homes or duplexes at N.J.A.C. 7:7-6.4.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

### **Subchapter 5. General permits-by-Certification**

193. COMMENT: The use of electronic permitting through this proposal will be of great benefit to home and business owners in the coastal zone. (134)

RESPONSE: The Department acknowledges this comment in support of the rule.

194. COMMENT: The public should have access to all granted permits-by-certification via an online database and these permits should also be noticed in the New Jersey Register. (162)

RESPONSE: Under the electronic permit application pilot project, the date the application was received and the date the decision was rendered are published in the DEP Bulletin. The Department will continue this practice under the adopted rules. Further, the public, through Dataminer, can search land use permits by file number; however permit decisions cannot be viewed or printed from data miner. The Department is currently working towards making these decisions available to the public. Further, the Department does not publish permit decisions in the New Jersey Register; these decisions are published in the DEP Bulletin. It should also be noted that public notice of the application pursuant to N.J.A.C. 7:7-24 is required.

195. COMMENT: Subchapter 5 proposes general permits-by-certification that include numerous conditions, but involve no formal permit application, no opportunity for public comment, and no Department review. General permit-by-certification 15 actually includes 11

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

specific conditions. How will the Department ensure that these conditions have been satisfied and that coastal resources have been adequately protected, without actually reviewing permit applications? What evaluations and enforcement actions are proposed to ensure that the Department is satisfying its obligation to appropriately implement coastal statutes? (90)

RESPONSE: General permits-by-certification require notification to the Department, through the on-line submission, and, therefore, the Department does have the ability to audit compliance with those permits. The Bureau of Coastal and Land Use Compliance and Enforcement has committed to performing at least 50 standard compliance inspections targeting general permits-by-certification. Projects that are found to be out of compliance with the specifications for these permits will be issued Notices of Violation, and the owner will be directed to apply for the proper permit or the offending construction must be removed and the area restored. Failure by the owner to take one of these corrective actions will result in the issuance of an Administrative Order and possible penalty assessment. If these inspections determine that a significant number of inspected sites are out of compliance with the general permit-by-certification, the Bureau may increase or extend this targeted enforcement effort.

196. COMMENT: The new class of permit, general permit-by-certification, is cause for concern as this permit will allow applicants to obtain a permit automatically through a website without review by Department staff. (7, 12, 13, 14, 17, 20, 31, 35, 44, 49, 64, 65, 71, 78, 80, 85, 91, 99, 101, 104, 105, 108, 110, 135, 137, 138, 139)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

197. COMMENT: Allowing persons seeking to obtain a permit to acquire one through a website instead of more established channels is negligent and could lead to dangerous building that puts many people's lives in jeopardy. (73)

198. COMMENT: Have we learned nothing from the events of Superstorm Sandy? There are still so many communities, individuals, and businesses dealing with the financial and economic aftermath of Sandy, that it is irresponsible of the Department to allow building to occur in fragile and extremely vulnerable coastal environments without review by the Department. (5)

199. COMMENT: The Department claims that the proposed rules simply work to eliminate red tape and increase government transparency. This is just a disguise to minimize the interaction between the Department and coastal developers. For example, the general permits-by-certification allow developers to automatically receive permits via an online system without any government review or public input allowing for less government oversight and increased negative environmental impacts. This is of concern since enforcement of permits is down 60 percent over the last four years. (72, 130, 146)

200. COMMENT: The proposed general permits-by-certification essentially give New Jersey real estate developers a blank check to build in hazardous coastal areas, allowing them to profit on these developments while the citizens of New Jersey are left to pick up the tab when the next coastal storm comes along. (14)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

201. COMMENT: The new rules allow developers to patrol themselves. Relaxing the rules will not do anyone a favor in the long run. (2)

RESPONSE TO COMMENTS 196 THROUGH 201: The addition of general permits-by-certification (electronic permits) is intended to facilitate the Department's transformation goal of evaluating all business operations in order to streamline functions, reengineer business processes, and leverage technology so that administrative paperwork is reduced, applications and other forms can be shared across multiple programs, and the number of electronic submittals can be increased. As a result, the Department will be better able to focus its resources on those activities that are likely to have the most impact on public safety and the environment. The electronic applications (general permits-by-certification) are a tightly circumscribed set of activities. The tight limitations on the activity or activities that can be authorized enables the automated issuance of an approval or rejection because there is no need for a case-by-case evaluation of whether the particular proposed manner of conducting the activity meets the conditions of the general permit-by-certification. The applicant has to certify that it does. Upon successfully completing the application and certifying the truth and accuracy of the information provided, the applicant has access to the authorization from their computer.

An applicant for an authorization under a general permit-by-certification is required to submit an application to the Department electronically through the Department's online permitting system; the application requirements are set forth at N.J.A.C. 7:7-23.3. Among those requirements is the requirement, at N.J.A.C. 7:7-23.3(b)6ii, that the applicant certify that public notice of the application has been provided in accordance with N.J.A.C. 7:7-24.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Under this adoption, the Department promulgated two general permits-by-certification; general permit-by-certification 10 for the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead, and general permit-by-certification 15 for the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons. The tightly circumscribed set of activities that can be authorized enable the automated issuance of an approval or rejection because there is no need for a case-by-case evaluation of whether the particular proposed manner of conducting the activity meets the conditions of the general permit-by-certification. The limitations set forth under these permits will assure that special areas and special aquatic habitats remain protected. To promulgate new general permits-by-certification, the Department must adhere to the requirements set forth at N.J.A.C. 7:7-3.2 for issuing by rulemaking general permits-by-certification, which includes publication of a notice of rule proposed in the New Jersey Register and consideration of public comment.

Although the response to the application is automated, the online submission process creates a complete and certified record by the applicant regarding the activity to be conducted, including the name, address, telephone number, and e-mail address of the person responsible for conducting the activity and the property owner (if different), the specific location of the activity, and the public notice of the proposed activity that the applicant is required to provide. In accordance with N.J.A.C. 7:7-23.2(k), failure to provide complete and accurate information may result the termination of the authorization under a general permit-by-certification. It may also result in an enforcement action. As indicated in the Response to Comment 181, the Department

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

will conduct compliance inspections of activities conducted in accordance with general permits-by-certification to ensure that impermissible activities are not occurring.

202. COMMENT: The proposed general-permits-by-certification undermines meaningful public engagement. The information provided on line is limited in scope, making it difficult or impossible for a nearby affected property owner to participate in a review of the complete application. (62)

RESPONSE: N.J.A.C. 7:7-23.3(b)1 through 8 set forth the particular information an applicant for an authorization under a general permit-by-certification must provide through the electronic application process, including information specific to the proposed project that relates to the requirements of the general permit-by-certification under which the application is being submitted. For example, as part of an application for an authorization under general permit-by-certification 10 the applicant must certify that the replacement bulkhead is located upland of any wetlands; the construction of a bulkhead that is subject to wave run-up forces is designed and certified by a New Jersey licensed professional engineer to withstand the forces of the wave run-up; the structure will not create net adverse shoreline movement downdrift, including erosion and shoaling; the construction will have no adverse impact to special areas as described at N.J.A.C. 7:7-9; and that clean fill from an upland source will be used as backfill.

An applicant for an authorization under a general permit-by-certification must also provide public notice of the application in accordance with N.J.A.C. 7:7-24. This public notice is the same public notice required for all coastal permit applications and includes notice to all

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

owners of real property, including easements, located within 200 feet of the property boundary of the site (see N.J.A.C. 7:7-24.3(b)6). Notice of the application must comply with N.J.A.C. 7:7-24.3(d) and includes a brief description of the proposed project, a site plan showing the location and boundaries of the project site and depicting the proposed development in relationship to existing site conditions, and a copy of the form notice letter. Accordingly, nearby affected property owners will be provided the same information that is required to be provided for an application for an authorization under a general permit or an application for an individual permit.

203. COMMENT: How will the Tidelands Resource Council review an application under the general permits-by-certification? (130, 146)

RESPONSE: The issue of tidelands ownership would arise with respect to the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead. As part of the on-line application for an authorization under a general permit-by-certification, a map identifying the property in question is displayed. This map includes an overlay identifying areas subject to a tidelands claim. Through the on-line application, an applicant must certify that they have ownership of the property upon which the proposed structure will be located. Where a proposed activity is located within an area subject to a tidelands claim, the applicant does not own the property, unless the applicant is in possession of a tidelands instrument for that area. The operations of the Bureau of Tidelands Management have been integrated with the Department's New Jersey Environmental Management System (NJEMS) so that all existing tidelands grants, leases, and licenses, as well as pending

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

applications for them, are contained in the NJEMS database. Accordingly staff can use the database to determine if a permittee has in fact obtained an approval for the authorized activities. It should be noted that, review of the application by the Tidelands Resource Council would not be necessary since the applicant would not be eligible for authorization under the general permit-by-certification as they do not have ownership on the land. For example, should a bulkhead be constructed under an authorization for general permit-by-certification 10 in an area where the map depicts tidelands ownership without possession of a tidelands instrument, the applicant would be in violation of the Tidelands Statute, N.J.S.A. 12:5-1, and subject to enforcement action.

204. COMMENT: The new general permits-by-certification have little to do with legitimate simplification and elimination of bureaucracy. These permits are a transparent effort to allow developers and engineers to bypass the requirements to submit their proposal to public participation and scrutiny. Whether or not permit-by-certifications are a good idea in some cases, in the case of proposed development with significant potential for environmental impact, it is a license for irresponsible development at best. (8)

RESPONSE: As explained at 46 N.J.R. 1052, the transformation of the operations of the land use permitting programs involves streamlining functions, re-engineering business processes, and leveraging technology to eliminate unnecessary paperwork, share applications and forms across the Department, and increase the use of electronic submittals. As with the use of electronic permitting by other Department programs, this also benefits the environment by allowing

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department resources and personnel to focus on activities that pose the most significant impacts to the environment. In accordance with N.J.A.C. 7:7-3.2, the Department will promulgate a general permit-by-certification only if the activities will cause only minimal adverse environmental impacts when performed separately or cumulatively (when considered in combination with other projects), are in keeping with legislative intent to protect and preserve the coastal area from inappropriate development, and are in conformance with the purposes of the applicable statutes. In accordance with the rulemaking provisions of the APA, the Department will promulgate a general permit-by-certification after publication of a notice of rule proposal in the New Jersey Register and consideration of public comment. The rulemaking process includes providing additional notice of the proposal on the Department's website, to media outlets in the Statehouse, and by email to the Department's rulemaking listserv, as well as an additional form of notice. At this time, there are only two adopted general permits-by-certification; general permit-by-certification 10 for the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead, and general permit-by-certification 15 for the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons.

Further, in accordance with N.J.A.C. 7:7-23.3, Additional application requirements for an authorization under a general permit-by-certification, public notice of the application for authorization under the general permit-by-certification is required in accordance with N.J.A.C. 7:7-24, Requirements for applicant to provide public notice of an application.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

205. COMMENT: Under the new general permits-by-certification, anyone can apply online for a permit and issue the permit to themselves. Accordingly, anyone can construct docks or boat ramps for single-family homes with total disregard to wetlands buffers, water quality (in the case of pressure treated lumber), and marine wildlife. Marinas can fill in wetlands between two docks with “fill” to connect them when separated by wetlands or shellfish beds, with no questions asked as to where the fill came from and what toxins it may contain. Shellfish beds must be protected as many families make a living by harvesting clams and other shellfish, especially in the Barnegat Bay. (94)

RESPONSE: As explained in the Response to Comments 196 through 201, the Department has promulgated two general permits-by-certification; general permit-by-certification 10 for the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead, and general permit-by-certification 15 for the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons. The tightly circumscribed set of activities that can be authorized enable the automated issuance of an approval or rejection because there is no need for a case-by-case evaluation of whether the particular proposed manner of conducting the activity meets the conditions of the general permit-by-certification. The limitations set forth under these permits will assure that special areas and special aquatic habitats remain protected.

General permit-by-certification 15 is limited to the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons. The general permit-by-certification does not disregard wetlands and wetland buffers as it sets forth specific conditions relating to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

construction of the structures authorized under this permit to ensure any wetlands disturbed are restored. The Department only requires the use of non-polluting materials in dock, pier, and bulkhead construction when the structure is located within shellfish habitat. Due to the nature of a man-made lagoon, shellfish habitat is not present within these features. As explained at 46 N.J.R. 1069, the conditions in general permit-by-certification 15 are identical to the conditions required to be met under the general permit prior to this adoption at N.J.A.C. 7:7-7.19, which does not require the use of non-polluting materials.

The adopted general permits-by-certification do not authorize the construction of a new marina or expansion of an existing marina within shellfish habitat in “infill” situations. The construction or expansion of such marinas requires an individual coastal permit. Further, the amendments to the shellfish habitat rule allowing for the construction of a new marina or expansion of an existing marina within shellfish habitat in limited infill situations at N.J.A.C. 7:7-9.2(d)4 and 5 do not allow for the filling of wetlands.

206. COMMENT: It is good to see the impact of the rules on development in lagoons and specifically bulkhead repair is being eliminated. It has been a waste of resource for the Department to regulate such activities. (121)

RESPONSE: Through the adoption of the general permits-by-certification, the Department has streamlined the permitting process for the reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing bulkhead and the construction of piers, docks, including jet ski ramps, pilings and boatlifts in man-made lagoons. However, these activities

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

remain regulated under CAFRA and/or the Waterfront Development Law and, as such, require a permit from the Department.

**N.J.A.C. 7:7-5.1 General permit-by-certification 10 – reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing bulkhead**

207. COMMENT: The clean fill requirement at proposed N.J.A.C. 7:7-5.1(a)5 should be revised to clarify that clean fill does not have to be obtained from an onsite, upland source, but can be obtained from an offsite source. (50)

RESPONSE: N.J.A.C. 7:7-5.1(a)5 does not require the clean fill to be obtained from an onsite upland source. Rather, this provision requires that clean fill used as backfill for the bulkhead be obtained from an upland source.

208. COMMENT: It is unclear what constitutes a “functioning” bulkhead or at what point a bulkhead is not functioning. Further, it appears that under the general permit-by-certification 10, an applicant must certify that no adverse shoreline movement will occur as a result of the replacement bulkheading. How will this provision be implemented? (54)

RESPONSE: A bulkhead is considered functional if it is currently operating as designed for its intended use and has been maintained in working order, whereas a non-functioning bulkhead would not be operating as designed. For example, where a bulkhead forms the barrier between land and water, the bulkhead would be considered functional if it keeps the water on the water

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

side and the land on the land side. A non-functioning bulkhead is a bulkhead that has degraded and at present the water passes through the structure, or the tidal wetland boundary has moved landward of the outermost bulkhead face.

Under the permit-by-certification, the applicant is required to certify that the bulkhead is functioning and that its reconstruction will not have an adverse impact on shoreline movements. Civil engineers can assess potential impacts of a bulkhead on shoreline movement. Should an applicant provide incomplete or inaccurate information, such action in accordance with N.J.A.C. 7:7-23.2(k), may result the termination of the authorization under a general permit-by-certification. It may also result in an enforcement action.

**N.J.A.C. 7:7-5.2 General permit-by-certification 15 – construction of piers, docks, including jet ski ramps, pilings and boatlifts in man-made lagoons**

209. COMMENT: Proposed N.J.A.C. 7:7-5.2(a)6 provides that proposed structures must “not hinder” navigation or access to adjacent docks, piers, moorings, or water areas. In the context of a general permit-by-certification, this requirement is too subjective and will lead to inconsistent and arbitrary results among applicants. All structures will have some effect on navigation and access to adjacent areas. Therefore, this standard should be changed to “does not prevent or substantially hinder.” (50)

RESPONSE: The general-permit-by-certification contains specific requirements which are intended to address impacts to navigation or access to adjacent docks, piers, moorings, or water areas. To address impacts to the navigability of the lagoon, N.J.A.C. 7:7-5.2(a) requires that the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

structures including mooring piles and mooring areas not extend beyond a distance of 20 percent of the width of the man-made lagoon. Further, to address impacts to access to adjacent docks and mooring areas associated with the construction of a dock perpendicular to the adjacent bulkhead or shoreline, N.J.A.C. 7:7-5.2(a)8 requires the dock to be located a minimum of four feet from all property lines. The requirement to which the commenter refers is intended to ensure access navigation of the waterway is not hindered and access to adjacent docks, piers, moorings, or water areas is not hindered. The Department does not believe clarification is needed of this intent.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 6. General Permits**

### **General comments**

210. COMMENT: The Department proposes to eliminate specific information requirements for general permits in Subchapter 6 that were previously adopted to provide an efficient permit application review and clarify the plan details that would allow Department to clearly and efficiently evaluate permit applications. Without requiring these plan details, how will applicants know the necessary level of detail and how will Department ensure compliance with permit conditions? (90)

RESPONSE: The specific additional information required to be submitted as part of an application for each general permit has been deleted because some of the requirements, such as the requirement that a Compliance Statement be prepared as part of the application, are unnecessary as the requirement is covered elsewhere in the rules. Other information is more appropriately located on an application checklist. Application checklists identify all of the submissions required under the rules to be part of an application, and also the appropriate level of detail and the format of the information to be submitted for each type of application to ensure that the submissions are sufficient to demonstrate the proposed development meets the requirements of the particular permit. As noted in the example at N.J.A.C. 7:7-23.2(a), where the rules require, as part of an application, the submittal of a site plan or photographs showing certain types of information, the corresponding checklist will indicate, based on the type of development the particular permit covers, the number of copies of the plan to be submitted, the scale and details of the information to be illustrated on the plan or drawing, and the number and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

orientation of photographs of the location of the proposed development. The checklist will also indicate whether the plan should be folded or prepared in a certain manner to facilitate processing. While certain information has been relocated to application checklists, the rules continue to specify all components of the checklist that are regulatory with the checklists, which are available for download from the Department's website at [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) or by contacting the Department at the address set forth at N.J.A.C. 7:7-1.6, also including other types of information designed to assist applicants. The checklists do not include any new or additional requirements not included in the rules.

**N.J.A.C. 7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes**

211. COMMENT: The Department is commended for the amendments allowing the construction of one or two single-family homes or duplexes under a general permit. This change will alleviate the hardship that some homeowners face in attempting to build one house for themselves and one for a family member. (11, 50)

212. COMMENT: The Department is commended for extending the general permit for the construction of one single-family home or duplex to two single-family homes or duplex dwellings. This change will eliminate unnecessary burdens on individual property owners who could not otherwise afford to expend the resources necessary for CAFRA Individual Permit application preparation and review. This limited scope of development is not expected to subject the coastal environment to significant risks. (33, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

213. COMMENT: The provisions expanding the existing general permit for the construction of one single-family home or duplex to two homes or duplexes is fully supported. The change will reduce the cost associated with building these homes, which is often passed on to the homeowners residing in them, as well as speed up the process so that the families purchasing their homes can move into them in a more expedited manner. (134)

RESPONSE TO COMMENTS 211 THROUGH 213: The Department acknowledges these comments in support of the rule.

214. COMMENT: Proposed N.J.A.C. 7:7-6.4(d) seems to imply that if a property on a filled water's edge has a water-dependent use (which includes a dock by definition), construction of a second home (or reconstruction of two homes owned by the same property owner) would be required to comply with the filled water's edge policy. This would mean these homes would not be allowed to use the area within 100 feet of the water for anything other than a water-dependent use. The Department should clarify whether this restriction is meant to apply solely to the subdivision of a lot that does not already have homes for construction of two new homes. Residential docks should not be considered water-dependent uses in this context. (50)

RESPONSE: N.J.A.C. 7:7-6.4(d) requires that the development of two single-family homes or duplexes must comply only with subsection (e) of the filled water's edge rule, N.J.A.C. 7:7-9.23, if the site has included a water-dependent use at any time since July of 1977. For sites with an

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

existing or pre-existing marina, the development would be required to comply with N.J.A.C. 7:7-9.23(e)1i through iii. Under the CZM rules, a marina is defined as any dock, pier, bulkhead, mooring, or similar structure or a collection of adjacent structures under singular or related ownership providing permanent or semi-permanent dockage of five or more vessels. A residential dock with less than five slips would not be considered a marina and thus the development of the site with two single family homes would not need to comply with N.J.A.C. 7:7-9.23(e)1i through iii.

215. COMMENT: The change to allow two houses or duplexes to be built on a single bulkheaded lot will increase non-porous cover and coastal development, as these lots are exempted from the impervious cover requirements of the rules. This change will exacerbate polluted stormwater runoff, impair water quality, and further reduce the natural buffering capacity of coastal areas. What analysis has been done to forecast the increased pollutant load that this change will incur for coastal water bodies? For example, increasing shoreline and streamside impervious cover contradicts the focus on coastal water quality in the Barnegat Bay region and the Governor's 10 Point Plan.

In particular, the proposed change that allows construction of one or two single-family homes or duplexes in the undeveloped portion of a flood hazard area within 100 feet of a navigable waterway at N.J.A.C. 7:7-9.25 puts coastal residents directly in harm's way. In addition to subjecting more homes and residents to the detrimental effects of flooding, sea level rise, and storm events, the resultant increase in polluted runoff that enters these waterways will further degrade coastal water quality. These changes as well as others allow increased levels of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

development closer to waterways, which, in light of the lessons learned from Superstorm Sandy, is shortsighted and irresponsible. (109, 162)

216. COMMENT: The proposed amendments that would expand the general permit for construction or expansion of a single-family home to also include two single-family homes or duplexes is problematic. The proposal would allow such developments in undeveloped high hazard areas, where new construction and infrastructure should be prohibited to the maximum extent. At a time when much of New Jersey's existing infrastructure is in dire need of repair with no apparent solution in sight, it is foolhardy and fiscally wasteful to encourage new infrastructure in vulnerable areas that will require constant upkeep at public expense. (68)

217. COMMENT: The amendments to the general permit 4 propose to authorize the development of one or two single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the one or two single-family homes or duplexes and accessory development are located landward of the mean high water line, and provided the single-family homes or duplexes are not located on a bulkheaded lagoon lot. This provision seems to authorize this activity in coastal high hazard and erosion hazard areas. The rationale for this change is to facilitate development and redevelopment of single-family homes and duplexes based on a disturbance threshold rather than a risk threshold. This provision has real potential to substantially increase the number of people and properties at risk in the coastal area, and should not be adopted without a coast-wide vulnerability assessment that factors in projected sea level

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rise and more extreme storms in the future. Therefore, the construction of two single-family homes or duplexes should not be subject to authorization under a general permit; rather it should continue to be reviewed under an individual permit. (33, 154)

218. COMMENT: The proposed amendments to general permit 4 allow more development and population growth in the coastal zone. Population growth is the driver of most adverse impacts to land use and water quality along the coast. Any accommodation for more growth in the coastal zone should be matched or offset by diverse activities and efforts which substantially minimize adverse impacts of human activities. (54)

219. COMMENT: The rule continues to make it easier to put people in harm's way and also increase stormwater pollution through the expansion of the general permit 4. The expansion of the single-family home or duplex to two single-family homes or duplexes is clearly not a streamlining or lessening of a burden on an applicant. Instead, the changes serve to put more homes and people in high hazard areas with minimal review by the Department. The changes to the general permit result in cumulative death by a thousand homes impacted from stormwater pollution and untold increased risks to public health and safety. This is not the direction to be headed along the coast post-Sandy. (62)

220. COMMENT: Proposed N.J.A.C. 7:7-6.4 expands the scope of development under this permit from one single-family or duplex dwelling to two single-family or duplex dwellings. This provision is inconsistent with the current general permit adopted in response to the CAFRA

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

amendments of 1993 which specifically limited the authorized activity to one single-family or duplex dwelling in order to avoid regulatory hardship on single-family property owners. The rulemaking record illustrates that the Department limited the scope of this general to provide regulatory relief while minimizing potential adverse impacts to coastal resources as required by the CAFRA amendments. The expansion of this general permit will result in more development closer to tidal waters, increasing the vulnerability of the development and residents to coastal storm and flood impacts; will reduce setbacks along the waterfront; will increase stormwater runoff into coastal waters; will adversely impact coastal views; will limit public access to the waterfront; and will increase impacts to coastal dunes.

What was the basis for this change? What type of cumulative impact analysis did the Department conduct to determine that the impacts of this change will be minimized on a coast-wide basis? (90)

RESPONSE TO COMMENTS 215 THROUGH 220: It has been the Department's experience that the lots to which the general permit will apply are typically, but not always, bulkheaded small lots located within existing residential back bay areas and of a size that would preclude intense waterfront developments such as marinas. Typically, these lots are already disturbed and, in some instances, may have an existing single-family home on the lot which will be replaced with two single-family homes. The Department believes that the standards set forth in the permit are protective of both the public and environment.

As explained previously, the coastal high hazard area rule, N.J.A.C. 7:7-9.18, prohibits residential development, including hotels and motels, except for the construction of single-family

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

homes and duplexes that meet the standards at N.J.A.C. 7:7-15.2(e) or (f). Single-family homes and duplexes may be developed in some coastal high hazard areas where extensive development has already occurred. Infill single-family homes or duplexes are found to be acceptable because such development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of quantity and intensity of development that will be permitted and the development allowed will be limited to the degree currently existing in the area. The development of two single-family homes or duplexes under the general permit must also comply with all Federal, State, and local requirements including current construction codes which address flood resistant construction techniques.

**N.J.A.C. 7:7-6.5 General permit 5 – expansion, or reconstruction (with or without expansion), of a single-family home or duplex**

221. COMMENT: General permit 5 should be expanded to apply to one or two single-family homes and duplexes. (50)

RESPONSE: In developing the amendments to the general permit 4 for the construction of one or two single-family homes or duplexes, the Department did consider expanding the scope of general permit 5. However, after consideration, the Department determined that expansion of the scope is not necessary because such activities can be authorized under general permit 4 since the term “construction” includes reconstruction and expansion.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-6.6 General permit 6 - construction of a bulkhead and placement of associated fill on a man-made lagoon**

222. COMMENT: The addition of dredged material as an allowable backfill under the general permit for the construction of a bulkhead and placement of associated fill on a man-made lagoon at N.J.A.C. 7:7-6.6 is supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rules.

223. COMMENT: Proposed N.J.A.C. 7:7-6.6 authorizes bulkhead construction and associated placement of fill on a lagoon lot. The former permit required the use of clean fill from an upland source as backfill. Proposed N.J.A.C. 7:7-6.6(a)6 allows for the use of “dredged material removed as part of the bulkhead construction” as backfill for the bulkhead construction. This condition implies that dredging is also authorized by the permit but this activity is not specified as an authorized activity. Also, there are no conditions included to mitigate impacts from placement of dredged material as backfill, given that dredged material is slurry and requires dewatering prior to use in construction activities. Use of this slurry material will result in turbidity and water quality impacts unless specific conditions are included to mitigate such impacts. And unless adequately dewatered, use of this material as backfill may result in bulkhead failure as material settles over time. The narrative of the proposed rule describes a series of standards referred to as Appendix G which are not included in the proposal. (90)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The installation of a bulkhead under general permit 6 at N.J.A.C. 7:7-6.6 may require the removal of material for the installation of the bulkhead. Because the removal of this material occurs below the mean high water line, it is considered dredging under the CZM rules. Under N.J.A.C. 7:7-6.6(a)6, the dredged material is required to meet the criteria for structural or non-structural fill. Accordingly, the dredged material could not be placed as a slurry and would have to be dewatered prior to its use as backfill. Further, the standards concerning the use of the dredged material as backfill referenced in the Summary from Chapter V of Appendix G were included as part of the proposal, see 46 N.J.R. 1280.

**N.J.A.C. 7:7-6.9 General permit 9 - construction of support facilities at legally existing and operating marinas**

224. COMMENT: The deletion of the requirements that restrooms provide both hot and cold water and be maintained in a sanitary, warm, dry brightly-lit, and well-ventilated condition, and that trash receptacles along with adequate fish cleaning stations be provided, is supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rules.

**N.J.A.C. 7:7-6.10 General permit 10 - reconstruction of a legally existing functioning bulkhead**

225. COMMENT: The amendments to the general permit for the reconstruction of a legally existing functioning bulkhead are supported. (28)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rule.

226. COMMENT: Proposed N.J.A.C. 7:7-6.10(b)3 eliminates the requirement to install a splash pad on the landward side of bulkheads constructed in the V zone. This provision requiring a splash pad was previously adopted in response to evidence collected as part of DEP post-storm damage surveys that documented that the absence of splash pads on V zone bulkheads resulted in erosion and scour of backfill material and associated bulkhead failure. The proposed rule will not adequately protect the bulkhead structures from wave overtopping and potential bulkhead failure. Elimination of this requirement will result in increased storm damages to V zone bulkheads, increased public recovery costs, increased environmental impacts, and completely ignores lessons of coastal storms. What data has DEP relied upon to propose such a change? (90)

RESPONSE: The splash pad requirement was intended to ensure that the bulkhead would protect landward development by lessening the impact from waves overtopping the bulkhead because such impact could weaken the structure's support. However, based on its experience in reviewing applications for the construction of bulkheads and its discussions with licensed professional engineers, the Department determined that the construction of a splash pad may not be structurally appropriate in all situations. Water can accumulate on the splash pad rather than infiltrate into the ground, thereby compromising the integrity of the bulkhead. Therefore, the Department deleted the requirement that bulkhead construction in V zones include a splash pad on the landward side. While a splash pad will no longer be required for all bulkheads subject to wave run up forces, in appropriate circumstances an engineer can choose to incorporate a splash

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

pad into the design provided that the engineer certifies the bulkhead can withstand V zone force wave run up. This amendment allows engineers to design the bulkhead to fit the particular circumstances on the site, either including a splash pad or not as appropriate.

**N.J.A.C. 7:7-6.11 General permit 11 – investigation, cleanup, removal, or remediation of hazardous substances**

227. COMMENT: General permit 11 includes a mitigation requirement for impacts associated with remediation. This requirement discourages remediation activities and should be removed, particularly where the person performing the remediation did not cause or contribute to the conditions that made the remediation necessary. (11, 50)

RESPONSE: Mitigation is required to replace the ecological functions and values of the resource lost. A contaminated special area still provides ecological functions, such as habitat, and, therefore, mitigation is required to replace the ecological functions and values of the resource lost through remediation.

While the Department disagrees that the mitigation requirement should be removed, it does recognize that impacts associated with hazardous substance remediation are unique and, therefore, included in this rulemaking provisions to address such uniqueness. Specifically, the Department recognizes that disturbance associated with hazardous substance remediation is often intended to be temporary but may exceed six months in duration. To address this situation, the definition of “temporary disturbance” adopted herein provides that the Department will consider such disturbances to be temporary provided the disturbed areas are restored to their original

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

**N.J.A.C. 7:7-6.14 General permit 14 – bulkhead construction and placement of associated fill at a single-family home or duplex lot**

228. COMMENT: General permit 14 authorizes bulkhead construction and placement of associated fill at a single-family home or duplex lot and general permit 24 authorizes habitat creation, restoration, enhancement, and living shoreline activities. However, general permit 14 contains no cross-reference to living shorelines. In addition, it is unclear what constitutes a “functioning” bulkhead or at what point a bulkhead is not functioning and how an applicant will certify that no adverse shoreline movement will occur as a result of new bulkheading. Finally, it appears that the general permit for bulkhead construction or reconstruction does not follow the coastal engineering rules, which follows a hierarchy and allows for bulkheads only as the last option for shore protection. Accordingly, provisions related to bulkheading should be removed or altered to ensure that bulkheads truly are the last option for shore protection. Further, the expansion of a bulkhead should not be allowed without any associated mitigation. (33, 154)

RESPONSE: As explained in the Response to Comments 144 and 145, while the Department adopted a new coastal engineering rule in 2013, which made clear that non-structural shore protection and/or storm damage structures should be considered first, the new rule continued the standards from the prior coastal engineering rule for the maintenance or reconstruction of an existing bulkhead. Bulkheads and hardened shorelines have been the norm in New Jersey for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

decades and public acceptance of new natural shore protection measures is needed for a Living Shoreline Program to be successful in New Jersey.

The Department through its Sustainable and Resilient Communities Program will be piloting a comprehensive planning approach that includes the establishment of a municipal shoreline strategy that will incorporate data from wind and wave energy, erosion history, shoreline topography, and bathymetry to develop a plan which would identify the preferred erosion control strategies, with a focus on the benefits of the shoreline mitigation projects for coastal resiliency and habitat creation. Such planning activities will assist in public acceptance of these types of shoreline protection measures and inform future regulatory changes.

As indicated in other Responses above, the Department applies the generally understood meaning of “functional” when describing a functional bulkhead. As defined at N.J.A.C. 7:7-1.5, a bulkhead serves as a shore protection structure that withstands the forces of waves and currents. Accordingly, a functional bulkhead is one that is currently operating as designed for its intended use and has been maintained in working order; whereas a non-functioning bulkhead would not be operating as designed.

Where the one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead within shellfish habitat is allowed under N.J.A.C. 7:7-9.2(i), N.J.A.C. 7:7-9.2(i)3 requires that a conservation restriction be placed on the property associated with the bulkhead requiring that any future replacement bulkhead be located in the same location as the bulkhead replaced or reconstructed. In addition, the replacement bulkhead must be constructed of a non-polluting material. These requirements are intended to mitigate future encroachments into this special area and improve water quality.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C 7:7-6.15 General permit 15 - construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons**

229. COMMENT: The amendments to the spacing requirements between dock planking allowing for an alternative dock design, that is, alternative materials and/or configuration at N.J.A.C. 7:6-6.15 and 12.5(b)6, are supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rules.

230. COMMENT: Proposed N.J.A.C. 7:7-6.15 provides that an “alternative dock design which allows for sunlight penetration equal to or greater than that allowed by the spacing of planking described in this paragraph is also acceptable.” However, there is no standard for what this alternative design is. The purpose of the general permit is to define clear standards that apply to a regulated activity so that applicants understand the full scope of the authorization. There is no explanation as to why this change is being proposed. Previously, dock construction was required to maintain a specific plank spacing to ensure adequate light penetration to sustain the ecological values and productivity of shallow water habitat. The new provision does not provide any examples of what, specifically, the Department will consider as an acceptable alternative, therefore it is unclear what alternatives may ultimately be approved. (90)

RESPONSE: The general permit requires the space between horizontal planking be maximized and the width of horizontal planking be minimized to the maximum extent practicable and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

specifies the spacing necessary between planking based on the width of planks used under normal circumstances. The intent of this provision is to allow the maximum amount of sunlight penetration to the water below. Docks and piers that maximize sunlight penetration into the water and onto the bottom allow continued photosynthesis by plants underneath the structure. In recognition that new materials have been developed that will allow docks to meet the intent of the rule, the Department has modified this provision to allow an alternative dock design, that is, alternative materials and/or configuration, provided the alternative design allows for equal or greater sunlight penetration as docks constructed of planking and configured as prescribed in this paragraph. Alternative designs include, for example, grate decking which is constructed of metal, wood, aluminum, or other similar materials which allow sunlight penetration through the grates within the dock or pier. For clarity, the Department is amending this general permit and the docks and piers recreational rules at N.J.A.C. 7:7-12.5(b)6 which contains the same provision upon adoption to include the above examples of alternative dock design.

**N.J.A.C. 7:7-6.24 General permit 24 – habitat creation, restoration, enhancement, and living shoreline activities**

231. COMMENT: The “sponsorship” requirement should be removed from general permit 24. This general permit should be available to any entity proposing habitat creation, restoration, enhancement, and living shoreline activities. Obtaining sponsorship for activities undertaken by the private sector is difficult. In some cases, applicants have indicated that the Department is the sponsor simply because the Department is the entity that must approve the project. (124)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: In 2013, the Department amended this general permit to enable more persons and entities to be able to apply for authorization under the general permit while still ensuring oversight of the activities by the Federal and/or State experts or colleges/universities conducting research who are responsible for the plans identified at N.J.A.C. 7:7-7.29(b). (See 45 N.J.R. 1141(a); May 6, 2013; 45 N.J.R. 1696(a); July 15, 2013.) A sponsor is an entity that endorses the proposed activities in writing, meaning that the entity has reviewed the project and concurs that the proposed project is suitable for its intended purpose. "Sponsor" does not mean that the entity is funding or partially funding the project. Accordingly, a member of the private sector is able to apply for authorization under this general permit for habitat creation, restoration, enhancement, and living shoreline activities provided it has obtained a sponsor, even if the project is entirely financed by the applicant. The Department does not anticipate the private sector will have difficulty obtaining appropriate sponsorship.

**N.J.A.C. 7:7-6.29 General permit 29 – dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency**

232. COMMENT: The proposed amendment to general permit 29 to allow the Department to make an acceptable use determination (AUD) for the beneficial use of the dredged material following a storm event for which the Governor has declared a State of Emergency is supported. While applicants are given 24 months after the declaration of a State of Emergency to submit an application, the rule does not include a time frame for the Department's action on the application nor does it provide for input from local government on proposed projects that would utilize the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

dredged material. Adding an acceptable time frame for the Department to make an AUD decision and adding the ability for county and municipal review would strengthen this general permit. (129)

RESPONSE: Once an application for an authorization under general permit 29 has been determined to be complete for review, the Department has 90 calendar days to render a decision on the application. Because the AUD for a project is issued concurrently with an authorization under general permit 29, the Department will also render a decision on the AUD within the same 90-calendar-day period.

In accordance with N.J.A.C. 7:7-26.1(g), the Department is required to publish notice in the DEP Bulletin of the receipt of the application, the status of the application during review, and the Department's decision to approve or deny the application. Further, in accordance with N.J.A.C. 7:7-23.4, Additional application requirements for an authorization under a general permit or for an individual permit, public notice of the application for authorization under the general permit is required in accordance with N.J.A.C. 7:7-24, Requirements for applicant to provide public notice of an application. Pursuant to N.J.A.C. 7:7-24.3, the recipients of public notice of an application for an authorization under a general permit include: the municipal clerk, construction code official, environmental commission or other government agency with similar responsibilities, and planning board of each municipality in which the site is located; the local Soil Conservation District, as applicable; and all owners of real property, including easement, located within 200 feet of the property boundary of the site. This notice provides the above entities with the opportunity to comment on a proposed project.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 8. Individual Permits**

### **N.J.A.C. 7:7-8.2 Duration of an individual permit**

233. COMMENT: The Department should clarify the phrase “beyond the permittee’s control” at N.J.A.C. 7:7-8.2(d) as this term is highly subjective without further guidance and definition in the rules. The commenters offered to participate in any discussions concerning further clarification of the phrase. (83, 156)

RESPONSE: New N.J.A.C. 7:7-8.2(d) continues the exception under the prior rules at N.J.A.C. 7:7-1.5(c) for projects delayed due to circumstances beyond the permittee’s control. As explained at 46 N.J.R. 1073, circumstances that could trigger the provisions of N.J.A.C. 7:7-8.2(d) might be, for example, a delay in the financing of a public works project or a delay in obtaining necessary local approvals where the delay is beyond the control of the permittee. The Department does not believe further clarification is necessary.

234. COMMENT: The Department is commended for proposing clarifications to the individual permit duration at proposed N.J.A.C. 7:7-8.2 as it is important that permits be allowed to be extended for an additional five years, particularly in light of the recent economic downturn. (50)

RESPONSE: The Department acknowledges this comment in support of rule.

235. COMMENT: Proposed N.J.A.C. 7:7-8.2(c) should be further revised to streamline the permit extension process. N.J.A.C. 7:7-8.2(c) provides that a permit will remain valid until a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

project is completed, when authorized construction activities landward of the mean water line commence within five years of the date of issuance and “do not cease for a cumulative period of one year or longer.” This requirement is concerning since delays in construction for a cumulative period of more than one year may be unavoidable and beyond the control of the permittee. The time limit condition imposes unreasonable burdens on the permittee and fails to recognize the investment backed expectations of permittees who have commenced construction but whose construction activities have been delayed.

Further, proposed N.J.A.C. 7:7-8.2(c)2 requires the permittee to obtain written approval from the Department to continue construction. It is recommended that instead of requiring written approval, which creates an unnecessary administrative burden on all involved parties, a simple notice process should be created allowing the permittee to submit notice to the Department. No further action should be required unless the Department responds in writing with an objection. Under paragraph (c)1, the Department should have the ability to vary the timing condition and accept submissions or notices of extension that are submitted later than 20 working days prior to the five-year expiration date of the permit. (50)

RESPONSE: N.J.A.C. 7:7-8.2(d) enables the individual permit to continue valid for 10 years from issuance in two situations. The first is where construction has not commenced within five years of permit issuance due to circumstances beyond the permittee’s control. The second is where construction has commenced within five years of permit issuance but will cease for a cumulative period of one year or longer due to circumstances beyond the permittee’s control. In either situation, the permittee must obtain written approval from the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Under N.J.A.C. 7:7-8.2 (c) and (d), written notification to the Department is necessary for enforcement purposes. Twenty working days is the minimum amount of time necessary for the Department to receive, review, and issue a decision on the request to continue construction under N.J.A.C. 7:7-8.2. As provided under N.J.A.C. 7:7-8.2(c) and (d), construction may continue while the request is under review by the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 9. Special Areas**

### **General comments**

236. COMMENT: The Department is commended for adding the rationale sections back into the rules, because the perspective as to why certain special areas are protected is oftentimes lost.

However, it appears that some rationales have been included and others have not. Each special area should have a rationale. (50)

RESPONSE: With the concurrence of the Office of Administrative Law, most of the Rationale statements promulgated as part of many sections of N.J.A.C. 7:7E, which statements have not previously been reproduced in the New Jersey Administrative Code, will now be reproduced in the Code in N.J.A.C. 7:7 as adopted herein. In addition to the Rationale statements included in the notice of proposal, the rule text of this notice of adoption includes those Rationale statements not amended by this rulemaking that will now be reproduced in the Code.

### **N.J.A.C. 7:7-9.2 Shellfish habitat**

237. COMMENT: Proposed N.J.A.C. 7:7-9.2(a)2, which provides that shellfish habitat may be classified by the Department based on “data available to the New Jersey Bureau of Shellfisheries,” is vague. The rule should specify the data relied upon for shellfish habitat determinations. In general, the Department requires the use of historic maps published on their website which reflect historic shellfish distribution, but not necessarily current shellfish distribution. The rule should state, or guidance should be developed, to allow onsite shellfish analysis. (11, 50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: In addition to the habitat mapping, the Department's Bureau of Shellfisheries references information on shellfish from a variety of sources, including site inspections performed by the Bureau, relay data, disease investigations, and site inspections performed by third parties. Due to the sporadic nature of data availability at any one particular site, sites are reviewed on a case-by-case basis. The Bureau of Shellfisheries currently does not have a formal database of this information, but has been working to improve cataloging of data and sharing with the Division of Land Use Regulation. Because the information concerning the presence of shellfish is not static, it would be impossible to cite all sources in the rule and ensure that the rule is always "up to date." Current densities of shellfish populations can be discerned using the "Shellfish Survey Guidelines for New Jersey" also known as the "Lockwood Guidelines" dated 1991. The Guidelines have and will continue to be available to the public. However, the Department notes that the use of a crab dredge for sampling hard clams is no longer recommended. Before performing a shellfish survey, the Department recommends that the proposed methodology be reviewed by the Bureau of Shellfisheries.

238. COMMENT: The proposed amendments to N.J.A.C. 7:7-9.2 will result in considerable adverse impacts to shellfisheries from the construction and expansion of new and existing marinas in historical and current shellfish habitat, irrespective of their status, that is, whether the area is productive. Even areas that are prohibited for harvesting of shellfish provide important shellfish habitats, as such areas provide refuge habitats for nursery stock which can help sustain populations and increase larval/juvenile recruitment. Shellfish habitat supports limited and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

imperiled coastal resources (shellfish and shellfish harvesters) and should be protected. Healthy shellfish populations and a thriving shellfish industry are vital to the shore's recovery and economic vitality. (54)

239. COMMENT: Proposed N.J.A.C. 7:7-9.2(c) allows new marinas and marina expansions into shellfish habitat areas, which will result in condemnation of shellfish habitat and loss of productive shellfish resources and associated economic benefits. (90)

240. COMMENT: The provisions allowing for the construction of new marinas in infill situations and allowing shellfish beds to be filled in should not be adopted. How will the Department stop developers from filling in land to connect a marina and restaurant? The Department must balance the needs of the various businesses. (15)

RESPONSE TO COMMENTS 238 THROUGH 240: The adopted amendments reflect an effort by the Department to balance competing interests associated with the diversity of uses and users in and around the shore area, while protecting the shore ecosystem. The amendments do not allow the filling of shellfish habitat to create uplands for the construction of the marina or restaurant.

The allowance for the expansion of an existing marina into shellfish habitat is limited to legally existing, operating, commercial marinas that are open to the general public for the mooring of vessels, including marinas operated by public agencies, commissions, and authorities. In addition to limiting the type of marina that may be expanded under N.J.A.C. 7:7-

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

9.2(d)4, the rule requires that the expansion be designed and constructed in a manner that limits the area of shellfish habitat condemned, that is downgraded to prohibited status, to the maximum extent practicable through expanding the marina into areas other than shellfish habitat if possible, reconfiguring the slips within the existing marina to provide for the desired expansion to the extent possible, and adjusting the dimensions and locations of the expansion to minimize the total area of shellfish habitat covered by structures.

Further, with respect to the construction of new “infill” marinas, the development of the infill criteria was predicated upon a realization that there are existing impacts in areas possessing a concentration of commercial marinas such that the marine ecosystem within the surrounding area has been affected by their operation. While the construction of a new commercial marina within shellfish habitat in an infill situation will result in the downgrading of the shellfish growing water classification to prohibited for shellfish harvesting where the structures are located and boats moored, the habitat will continue to exist. The rules also prohibit dredging associated with the construction or use of the new marina for the reasons discussed in the Response to Comment 247.

In addition to limiting the number of locations and situations under which an existing marina may be expanded and a new marina constructed, the rule amendments require adequate water depths, the use of non-polluting materials, and additionally require a monetary contribution to the Department’s dedicated account for shellfish habitat mitigation, ensuring that adverse impacts to the shellfish resource are minimized and habitat improvements are promoted in areas outside of the impacted area through the use of the mitigation funds.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

241. COMMENT: The proposed policy decision to allow the further destruction of limited shellfish habitat is objectionable on its face, but the rationale the Department offers is counterintuitive. The proposal acknowledges decreasing demand for boat slips at commercial marinas, and the subsequent failure of the associated marina business, yet it proposes to solve this by increasing the number of slips. This is fundamentally contrary to the basic economic principles of supply and demand: if the current demand is not being sought by the market, why would the State seek to promote the construction of more slips, particularly with a direct cost to the public trust and other economic interests such as the shellfish industry?

How can this impact be justified? Has the Department conducted an analysis of this proposed change to determine the environmental and economic impacts that will result? Has there been a benefit cost analysis pursuant to Executive Order No. 2 that has shown an overall benefit of the proposed change? What scientific and/or market analysis has the Department relied on to justify condemnation of productive shellfish habitat to support new marinas and marina expansions into shellfish habitat? Anecdotal information provided by the Marine Trades Association should not be relied on to justify destruction of these productive shellfish resources. Has the Marine Trades Association information been peer reviewed and/or verified by the Department to confirm the findings? Has the Department conducted independent research into marina slip availability to determine if this accommodation is necessary? Has the Department coordinated with the Federal agencies such as the National Marine Fisheries Service and USACE to determine whether this change is consistent with their standards and permit requirements? Please provide results of all information, studies, and analyses referenced above. (90)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

242. COMMENT: The Department is proposing to sacrifice shellfish habitat in order to support marinas. In its proposal, the Department suggests these rules are necessary in order to ensure there is a sufficient number of boat slips available. There is no discussion that the current number of slips is insufficient or will be insufficient in the near future. The Department does not explain how the sacrifice of habitat is in accordance with New Jersey law. Further, it does not explain how removing shellfish habitat will not further degrade water quality. Shellfish provide filtering services to the environment. Further, the Department does not explain why the shellfish industry is less important than the marina industry; it is not. Further, by removing habitat these rules will further the degradation of water quality; thus harming both industries. (118)

243. COMMENT: Considering the heavily developed nature of most of New Jersey's coastal regions, the area of functioning shellfish beds, which are critically important to the coastal economy and ecology, is already limited. Since the Department has not analyzed the a cumulative impacts of allowing the expansion of existing marinas and the construction on new marinas into shellfish areas in limited infill situations, it is impossible to accurately predict the potential loss of shellfish areas that could result from this provision. Therefore, it is recommended that the Department withdraw this provision at this time, and conduct an analysis of the cumulative impacts to shellfish areas that could result if this provision were implemented. If the analysis demonstrates that there would be negligible impacts to shellfish areas, the Department could propose this provision in a future rulemaking. (33, 154)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

244. COMMENT: The amendments to the shellfish habitat rule will allow the expansion, or new construction, of a marina in shellfish habitat which would undermine the health of this habitat. There does not appear to be any provisions in the proposal to limit the cumulative area of shellfish habitat that will be impacted or condemned across the State as a result of this change. It is requested that the Department provide both the research and the rationale that demonstrate the economic and environmental benefits that will result from this change, over and above the loss of ecological habitat, water quality benefits, sensitive shellfish resources, and income to those harvesting shellfish. (162)

RESPONSE TO COMMENTS 241 THROUGH 244: Marinas are an essential component of the State's waterfront community as they provide necessary infrastructure and services to the boating public as well as contribute to the State's economy. The Department, through the CZM rules, does recognize the environmental and economic importance of the shellfish industry to New Jersey. For example, the Department undertook rulemaking in 2013 to facilitate the restoration of the shellfish aquaculture industry and to further encourage shellfish aquaculture activities through the streamlining of the permitting process by adding three new permits-by-rule, the addition of two new general permits and the revamping of the aquaculture rule to specifically address shellfish aquaculture. (See 45 N.J.R. 1141(a); May 6, 2013 and 45 N.J.R. 1696(a); June 15, 2013). As explained in the Response to Comments 238 through 240, the adopted amendments reflect an effort by the Department to balance competing interests associated with the diversity of uses and users in and around the shore area while protecting the shore ecosystem. In addition, as indicated in the environmental impact statement at 46 N.J.R. 1129, the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department expects positive environmental impacts to result from the shellfish habitat restoration, enhancement, and research activities conducted with funding from the Department's dedicated account for shellfish habitat mitigation. These activities along with the requirements of the shellfish habitat rule as amended, will serve to minimize the impacts to shellfish habitat and the marine ecosystem.

As explained at 46 N.J.R 1087, the information provided by the Marine Trades Association concerning the loss of marine facilities within the State is supported by the Department's experience in reviewing development proposals to convert existing water dependent uses to housing. Accordingly, the Department does not consider this information anecdotal. The amendments adopted herein are intended to help maintain the economic viability of existing marinas and allow for the development of new marinas in appropriate circumstances while minimizing environmental impacts.

The amendments allowing for the expansion of existing marinas and construction of "infill" marinas in limited situations do consider impacts to water quality. The amendments require a minimum amount of water to be present in the area where boats will be moored, prohibit dredging associated with the construction and use of the marina, require the use of non-polluting materials, and require the recording of a conservation restriction as explained below.

Mitigation for the impacts to shellfish habitat and marine ecosystem associated with the construction of a dock, pier, mooring, or marina include the recording of a conservation restriction and a monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The conservation restriction is intended to mitigate for the impacts to the marine ecosystem and prohibits the construction of a shoreline protection structure other than

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

stone rip-rap or other sloped revetments on an unbulkheaded lot, or the replacement, reconstruction, or rehabilitation of an existing bulkhead with anything other than non-polluting materials. In addition, the monetary contribution to the Department's dedicated fund for shellfish habitat mitigation and restoration is based on the area of shellfish habitat covered by planned structures and mooring areas, the documented shellfish density supported by the local habitat, and the commercial value of the resource. This contribution is intended to ensure that adverse impacts to the shellfish resource are minimized and habitat improvements are promoted in areas outside of the impacted area through the use of the mitigation funds. The account is administered primarily by the Department's Division of Land Use Regulation and is used by the Department's Marine Fisheries Administration to conduct activities related to the enhancement and/ or restoration of shellfish habitat throughout State waters. See the Response to Comment 364 for various enhancement and restoration efforts funded from the Department's dedicated account for shellfish habitat mitigation.

245. COMMENT: The change to the shellfish habitat rule allowing the expansion of an existing marina or construction of a new infill marina in shellfish waters is supported. This change will help preserve existing marinas and expand others. However, it is not clear why dredging is prohibited in these instances as this will limit the applicability of this provision in areas of high demand. Dredging should be allowed at an existing marina where dredging is currently permitted or where dredging is permitted at adjacent marinas. (50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rule. Dredging associated with the construction or use of the expansion or new marina is prohibited because it destroys shellfish habitat by removing the substrate in which the shellfish live. While the expansion of an existing marina and construction of a new commercial marina within shellfish habitat in an infill situation will result in the downgrading of the shellfish growing water classification to prohibit for shellfish harvesting where the structures are located and boats moored, the habitat will continue to exist allowing the resource to continue to contribute to the overall ecosystem.

246. COMMENT: N.J.A.C. 7:7-9.2(d)4ii and 5iv limit marina expansion or a new marina to areas with water depth no less than two feet at mean low water. However, jet skis and jet ski floats (lifts) do not require a minimum of two feet of water, and mooring areas or “slips” for jet skis and jet ski floats (lifts) should be permitted in marinas at any depth. (150)

RESPONSE: As explained in the rule Summary at 46 N.J.R 1075, a minimum water depth at least two feet at mean low water, with the depth to be greater than that if larger vessels are proposed to be moored in the area of expansion, is required. This requirement is necessary to ensure that the area in which the marina will be expanded has adequate water depths so that dredging will not be required. In addition, this water depth provides separation between floating docks/jet ski ramps and the bottom of the waterbody so that at mean low water the floating dock/jet ski ramp is not sitting on the water body bottom.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

247. COMMENT: Proposed N.J.A.C. 7:7-9.2(d)4iii and 5v provide that no dredging shall be performed in conjunction with the construction or use of the marina expansion or the new marina. This prohibition is overly restrictive because an expanded or new marina, which otherwise meets all applicable criteria, should not be prohibited if only a minor amount of dredging is necessary for its construction. In addition, once a marina exists, over time maintenance dredging may become necessary due to natural siltation, the build-up of sand/mud due to tidal currents, or the deposition of sand/mud due to storm events such as Sandy. While shellfish habitat may be temporarily disrupted due to initial minor dredging or due to maintenance dredging in the future, the shellfish habitat will quickly regenerate. The need for minor initial dredging in conjunction with an expanded or new marina or later maintenance dredging, outweighs the temporary disruption of shellfish habitat within the marina, and the proposed rule should provide such latitude. (150)

RESPONSE: The amendments to the shellfish habitat rule allowing for the expansion of an existing marina and the construction of a new marina in certain “infill” situations are intended to balance the need to preserve existing marinas and the services they provide with protecting the shellfish resource. Dredging destroys existing shellfish habitat by altering the physical characteristics of the substrate which in turn impacts shellfish recruitment. The extent of the impact to shellfish habitat from dredging is site specific and dependent upon the type and amount of substrate removed, the composition of the remaining substrate after dredging occurs, and amount of siltation that occurs post dredging. Based on the Department’s experience with dredging activities at marinas, the shellfish habitat will most likely not recover to pre-dredging

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

conditions. In addition, once an area is dredged legally, future dredging activities are classified as “maintenance dredging” and would be allowed under the rules at N.J.A.C. 7:7-12.6 to maintain dredged area, which will further inhibit any chance of recovery to shellfish habitat.

248. COMMENT: The standard for determining the length of a dock at proposed N.J.A.C. 7:7-9.2(d)3ii is based on the nearest adjacent docks, whether or not the length of an adjacent dock is representative of other docks in the area or is even a useable dock. The rule should include flexibility to allow consideration of docks beyond adjacent properties if the adjacent dock is not typical. (50)

RESPONSE: The dock length limitation seeks to provide reasonable recreational use of waterfront property while minimizing impacts to shellfish habitat. Development of the dock in-fill criteria was predicated upon a realization that there are existing impacts in areas with a relatively higher dock density, and the incremental addition of a single dock between them would present, at most, only a negligible discernable impact. However, the rule at N.J.A.C. 7:7-9.2(d)3ii provides the Department with flexibility in determining the acceptable length of a dock where it determines that a different length dock or pier is appropriate in order to ensure that the requirements of the CZM rules are met.

249. COMMENT: Proposed N.J.A.C. 7:7-9.2(d)4iii and 5i allow for new commercial marinas within shellfish habitat if located between two adjacent existing marinas not more than 500 feet apart. However, the rule restricts the adjacent marinas to commercial marinas in order to allow

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

for a new infill commercial marina between the two existing marinas. While the intent of the Department to restrict new infill marinas to “commercial” marinas, that is those open to the general public, rather than restricted to homeowners or club members, is acknowledged, there is no logic to restricting the two qualifying adjacent marinas to commercial marinas in order to allow a new infill commercial marina. The idea of allowing new infill marinas is to encourage a concentration of new marina development, rather than a spread of such development. Whether the two existing adjacent marinas are commercial or restricted to a condominium development or private club is not relevant to the reasons for encouraging new marina development in infill locations. (150)

RESPONSE: Because N.J.A.C. 7:7-9.2(d)5i allows for the construction of new marinas in a public resource (the shellfish habitat), it is appropriate to require that the new infill marina be located within an area that has a concentration of marinas that serve the public.

250. COMMENT: The requirement at N.J.A.C. 7:7-9.2(d)4iii which prohibits dredging in conjunction with the construction or use of the marina expansion, is opposed especially if the mitigation requirement is not removed. If mitigation will be required for marina expansion into shellfish habitat, and since the purpose of mitigation is to compensate for loss of shellfish habitat, dredging should not be prohibited within the expanded marina footprint. (11, 28)

251. COMMENT: The amendments to the shellfish habitat rule allowing for the expansion of an existing marina or construction of a new marina in certain “infill” situations is strongly

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

supported. However, the mitigation requirement and the monetary contribution are opposed as they will likely prevent any of these projects from moving forward; therefore making these amendments ineffective. As stated in the Summary, the mitigation for shellfish is based on economic loss to the industry and not the loss of shellfish to nature. Basing the monetary contribution on the area of shellfish habitat condemned indicates that the economic interest of shellfishermen is valued over that of marina owners. As recognized in the proposal, the economic contributions of the boating industry are significant. These contributions must be given equal or greater priority when determining monetary contributions for mitigation. It is requested that the Department re-evaluate and amend the mitigation requirements in this section to reduce the monetary requirement for the construction of a dock, pier, mooring, or marina in shellfish habitat. (11, 28)

RESPONSE TO COMMENTS 250 AND 251: The mitigation requirements associated with the expansion of a marina or construction of a new infill marina are the same as the requirements for the construction of a dock, pier, or mooring at a single-family property. In all cases, dredging is prohibited as it removes the resource and habitat. Mitigation is required for the economic loss associated with the loss of harvestability of the shellfish and thus the monetary contribution is based on the area of shellfish habitat covered by structures and moorings, the documented shellfish density on the property, and the commercial value of the resource. The monetary contribution is not based on the destruction of the habitat through the removal of the substrate in which the shellfish live resulting from dredging of the habitat.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

252. COMMENT: The amendments provide that the marina expansion must be designed and constructed in a manner that limits the area of shellfish habitat condemned and reduced to prohibited status and reduces adverse impacts to the marine ecosystem to the maximum extent, but no definition or quantification of these terms is given. (162)

253. COMMENT: There does not appear to be any limit on dock coverage, which will further impact sensitive habitat. (90)

RESPONSE TO COMMENTS 252 AND 253: As explained at 46 N.J.R. 1074, N.J.A.C. 7:7-9.2(d)4i requires that the expansion be designed and constructed in a manner that limits the area of shellfish habitat condemned, that is, downgraded to “prohibited” for shellfish harvesting under N.J.A.C. 7:12-2.1(a)1ii and reduces the impacts to the marine ecosystem to the maximum extent practicable. This is to be achieved by expanding the marina into areas other than shellfish habitat if possible, reconfiguring the slips within the existing marina to provide for the desired expansion to the extent possible, and adjusting the dimensions and locations of the expansion to minimize the total area of shellfish habitat covered by structures.

254. COMMENT: The amendments allow marina expansion into areas as shallow as two feet mean low water, which will cause disturbance of the sediments and increase turbidity, thereby adversely affecting water quality. Additionally, this increased turbidity and the mechanical impact of prop dredging will affect shellfish in the area as well as adjacent productive shellfish habitat areas. In effect, much larger areas of productive shellfish habitat will be impacted and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

condemned. This change conflicts directly with the statement at proposed N.J.A.C. 7:7-12.5(g) regarding docks and piers constructed in waters of insufficient depth adversely impacting water quality and special areas. (90, 162)

RESPONSE: The rules require that the area in which the marina will be expanded must have sufficient water depths to accommodate the vessels to be moored within the area of expansion. In no case may the water depth be less than two feet at mean low water. Accordingly, the actual required water depth will depend upon the size of the vessels the proposed expansion is designed to service with more than two feet depth at mean low water required if the two foot minimum depth is inadequate to accommodate the vessels the facility is designed to accommodate. This requirement is necessary to ensure that the area in which the marina will be expanded has adequate water depths so that dredging will not be required. Dredging destroys shellfish habitat by removing the substrate in which shellfish live. The minimum two feet of water at mean low water was chosen to ensure there is adequate water depth to support the average sized vessel as well as adequate water to continue to support the existing shellfish habitat within the proposed mooring area. Docks and piers constructed in water with insufficient depth cause increased turbidity resulting in adverse impacts to special areas and water quality. By way of example, while larger than an average vessel, on average, a 25-foot boat can have a draft ranging from one foot six inches to three feet. If the area of expansion is designed to moor vessels of this size, requiring water depth sufficient to accommodate this range of drafts at low tide will prevent suspension of sediment into the water column.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

255. COMMENT: The proposed amendments indicate that the pilings for an expansion or new construction are not required to be made from non-polluting materials. This allowance compromises water quality and the health of shellfish resources. (162)

256. COMMENT: The rule allows for the use of polluting materials for dock pilings in shellfish habitat areas. Use of creosote, CCA, and other hazardous materials has been shown to be a potential health hazard, as documented via Rutgers University research that the Department has cited and relied upon in the past. Given the fact that non-polluting pile materials are available, the Department is compromising human health, water quality, and shellfish health and ignoring alternatives that would minimize these adverse impacts. What new scientific studies has the Department relied upon in support of a new rule that allows polluting materials to be used for marine construction in shellfish habitat areas? (90)

RESPONSE TO COMMENTS 255 AND 256: The rules do not allow for the use of creosote. N.J.S.A. 13:1K-36 et seq., an act concerning creosote or creosote-treated products, prohibits the use of creosote except for use associated with railroads and utility poles in New Jersey. As explained at 46 N.J.R. 1075, pilings are not required to be of a non-polluting material because treated pilings do not leach the chemicals to the same degree that sheathing and planking do. The difference in leaching is due to the fact that pilings consist primarily of “heartwoods” which better absorb chemicals used to treat wood. In addition, the surface area of pilings which come in contact with the water is much less than the surface area of bulkhead sheathing and dock planking that comes in contact with the water; therefore, pilings do not represent as great a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

concern in terms of chemical leaching. This position is supported by, for example, “Effects of CCA Wood on Non-Target Aquatic Biota,” Weis, J.S. and Weis, P, .Pre-Conference Proceedings, Environmental Impacts of Preservative-Treated Wood. Florida Center for Solid and Hazardous Waste Management, Gainesville, FL (2004): <http://www.ccaresearch.org/Pre-Conference/pdf/Weis.pdf> and “Assessment of the Risks to Aquatic Life from the Use of Pressure Treated Wood in Water,” Sinnott, T. J. New York State Department of Environmental Conservation. 17 March 2000. [http://www.dec.ny.gov/docs/wildlife\\_pdf/woodline.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/woodline.pdf).

257. COMMENT: Proposed N.J.A.C. 7:7-9.2(d)5 refers to Appendix F as an illustration for the measurement of the 500 feet for determining a marina infill location. It states that the 500 feet is to be measured from the outside corner of the outermost end of decking of the two nearest adjacent legal docks or piers. However, Appendix F shows the opposite; the distance is measured from the inside corner of the outermost end of the nearest adjacent dock or pier. Appendix F should be changed to reflect the language of the proposed rule. (150)

RESPONSE: Appendix F accurately reflects N.J.A.C. 7:7-9.2(d)5 which provides that the distance between the two nearest adjacent legal docks or piers of the two marinas on either side of the proposed marina is no more than 500 feet as measured from the outside corner of the outermost end of decking of the two nearest adjacent legal docks or piers.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

258. COMMENT: The amendments allowing for the expansion of existing marinas and construction of new marinas in limited infill situations specified at N.J.A.C. 7:7-9.2(d)4 and 5 are opposed. (7, 80)

RESPONSE: Over the past several years, the State has seen a decrease in the number of marina facilities through their conversion to various non-water dependent uses. The Marine Trades Association of New Jersey has reported that as of 2011, over 500 boat slips and 17 marinas have been lost. Not only does this loss result in fewer boat slips available to the public, it results in a loss of jobs, revenue, and services at marina facilities. The amendments to the shellfish habitat rule allowing for the expansion of existing marinas and construction of new marinas are intended to preserve existing marinas and allow for the construction of new marinas in limited situations where resources are already currently affected. These amendments may have an impact on the shellfish growing water classification of the waters located within the new marina or marina expansion as the waters will be automatically condemned and reduced to “prohibited” status pursuant to N.J.A.C. 7:12-2.1(a)1ii if they are not already condemned or “prohibited.” However, because the amendments prohibit dredging associated with the new marina construction or marina expansion, the shellfish and habitat will remain. In both instances, mitigation is required as a means of compensating for adverse impacts to shellfish habitat and associated ecosystems. The Department expects positive environmental impacts to result from shellfish habitat restoration, enhancement, and research projects funded in whole or in part by moneys deposited into the dedicated account for shellfish habitat mitigation. Together, the requirements of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

amended rule will ensure that the impacts to shellfish habitat and the marine ecosystem are minimized.

259. COMMENT: Proposed N.J.A.C. 7:7-9.2(c)5 includes infill requirements that can only apply to very specific marina sites. Please identify the specific areas and marina sites that this rule has been proposed to accommodate. (90)

RESPONSE: The areas of the coast where infill marinas may be constructed under N.J.A.C. 7:7-9.2(d)5 are those areas where there is a concentration of commercial marinas within a close proximity. Areas anticipated to qualify include the back bay area of Atlantic City, Ventnor, and Margate in Atlantic County, and the Navesink and Shrewsbury Rivers in Monmouth County.

260. COMMENT: It is recognized that the marina industry has been hard hit by Superstorm Sandy, and the Department's efforts to promote marina improvements and enhancements is supported, including water-orientated or related facilities such as restaurants, within the boundaries of existing marinas. However, increasing marinas into new undeveloped water areas to support a shrinking base of boaters does not appear to be justified. Instead of promoting expansion of marinas into undeveloped waterfront areas, the Department is encouraged to invest more funding into environmental enhancement programs such as the NJCMP's Clean Marina Program and the Department's Clean Vessel grants program, and to work with counties and municipalities to provide grants and other financial incentives for improvements within existing

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

marina boundaries. The goal is for the Department not to adversely affect water quality, aquatic habitats and resources, and other non-marina water dependent activities. (54)

RESPONSE: As explained previously, the Department in amending this rule had to balance the competing interests of the shellfishermen and boating communities. The Department recognizes that there are existing marinas located within shellfish habitat. Rather than prohibiting the expansion of these marinas, the Department, in an effort to preserve these existing water dependent uses, is allowing for their expansion in limited circumstances, recognizing that the marina infrastructure already exists and that the shellfish growing waters within the area of the existing marina are classified as prohibited. Further, with respect to the construction of new marinas in limited “infill” situations, the development of the infill criteria was predicated upon a realization that there are existing impacts in areas possessing a concentration of commercial marinas such that the marine ecosystem within the surrounding area has been affected by their operation. While the construction of a new commercial marina within shellfish habitat in an infill situation will result in the downgrading of the shellfish growing water classification to prohibited status for shellfish harvesting where the structures are located and boats moored, the habitat will continue to exist.

The New Jersey Clean Marina Program and New Jersey Clean Vessel Act Program are important tools that help to improve water quality and the Department continues to support these programs through funding and rulemaking. Specifically, the New Jersey Coastal Management Program continues to support the New Jersey Clean Marina Program by providing \$25,000 annually to the New Jersey Sea Grant Consortium which provides technical support and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

assistance with implementation of best management practices for marinas participating in the Program. There are currently 48 designated clean marinas and 33 additional marinas that have pledged to work towards clean marina designation.

With respect to New Jersey's Clean Vessel Act Program, as of January 2015, there have been 381 applications for funding for the construction, renovation, operation, and maintenance of sewage pumpout facilities from marinas, county governments, and other interested parties. More than 300 marina pumpout stations and eight pumpout boats in New Jersey's waters have been funded since the program's inception in 1994. It has been estimated that the pumpout stations at marinas have prevented approximately 500,000 gallons of sewage from entering the water and pumpout boats accounted for an additional 120,000 gallons. To encourage the installation of pumpout facilities at marinas and in support of New Jersey's Clean Vessel Act Program, in 2013 the Department adopted a permit-by-rule, currently codified at N.J.A.C. 7:7-4.19 of the consolidated rules, for the construction and/or installation of a pumpout facility and/or pumpout support facilities in support of the Department's Clean Vessel Program. (See 45 N.J.R. 1146(a), May 6, 2013; 45 N.J.R. 1696(a), July 15, 2013.)

**N.J.A.C. 7:7-9.7 Navigation channels**

261. COMMENT: The amendments to the navigation channel rule addressing the acceptability of maintenance and new dredging of navigation channels are supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rule.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

262. COMMENT: Proposed new N.J.A.C. 7:7-9.7(b)5 and 6 address the acceptability of maintenance and new dredging of navigation channels. With the exception of smaller scale and more localized dredging projects which require fewer controls, dredging projects require careful scrutiny, regardless of whether the dredging is considered maintenance or new. Large-scale dredging projects, such as those planned for the Westecunk Creek and Parkers Run, must be justified by demonstrating a “need” for the project and a lack of suitable alternatives, such as navigational aids to guide boaters away from shallows. The mere desire to have a speedier, deeper, and wider channel is an insufficient basis for the Department to consider the dredging conditionally acceptable inasmuch as all dredging operations have some environmental consequences, especially when it comes to deposition of the spoils. (119)

RESPONSE: Prior to these amendments, the maintenance dredging and new dredging of navigation channels was conditionally acceptable under the prior rules at N.J.A.C. 7:7E-4.6(a) and 4.7(b)1, respectively. These provisions have been carried over through this rulemaking at N.J.A.C. 7:7-12.6(a) and 12.7(b)1. In addition, consistent with the foregoing rules, the Department has made it clear with the amendments to the navigation channel rule at N.J.A.C. 7:7-9.7(b)5 and 6 that maintenance and new dredging of navigation channels is conditionally acceptable provided the dredging operation and the management of the dredged material meets the requirements of the maintenance dredging or new dredging rules at N.J.A.C. 7:7-12.6 and 12.7, respectively, and Appendix G.

The Department undertakes a comprehensive review of all dredging and dredged material management projects for consistency with the CZM rules. The new dredging rule at N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-12.7(b)1 continues to require that there be a demonstrated need for the dredging that cannot be satisfied by existing facilities. The maintenance dredging rule does not require a demonstration of need since maintenance dredging ensures continued safe navigation of State and Federal navigation channels and continued access to marinas, docks, ports, and other appropriate water dependent development. Also, State-channels have designated design depths. The need for maintenance dredging arises when shoaling causes established State- channels to become shallower than their design depths which hinders navigation. The draft of vessels using a particular State- channel is limited to the design depth. Accordingly, there is no requirement to demonstrate a need to dredge Westecunk Creek and Parker Run as these waterways already have existing State navigation channels with design depths, that are maintained by the State of New Jersey. Dredging will not occur below the design depth. Further, both the maintenance and new dredging rules require permittees to address water quality and biological impacts associated with the dredging activity. Through the review process, dredging projects are frequently revised (altered) to avoid or minimize any impacts associated with the activity to ensure regulatory compliance.

**N.J.A.C. 7:7-9.14 Wet borrow pits**

263. COMMENT: There is concern that the use of freshwater borrow pits for disposal of saline dredged materials will result in adverse impacts to water quality in the borrow pits and the surrounding ground and surface waters. Some of these borrow pits also support Federal- and State-listed plant and animal species; others are used for various types of recreation. The difficulty in managing such materials throughout much of the State is recognized and the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department is encouraged to make beneficial uses of such materials their highest priority.

However, actions which potentially impact the State's vital freshwater resources are not supported. (54)

RESPONSE: While the Department encourages the beneficial use of dredged material, the use must be consistent with the applicable CZM rules. As adopted, pursuant to N.J.A.C. 7:7-9.14(f), the filling of wet borrow pits for construction is conditionally acceptable provided the filling complies with the FWPA Rules, N.J.A.C. 7:7A, and the fill, including dredged material, is an appropriate particle size for the site, is clean, and will not degrade groundwater quality or flow. Accordingly, if saline dredged material was proposed for disposal in a freshwater borrow pit, the potential impacts to groundwater and surface water quality, including impacts due to chlorides, would be evaluated and the disposal would either be prohibited or conditioned in a manner that would ensure resources are protected.

#### **N.J.A.C. 7:7-9.15 Intertidal and subtidal shallows**

264. COMMENT: It is recommended that shore protection for property that has a sudden or recent (within the past five to 10 years) loss of shoreline be included as an activity that does not require mitigation. (83, 156)

RESPONSE: The intertidal and subtidal shallows rule does allow for shore protection activities within intertidal and subtidal shallows without mitigation. Specifically, the rule at N.J.A.C. 7:7-9.15(g) allows for the establishment of living shorelines in this special area to address the loss of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

vegetated shorelines and habitat in the littoral zone provided the living shoreline complies with the living shoreline general water area rule at N.J.A.C. 7:7-12.23. Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This is accomplished through the strategic placement of vegetation, sand, or other structural and organic materials. Because a living shoreline project is a habitat protection, restoration, or enhancement project that will result in a net gain of habitat functions and values, mitigation for the impact to these special areas is not required.

**N.J.A.C. 7:7-9.23 Filled water's edge**

265. COMMENT: The amendments to the filled water's edge rule allowing for the construction of a restaurant at a marina are supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rule.

266. COMMENT: While the Department is commended for amending the rule to allow restaurants within the filled water's edge areas when associated with a marina, it is recommended that the requisite amount of marina slips (25) for this rule to apply be revised to 10 to 15 slips. It is also recommended that the rules allow for yacht clubs within the filled water's edge. (83, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department has determined, based on its experience reviewing coastal permit applications for activities at marinas, that a marina consisting of 25 dockage units consisting of either dry dock storage or wet slips is of a sufficient size that, after construction of the restaurant, it will continue to provide marina services to support the recreational boating industry.

Because a yacht club is considered a water dependent use, as that term is defined at N.J.A.C. 7:7-1.5, a yacht club would be allowed in the waterfront portion of a filled water's edge site provided all requirements of that rule are met.

267. COMMENT: It is recommended that the Department allow mixed use buildings that include both non-water dependent and water dependent uses in the filled water's edge area. The rule could require that at least 51 percent of the structure be dedicated to water dependent uses or that the ground floor must be entirely dedicated to water dependent uses. (83, 156)

RESPONSE: The Department through this rulemaking is allowing for non-water dependent activities within filled water's edge sites in conjunction with water dependent activities, through the provisions allowing for the construction of a restaurant at a marina. A restaurant, since it serves the public, can be water-oriented if it takes full advantage of a waterfront location. Marinas are a water dependent development essential to the State's boating industry as they provide necessary infrastructure and services to the boating public. However, the economic recession and Superstorm Sandy have severely impacted this industry. The Department has determined that the construction of a restaurant within the waterfront portion of a marina site is appropriate since the restaurant will serve the public and expand the public's opportunity for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

both visual and physical access to the water and will provide marinas with a year-round use making them more economically viable. However, the Department continues to recognize the importance of filled water's edge sites and intends with the limited exception for restaurants at marinas and similar water-oriented uses, to protect them for water dependent uses.

268. COMMENT: It is disappointing that there has been no substantive change in the filled water's edge rule. This rule has inhibited redevelopment of waterfront sites where there is not practical future water dependent use. (11, 50)

RESPONSE: The filled water's edge rule seeks to promote both the marine trades as an important sector of the State's economy and uses that enhance public access to, and use of, the water's edge. Uses that require a waterfront location in order to function and uses that serve the general public and derive economic benefits from a water location are favored over non-water related uses such as housing and offices. The economic recession and Superstorm Sandy severely impacted the marina industry. Through this rulemaking, the Department has amended the filled water's edge rule to allow for the construction of a restaurant at a marina with 25 or more dockage units consisting of either dry dock storage or wet slips provided that it meets the standards at N.J.A.C. 7:7-15.3(d)8. The construction of a restaurant within the waterfront portion of a marina site is appropriate since the restaurant will serve the public and expand the public's opportunity for both visual and physical access to the water and will provide marinas with a year-round use making them more economically viable.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Further, this rulemaking included limited amendments to the rules governing the use, development and protection of the State's coastal resources relating to, among other things, marina development, dredging, recreational docks and piers, mitigation, and high rise structures. The Department attempts to identify any possible improvements needed in all its rules, obtain input from those impacted by its various programs, including the coastal program, and propose amendments determined to be appropriate to ensure that the Department's mission is achieved in as efficient a manner as possible. On September 8, 2014, the Department held a stakeholder meeting on the coastal rules to engage interested stakeholders. Based on the comments submitted on the rulemaking adopted herein, the Department sought input on, among other things, the filled water's edge rule. As a result of the stakeholder meeting, seven stakeholder subcommittees were formed one of which is intended to address the filled water's edge rule. This subcommittee met on September 29, 2014. An audio recording of the stakeholder subcommittee meeting is available at <http://www.nj.gov/dep/workgroups/past.html>.

269. COMMENT: Proposed N.J.A.C. 7:7-9.23(1) allows the construction of restaurants within the filled water's edge area of marina sites. Allowance for non-water dependent uses (restaurants) at marinas will detract from existing, limited water dependent uses and will further adversely impact the availability of water dependent uses throughout the coastal zone. This provision is in direct conflict with the Department's allegations that marina uses have been lost over time and therefore warrant relief from other special area rules as included elsewhere in this proposal. On one hand, the Department would allow non-water dependent uses at marina sites, while on the other hand the Department would allow destruction of shellfish habitat and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

submerged vegetation habitat to expand marina uses. If the Department actually wanted to preserve marina uses, there should be no provisions allowing construction of non-water dependent uses at existing marina sites. Also important to note is that the Department proposes to delete the language of the rationale of the rule which documents the increasing demand for marina uses. (90)

RESPONSE: Restaurants are considered “water oriented” development if they take full advantage of the waterfront location (see N.J.A.C. 7:7-1.5). A water oriented development is a development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. A restaurant, since it serves the public, can be water-oriented if it takes full advantage of a waterfront location. Marinas are a water dependent development essential to the State’s boating industry as they provide necessary infrastructure and services to the boating public. However, the economic recession and Superstorm Sandy have severely impacted this industry. The Department has determined that the construction of a restaurant within the waterfront portion of a marina site is appropriate since the restaurant will serve the public and expand the public’s opportunity for both visual and physical access to the water and will provide marinas with a year-round use making them more economically viable.

The Department deleted the language stating that many existing marinas are filled to capacity with waiting lists of one season or more from the rule rationale since this statement is no longer true. As explained at N.J.A.C. 7:7-15.3(d), the conversion of marinas to waterfront condominiums and other non-water dependent development is a trend that is growing both on a national and State level. The Marine Trades Association of New Jersey has been tracking the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

loss of marine facilities within the State. As indicated in the Response to Comments 241 through 244, the marina industry has lost over 500 slips and 17 marina facilities have been closed or sold for development. This is supported by the Department's experience in reviewing development proposals to convert existing water dependent uses to housing.

#### **N.J.A.C. 7:7-9.25 Flood hazard areas**

270. COMMENT: Proposed N.J.A.C. 7:7-9.25(d) will allow the construction of non-water dependent uses within the undeveloped flood hazard area. This provision will result in more development within vulnerable areas, and more potential for property damage and associated recovery costs. The rule will also reduce the area of public space available for public access to the waterfront.

The proposal contains conflicting language in the rationale. One section includes the goal to "preserve flood hazard corridors in an undeveloped state with native or adaptive forest vegetation and limited exceptions for water dependent uses." Yet another section includes language supporting residential development and makes no mention of the impact of these uses on public safety, impacts on public access to the waterfront, environmental impact, and that such development precludes water dependent uses, all which conflict with the statutory intent of CAFRA. The Department's reliance on building standards to protect lives and property is a clear weakening of the current policy which prohibits development in undeveloped portions of the flood hazard area. (90)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

271. COMMENT: The rules promote development in dangerous areas. The changes to the rules allowing the construction of a house within 100 feet of the water in a flood hazard area stands out. (51)

RESPONSE TO COMMENTS 270 AND 271: The amendment to N.J.A.C. 7:7-9.25(d) allows the construction of one or two single-family homes or duplexes within an undeveloped flood hazard area that is within 100 feet of a navigable water body. Residential development in the flood hazard area is not inconsistent with the Flood Hazard Area Control Act Rules. Under the FHACA Rules, development of a single-family home is allowed within flood hazard areas provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.

272. COMMENT: Pursuant to N.J.A.C. 7:7-9.25(d), 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 one or two single-family homes or duplexes in accordance with N.J.A.C. 7:7-15.2(e), or is for a water dependent use. The proposed amendment at N.J.A.C. 7:7-15.2(e)5i specifies that, “development that is located on a site partially or completely within a coastal high hazard areas rule (N.J.A.C. 7:7-9.18), or an erosion hazard areas rule (N.J.A.C. 7:7- 9.19)” need not comply with these policies if three conditions are met. This proposed exception to the location policies via the use policies is not appropriate. The applicability of this expanded exception to the flood hazard area rule should be linked to those communities that have conducted vulnerability assessments and adopted hazard mitigation plans or risk-based building

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

ordinances, as evidenced by a high NFIP Community Rating System rating. A more narrow regulatory scope for this provision would help incentivize risk based planning and management at local levels of government. (33, 154)

RESPONSE: Prior to this adoption, the CZM rules' coastal high hazard area and erosion hazard area rules allowed for the construction of single-family homes and duplexes within the special areas provided the development complied with housing use rule for single-family homes or duplexes. The Department has continued these provisions under this adoption. Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive development has already occurred. Infill single-family homes or duplexes are found to be acceptable because such development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of quantity and intensity of development that will be permitted and the development allowed will be limited to the degree currently existing in the area. Under the adopted rules, the Department is allowing the construction of one or two single-family homes or duplexes within an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body. Residential development may be authorized under the FHACA Rules. Specifically, the FHACA Rules allow development of a single-family home in flood hazard areas provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.

It should be noted that the NFIP does allow some development in V zones and that the CZM rules are more stringent in V zones than the minimum standards set by NFIP. FEMA's

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

regulations do not address the siting of developments; rather, FEMA addresses construction and development standards in 100-year flood plains that must be adopted by a municipality participating in the NFIP. FEMA encourages communities that participate in the NFIP to adopt higher standards. Further, a coastal municipality may choose to adopt regulations that are more stringent than those of the CZM rules.

273. COMMENT: The proposed amendments to N.J.A.C. 7:7-9.25 allowing single-family homes in flood hazard areas within 100 feet of a navigable waterway are opposed. Previously, only water-dependent uses of these areas, such as marinas, were allowed. This change has several undesirable outcomes: it may reduce public access to the water; it puts more people, including residents and first responders, at risk from future storms/sea level rise; and it will result in the further degradation of the Barnegat Bay and other water bodies. Because marinas have historically served as an important means of providing public access to the State's waters, the Department is encouraged to explore other mechanisms with marina owners and operators and other community partners to provide public access to the water at such sites. (54)

RESPONSE: With the expansion of the general permit at N.J.A.C. 7:7-6.4 to include two single-family homes or duplexes, as discussed in the Response to Comment 325, the Department has determined that, in addition to the compliance with the special area rules for beaches, flood hazard areas, riparian zones, wetlands, wetland buffers, and endangered or threatened wildlife or plant species habitat, the development of two single-family homes or duplexes should also address historic water dependent uses of the site. While the Department's experience is that

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

typically the lots subject to this rule are small in size and would preclude intense waterfront developments such as marinas, this is not always the case. Some lots may be larger in size and have pre-existing water-dependent uses. In addition to the special area rules listed above that would prevent negative environmental impacts from the development of two single-family homes or duplexes; the Department believes that water-dependent uses should also be protected where appropriate.

Because the types of lot that this general permit applies to are generally lots that would not support water dependent uses and lots that have been used for water dependent uses at any time since 1977 are subject to the filled water's edge rule, the Department disagrees that the amendments to the flood hazard area rule reduce public access to the water. As explained in the Response to Comments 270 and 271, the amendment to N.J.A.C. 7:7-9.25(d) which allows the construction of one or two single-family homes or duplexes within an undeveloped flood hazard area that is within 100 feet of a navigable water body is in accord with the FHACA Rules. Because development authorized under this general permit is subject to the flood hazard area rule, N.J.A.C. 7:7-9.25, and thus must comply with the standards specified in the FHACA Rules, development under this general permit will only occur where design and construction standards ensuring protection of public safety and the environment are met.

#### **N.J.A.C. 7:7-9.26 Riparian zones**

274. COMMENT: Proposed N.J.A.C. 7:7-9.26 allows construction of restaurants within riparian zones at existing marina facilities. This new provision will result in destruction of riparian zone

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

vegetation, functions, and values; will result in the displacement of current and future water dependent uses; and will result in greater density of development within hazardous areas. (90)

RESPONSE: The adopted amendments reflect an effort by the Department to balance competing interests associated with the diversity of uses and users in and around the shore area while protecting the shore ecosystem. As explained at 46 N.J.R. 1077, the ability to construct a restaurant at a marina facility will expand the public's opportunity for both visual and physical access to the State's tidal waters while providing marina facilities with a year-round use making them more economically viable. Accordingly, the Department has determined that the construction of a restaurant at a marina within a riparian zone is acceptable provided the requirements at N.J.A.C. 7:7-15.3(d)8 are met. The standards at N.J.A.C. 7:7-15.3(d)8 are intended to ensure that the services provided by the marina are not compromised and the marina will continue to support the boating industry. Further, the construction of a restaurant at a marina must comply with all applicable CZM rules, including N.J.A.C. 7:7-13 that addresses the intensity of development. Activities within riparian zones are additionally subject to the limitations and requirements for construction within riparian zones set forth in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-10.2, which ensure that activities near surface waters do not impair the important functions and values provided by riparian zone vegetation.

#### **N.J.A.C 7:7-9.27 Wetlands**

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

275. COMMENT: The addition of living shoreline projects with beneficial use of dredged materials, as permitted development in wetland areas at N.J.A.C. 7:7-9.27(c), acknowledges their positive impact on shoreline stabilization, buffering capacity, and water quality. (162)

276. COMMENT: The deletion of the requirement that a former dredged material management area in which wetlands are now present must have been used within the last 10 years is supported. This change will facilitate the use of former dredged material management areas that may not have been used in the last 10 years but are critical to facilitate maintenance and safe navigation of New Jersey's waterways. (28)

RESPONSE TO COMMENTS 275 AND 276: The Department acknowledges this comment in support of the rule.

277. COMMENT: The deletion of the requirement that a dredged material management area must have been used within the last 10 years is opposed. While the practical economic and logistical necessity of maintaining dredged material management areas near dredging areas is understood, because of the potential land use conflicts that ensue, this change is troubling. Allowing any historical dredged material storage area to be used as a dredged material management area could easily lead to the conversion of natural areas that may serve important habitat and ecological functions. The continued protection of threatened and endangered species and protection of wetlands, especially the buffer and water quality filtration functions, must be evaluated before converting an ecologically and culturally valuable area into a dredged material

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

management area. While there is a need for local dredged material management areas, these areas should be prioritized at a regional scale instead of being re-established solely because of a historic use. (109, 162)

278. COMMENT: Proposed N.J.A.C. 7:7-9.27(h) eliminates the requirement that continued disposal of dredged material on disposal sites containing wetlands be limited to sites that have been used for dredged material disposal within the past 10 years. The original regulatory provision was adopted in an effort to strike a balance between protection of wetlands, threatened and endangered species habitat, critical wildlife habitat, and coastal resources with the need to continue disposal operations. The newly proposed rule will allow for disposal of dredged material on wetlands regardless of how recently the site had been used for these operations. The new rule has no limits on the allowable area of wetlands disturbance, or the impacts to forest vegetation, threatened or endangered species habitats, and critical wildlife habitat. In addition, the proposal at N.J.A.C. 7:7-9.27(h)1 allows for the construction of new dikes, and new dredge material disposal within wetlands and sensitive habitats. The net result of these provisions will be continued loss of these coastal resources. Further, the rule fails to even require mitigation for all impacts. (90)

RESPONSE TO COMMENTS 277 AND 278: Over the last decade, a number of dredged material management areas adjacent to Federal and State navigation channels have been converted to residential or commercial development or mitigation areas, which has resulted in the inability of the Federal and State governments to maintain these navigation channels for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

recreational and commercial boating. Due to the loss of these areas, the government has had to transport dredged material far from its source at a higher cost, or defer maintenance dredging altogether. The failure to maintain navigational depths creates a hazard to all boating traffic and can impede growth of commercial and recreational activities in coastal communities or even result in reduction of those activities. Therefore, to minimize impacts to special areas, the Department has determined that it is appropriate to evaluate the use of former dredged material management areas based on existing environmental conditions at the time an application is submitted to the Department, rather than limiting use of the area based solely on the last time it was used for dredged material management. If it is determined that threatened and endangered species habitat, critical wildlife habitat, wetlands, or other natural resources are present on or in the vicinity of the proposed dredged material management area, the proposed dredged material management area would be required to comply with all applicable CZM rules, such as the special area rules addressing wetlands, threatened or endangered wildlife or plant species habitat, or critical wildlife habitat. The threatened and endangered wildlife or plant species habitat, critical wildlife habitat, and wetlands rules contain specific standards to protect these coastal resources and ensure that the environmental impacts associated with the proposed activity are minimized. Mitigation for impacts to these special areas will be required in accordance with the applicable rule.

279. COMMENT: The elimination of the requirement which holds that a dredged material management area or confined disposal facility (CDF) must have been in use during the past 10 years is opposed. This requirement must be left in place to protect all property owners against

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

improper development of a dredged material management area. This rule protects people who may have bought a home or built a home near an abandoned CDF without any knowledge or warning. (46)

280. COMMENT: The deletion of N.J.A.C. 7:7E-3.27(h)1, which provided that in order to use a former dredged material management area which now contains wetlands, the site must have been used in the last 10 years, is opposed. This provision was deleted in an attempt to facilitate the reuse of the Dock Road CDF in Eagleswood, Ocean County, which has not been used since 1983. The reuse of the Dock Road CDF is being challenged in the Appellate Division. (See *In the matter of Westecunk Creek State-Channel Maintenance Dredging and CDF Renovation, Eagleswood Township, Ocean County*, NJDEP File No. 1508-02-0009.2 (WFD100001 and FWW100001), Docket No. A-000493-14.)

N.J.A.C. 7:7E-3.27(h)1 provides essential protection for any person or development in the coastal area. Otherwise, any residential property owner faces the prospect that the apparently natural area across the street or down the road could be “revived” as a former CDF or dredged spoil area. This provision operates as a type of public notice provision, and is also a key public and private property rights protection. No homeowner or recreational property owner should have to fear that he or she is residing or contemplating investing in property that could later be severely impacted by a reused CDF that had been abandoned and long-since reverted to nature. (119)

RESPONSE TO COMMENTS 279 AND 280: The amendments to this rule are not directed to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

any specific site or project but are intended to be applied throughout the State. As explained previously, a number of dredged material management areas have been converted to other uses, negatively impacting the maintenance dredging of Federal and State navigation channels that can subsequently affect the growth of commercial and recreational activities in coastal communities. To address this issue and to minimize impacts to special areas, the Department has determined that it is appropriate to allow for additional flexibility in the use of former dredged material management areas based on existing environmental conditions at the time an application is submitted to the Department to minimize impacts to special areas rather than limiting use based upon the number of years since the site was last used for dredged material management.

N.J.A.C. 7:7E-3.27(h)1 did not provide protection for any person or development in the coastal area as asserted by the commenter. Rather, it addressed the impacts of the reuse of a dredged material management area on wetlands. The establishment or rehabilitation of an upland CDF requires Federal, State, and local approvals, all of which have public notice requirements that allow interested parties to submit formal comments on the proposed activity for consideration by the regulatory authority.

281. COMMENT: It is recommended that the wetlands rule include a process through which the Department can designate wetlands of a similar plant community as the adjacent mapped coastal wetlands or a biotic community identified within the Wetlands Act of 1970 as being regulated under the coastal wetlands authority. (83, 156)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Wetlands Act of 1970 at N.J.S.A. 13:9A-2 defines coastal wetlands as “any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State of New Jersey along the Delaware Bay and Delaware River, Raritan Bay, Barnegat Bay, Sandy Hook Bay, Shrewsbury River including Navesink River, Shark River, and the coastal inland waterways extending southerly from Manasquan Inlet to Cape May Harbor, or at any inlet, estuary or tributary waterway or any thereof, including those areas now or formerly connected to tidal waters whose surface is at or below an elevation of one foot above local extreme high water, and upon which may grow, or is capable of growing, some, but not necessarily all, of the following: Salt meadow grass (*Spartina patens*), spike grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltmarsh grass (*Spartina alterniflora*), saltworts (*Salicornia Europaea*, and *Salicornia bigelovii*), Sea Lavender (*Limonium carelinianum*), saltmarsh bulrushes (*Scirpus robustus* and *Scirpus Paludosus* var. *atlanticus*), sand spurrey (*Spergularia marina*), switch grass (*Panicum virgatum*), tall cordgrass (*Spartina pectinata*), hightide bush (*Iva frutescens* var. *oraria*), cattails (*Typha angustifolia*, and *Typha latifolia*), spike rush (*Eleocharis rostellata*), chairmaker's rush (*Scirpus americana*), bent grass (*Agrostis palustris*), and sweet grass (*Hierochloe odorata*).” Accordingly, the Department does not have the ability to expand the plant species named in the Act through rulemaking, as the commenters seem to suggest.

Further, the Act at N.J.S.A. 13:9A-1.b required the Commissioner to make an inventory and maps including boundaries of all tidal wetlands within the State. As a result, in the early 1970s the Department delineated tidal wetlands by interpreting aerial photography and conducting representative field inspections to verify the delineation. Accordingly, only those wetlands identified on the Department’s coastal wetlands maps which are promulgated by rule,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

are subject to the Wetlands Act of 1970 (see Appendix D). Therefore, any revisions to the maps must be made through rulemaking. All other tidal wetlands not identified on the coastal wetland maps are regulated under the Freshwater Wetlands Protection Act and implementing rules.

#### **N.J.A.C. 7:7-9.30 Intermittent stream corridors**

282. COMMENT: Proposed N.J.A.C. 7:7-9.30, which contains the Department's rule protecting intermittent stream corridors, is recodified from N.J.A.C. 7:7E-3.32 with amendments.

Specifically, the Department is proposing to delete the description of the prohibited activities that would directly degrade the function of intermittent stream corridors at existing N.J.A.C. 7:7E-3.32(c) since these resources are protected under the FHACA Rules and/or the FWPA Rules. Those regulations impose prohibitions as well as limitations that are designed to protect the functioning of this water feature, and should not be removed or deleted. (90)

RESPONSE: The amendments to the intermittent stream corridor rule do not lessen the protection of this special area. Rather, the amendments simply delete the description of the prohibited activities that would directly degrade the function of intermittent stream corridors since the rule, as amended, requires a proposed activity comply with the FHACA and FWPA Rules, as applicable. Both the FHACA and FWPA Rules impose prohibitions and limitations on activities that are designed to protect this resource.

#### **N.J.A.C. 7:7-9.49 Dredged material management areas**

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

283. COMMENT: The phrase “one-time placement” at N.J.A.C. 7:7-9.49(c)1 is not defined.

Are dredged material deposits over a several year period pursuant to a single contract or agreement that establishes the deposit considered “one-time placement”?

The one-time placement requirement will discourage further use or reuse of dredged material management areas on municipal and private properties at a time when the U.S. Army Corps of Engineers and the New Jersey Department of Transportation are actively pursuing reactivation of past dredged material management areas. (149)

RESPONSE: “One-time placement” refers to a single, non-recurring dredging project and the management of the associated dredged material. This would include, for example, the use of a temporary upland confined disposal facility to dewater the dredged material resulting from new dredging to construct a marina or the maintenance dredging of a residential dock. N.J.A.C. 7:7-9.49 does not “discourage” the use or reuse of dredged material management areas (DMMA) located on municipal or private properties; N.J.A.C. 7:7-9.49(c)1 would limit a change in land use of a dredged material management area unless the specified conditions are met. This provision provides persons, entities, and local governmental entities assurance that areas used for the one-time placement of dredged materials or that are not located within hydraulic pumping distance of a State or Federal channel, which is generally a distance greater than a mile, may be converted to a different land use where the Department has determined that the purchase of the property for use as a dredged material management area is not feasible.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

284. COMMENT: Proposed N.J.A.C. 7:7-9.49(c) creates the potential for temporary takings or inverse condemnation of properties whose proposed change of use is not conditionally acceptable because the Department determines that purchase by the State is feasible. A Department determination that purchase of a property by the State for use as a dredged material management area is feasible should lapse and a permit should become effective if, within one year following the permit decision, the State has not acquired the property in question. (149)

RESPONSE: The commenter presumes that the Department would deny a willing and able developer all economic use of the subject property. The rule merely sets forth the types of land the Department seeks to use as a dredge material facility, as part of its mission to enhance the coastal area and its accompanying water dependent uses.

285. COMMENT: Many historic dredged material management areas have evolved over years of inactivity into valuable components of the coastal ecosystem and serve as nesting areas for colonial water birds and habitat for endangered species. As the barrier islands and mainland areas have been increasingly developed, these DMMA's have become more important to the State's coastal wildlife species. Any reuse of a DMMA should evaluate the impacts to existing DMMA wetlands, threatened and endangered species habitats, colonial water bird nesting areas, and other wildlife species of concern. (54, 90)

RESPONSE: As explained in the Response to Comments 277 and 278, if it is determined that wetlands, threatened or endangered species habitat, or critical wildlife habitat are present on or

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

within the vicinity of a proposed dredged material management area, the proposed dredged material management area would be required to comply with the applicable CZM rules, such as the special area rules addressing wetlands, endangered or threatened species habitat, or critical wildlife habitat. Each special area rule contains specific standards to protect these coastal resources and ensure the environmental impacts associated with the proposed activity are minimized. Mitigation of the impacts would be required in accordance with the applicable rule.

286. COMMENT: Dredged material management areas present some special challenges in New Jersey. While some dredged spoil areas were undoubtedly established without any permit from the State or Federal government and preceded the extensive current coastal development, dredged material management areas should only be considered documented if they were previously permitted by the State or Federal government. A standard for the acceptable reuse of a dredged material management area should be added to this rule and it should require avoidance and minimization of impacts and mitigation for any permitted impacts. (54)

RESPONSE: The dredged material management area rule is intended to preserve existing dredged material management areas as these areas are critical to the State's recreational and boating industry and marine commerce. In addition to previously permitted facilities, dredged material management areas can be clearly documented using aerial photography and on-site geotechnical investigations. Appendix G, Chapter IV, Management of dredging activities and dredged material, addresses management of upland confined disposal facilities and discusses the design, construction, operation, closure, and permitting of these facilities. In order to use a site

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

identified as a dredged material management area for a proposed dredged material management activity, all applicable permits and approvals must be obtained from the Department. For example, in addition to requiring a coastal permit, a dredged material management area may also require a freshwater wetlands permit and water quality certificate, all which require avoidance, minimization, and mitigation for any adverse environmental impacts.

287. COMMENT: Proposed N.J.A.C. 7:7-9.49 would allow development on dredge material disposal sites and conversion of land uses. The Department continues to express concern about the importance of dredge material placement facilities on sustaining marina uses now and in the future, yet proposes a new rule that will eliminate these scarce disposal sites in favor of new development. How does the DEP reconcile these conflicting provisions? (90)

RESPONSE: The main objective of the rule is to preserve dredged material management areas that are located within close proximity to State and/or Federal navigation channels. Not all dredged material management areas used by the State are owned and operated by the State; dredged material management areas are also owned by persons, entities, or local governmental entities. For example, dredged material management areas may be located on private property such as marinas. The rule allows for the conversion of these dredged material management areas under certain circumstances so as not to penalize the person, entity or local government entity for allowing past use of their facility.

288. COMMENT: The new dredged material management area rule is supported. (28)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

289. COMMENT: The Department is commended for recognizing the importance of dredging and dredged material management areas to safe navigation of State and Federal navigation channels and marinas. Lack of appropriate disposal areas has been a significant impediment to the maintenance of existing channels, marinas, and mooring areas. (83, 156)

RESPONSE TO COMMENTS 288 AND 289: The Department acknowledges these comments in support of the rule.

290. COMMENT: While the need to preserve active dredged material management sites is understood, the new dredged material management area rule at N.J.A.C. 7:7-9.49 is highly restrictive. The rule does not allow a private landowner to close their dredged material management facility, even if it is no longer economically feasible to operate or if permits cannot be obtained. The cost to re-open a historic dredged material management area may be very high, especially if new berms and outfalls are required or the U.S. Army Corps of Engineers requires mitigation for impacts to wetlands that may have developed within the historic facility.

Operation of such a facility also requires permits from the State and the Army Corps of Engineers, and local permits often are required. These may not be obtainable and yet there is no provision in the rule to take that into consideration. The rule as written requires these areas not be redeveloped if they are within “hydraulic pumping” distance, even if the State does not want to operate them or if it is otherwise infeasible to do so. The hydraulic pumping distance is not specified and could depend on the number of pumps used. It is recommended that the rule be

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

modified to change the “and” between paragraphs (c)1 and (c) 2 to an “or” and an additional condition be added such as “the re-use of the site is not economically feasible or cannot be permitted under existing Federal, State or local regulations.” As currently written, the proposed rule may limit redevelopment of sites in proximity of navigation channels and encumber unusable sites. (50)

RESPONSE: N.J.A.C. 7:7-9.49(c) does not prohibit development that changes the land use of a privately held dredged material management area, it simply provides the acceptability conditions under which any such change would be reviewed by the Department during an application process, in coordination with the Federal and State agencies responsible for maintaining navigation channels. Therefore, since a change in land use from a dredged material management area is not outright prohibited in the rule, it is not highly restrictive. A private landowner may convert the land use of their dredged material management area once the acceptability conditions have been met. A land owner may also reopen any privately held historic dredged material management area provided it can be demonstrated to comply with the applicable CZM rules and obtain the necessary State and Federal permits. This provision would apply to any State or Federal agency at an existing site or newly acquired site from a private landowner. The adopted amendments are intended to promote the reestablishment of former dredged material management areas while ensuring minimum impacts to coastal resources in an effort to ensure adequate capacity for dredged material management in the future by public and private entities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

291. COMMENT: The standard at proposed N.J.A.C. 7:7-9.49(c) states that “development that changes the land use is conditionally acceptable provided the Department determines that the previous use for the area was for the one-time placement of dredge material...” Given the fact that these sites are often quite old, how can the Department confirm that placement of dredge material occurred only once? The rule does not identify the proofs that the Department will require demonstrating compliance with this standard and allowing new development and/or changed land use that will preclude future dredge material disposal at these sites. (90)

RESPONSE: State and Federal permits that document a dredged material management area was designed and used once to manage the dredged material for a specific dredging project will be available for some areas. In other cases, the Department will review possible historic records, as well as aerial photography, if available, and use its experience to evaluate site-specific characteristics, such as size, soils, vegetation, location, and presence/absence of berms, to determine if the dredged material management area was used only once.

292. COMMENT: It is recommended that the Department expand the dredged material management area special area rule to encourage a one-time State managed project to create new and regionalized dredged material management areas within areas that are appropriately located adjacent to an existing improved transportation corridor. The Department should consider a one-time amnesty on environmental impacts to allow the development of these facilities. The Department could also consider enhancements, such as perimeter fencing and limited material placement, to historic dredged material management areas for critical wildlife habitat as

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

mitigation for new facilities. The initiative would eliminate the current predicament that surrounds the State and Federal agencies' ability to manage navigation channels and for the private sector to manage existing marina basins, mooring areas, and lagoons.

It is further recommended that the Department allow the construction of permanent access roads to existing dredged material management areas that may be appropriately located but not directly connected to a nearby improved transportation corridor without additional mitigation requirements. (83, 156)

RESPONSE: The creation of regionalized dredged material management areas is beyond the scope of the implementation of the CZM rules. However, the Department, in conjunction with the New Jersey Department of Transportation's Office of Maritime Resources, has been working to identify appropriate existing and historic dredged material management areas that could be used as suggested by the commenter.

The Department does not believe the "amnesty" provision suggested by the commenter is appropriate. Dredged material management areas can be located and developed so as to minimize the potential adverse impacts from the construction and operation of these areas, consistent with the existing laws and regulations.

As written, the commenter's recommendation concerning "enhancements" is unclear. The commenter appears to suggest that alternative mitigation measures be considered by the Department for implementation if a dredged material management area was to be constructed and operated in critical wildlife habitat. Any proposed mitigation proposal submitted to the Department as mitigation for a dredged material management area will be evaluated by the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Division of Land Use Regulation's mitigation unit and appropriate State and Federal resource agencies.

With respect to allowing the construction of permanent access roads to existing dredged material management areas, such construction is conditionally acceptable, provided the access road is consistent with all applicable CZM rules, and any mitigation required in response to those rules (for example, impacts to wetlands) is provided.

293. COMMENT: The rule at N.J.A.C. 7:7-9.49 which establishes special area policies for dredged material management areas that are historically documented and were previously used for the placement of dredged material associated with the dredging of State and Federal navigation channels or marinas is supported. (129)

RESPONSE: The Department acknowledges this comment in support of the rule.

294. COMMENT: It is requested that the Department publish a map and list of the known previously used dredged material management areas. This would be helpful for local governments that need to find dredged material management areas for their projects. (129, 158)

RESPONSE: The New Jersey Department of Transportation's Office of Maritime Resources is in the process of developing a Dredged Material Management System database, including a mapping component that will identify and characterize known existing and historic dredged material management areas. This database will be accessible to the public when completed.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Additional information and resources concerning dredged material management in New Jersey are available on that agency website at:

<http://www.state.nj.us/transportation/airwater/maritime/drechannel.shtm>.

295. COMMENT: New N.J.A.C. 7:7-9.49 recognizes the need for dredged material management areas and discourages changes in land use for a State or Federally owned dredged material management area. This provision only seems to apply to government-owned property, although development of dredged material management areas on any land should be minimized and regionalized to the maximum extent practicable. Discouragement does not prohibit changes in land use, and the language does not specify to what extent applicants will be discouraged from building over former dredged material management areas. Further, development that would include a change in land use is deemed conditionally acceptable if former dredged material placement was for one-time use. What proof will be required to document one-time dredged material storage on a property? How does this provision actually prevent dredged material management areas from being developed? To reduce future land use battles over dredged material management areas placement, the Department should encourage both publicly and privately owned water-dependent businesses that conduct maintenance dredging to manage (and beneficially reuse, where possible) their dredged material on-site. (162)

RESPONSE: N.J.A.C. 7:7-9.49(b) and (c) contain provisions that address development that proposes changes to land use of a dredged material management area owned by a Federal or State agency, or by a person, entity, or local government. The commenter is correct that any

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

conversion of land use by a Federal or State agency that owns a dredged material management area is discouraged by the Department. “Discouraged” is defined in the rules to mean that a proposed use (or change in use in this case) of a coastal resource is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred.

The New Jersey Department of Transportation’s Office of Maritime Resources administers the State navigation channel dredging and dredged material management program, and is pursuing the continued use of State-owned sites, and the purchase or lease of new sites, using a regionalized approach for maintaining the State navigation channels. This approach is supported by the Department. Accordingly, it is unlikely that New Jersey Department of Transportation’s Office of Maritime Resources would pursue the conversion of an existing dredged material management area to another State use, as it would be detrimental to the ability to maintain State navigation channels in the future.

As explained in the Response to Comment 250, “one-time placement” refers to a single, non-recurring dredging project and the management of the associated dredged material. This would include, for example, the use of a temporary upland confined disposal facility to dewater the dredged material resulting from new dredging to construct a marina or the maintenance dredging of a residential dock. N.J.A.C. 7:7-9.49(c)1 would limit a change in land use of a dredged material management area unless the specified conditions are met. N.J.A.C. 7:7-9.49(c)2 is intended to allow the State to purchase a particular site before it is converted to another use, if feasible and in line with its regional approach to dredged material management of State navigation channels. This provision does not necessarily prevent a dredged material management area from being developed, but does serve to preserve those that are beneficial to the State.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department currently encourages privately-owned water dependent businesses to manage the dredged material on-site in existing dredged material management areas, or to use temporary dewatering facilities on-site, and to beneficially use this material on-site as construction fill as much as possible, or to transport the material off-site to another beneficial use location. For example, the adopted amendments promote the beneficial use of dredged material by allowing the material to be used as back fill for bulkhead construction under several general permits.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 12. General Water Areas**

### **N.J.A.C. 7:7-12.5 Recreational docks and piers**

296. COMMENT: Sea level rise will make those structures that were legal with reference to height clearance over wetlands potentially non-compliant. Older docks should be grandfathered if the expense of raising the structure is costly. (136)

RESPONSE: The rules do not require a property owner to adjust the height of a dock or pier to maintain the separation required under the recreational docks rule at N.J.A.C. 7:7-12.5(b)7 unless the dock or pier is proposed to be reconstructed or replaced and such reconstruction or replacement does not meet the standards at N.J.A.C. 7:7-2.4(d)7 and 8. Under N.J.A.C. 7:7-2.4(d)7 and 8, a permit is not required for the repair, replacement, renovation, or reconstruction, in the same location and size, of a dock or pier used solely for residential purposes or for the docking of or servicing of pleasure vessels that existed prior to January 1, 1981. To qualify for this exception, the dock or pier must appear on the applicable Tidelands Map or on the applicable coastal wetlands map identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D, or must have received a waterfront development permit subsequent to the date of the Tidelands Map or coastal wetlands map, as applicable. Finally, the repair, replacement, renovation, or reconstruction must be in the same location as the preexisting structure, and not increase the size of the structure. Under this provision, the size of the dock or pier is measured in two dimensions; length and width. Accordingly, should a property owner choose to increase the height of the dock or pier over the water surface, a waterfront development permit would not be required provided the activity complied with the above requirements.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

297. COMMENT: The rule rationale at N.J.A.C. 7:7-12.5(g) provides that “docks and piers constructed in water with insufficient water depth causes increased turbidity.” The Department should address this concern by establishing rule provisions that allow for docks of greater lengths where site conditions allow with mitigation. (50)

RESPONSE: The dock length limitation seeks to provide reasonable recreational use of waterfront property while minimizing impacts to special areas such as shellfish habitat and impacts on navigation and use of the State’s waters. As explained in the Response to Comment 248, development of the dock in-fill criteria was predicated upon a realization that there are existing impacts in areas with a relatively higher dock density, and the incremental addition of a single dock between them would present, at most, only a negligible discernable impact. The shellfish habitat rule at N.J.A.C. 7:7-9.2(d)3ii provides the Department with flexibility in determining the acceptable length of a dock where it determines that a different length dock or pier is appropriate in order to ensure that the requirements of the CZM rules are met.

298. COMMENT: The statement “Docks and piers constructed in water with insufficient water depth increased turbidity resulting in an adverse impact to special areas and water quality” at N.J.A.C. 7:7-12.5(g) is supported. However, this new statement conflicts with previous proposed new rules that allow new and expanded marinas in shellfish habitat and submerged vegetation habitat to be constructed with water depths of only two feet mean low water. Based on the allowance to construct new and expanded marinas in shallow waters, the Department will

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

be authorizing development that clearly conflicts with the language above that docks and piers constructed in water with insufficient water depth cause increased turbidity resulting in an adverse impact to special areas and water quality. Please justify this obvious conflict. (90)

RESPONSE: The amendments allowing for the construction of an infill marina and expansion of an existing marina in shellfish habitat do not authorize such construction in submerged aquatic vegetation habitat. The amendments to the shellfish habitat rule require that the area in which the marina will be expanded or constructed must have sufficient water depths to accommodate the vessels to be moored and, at a minimum, the water depth can be no less than two feet at mean low water to ensure that the area in which the marina or expansion will occur has adequate water depths so that dredging will not be required. By way of example, while larger than an average vessel, on average, a 25-foot boat can have a draft ranging from one foot six inches to three feet. If the area of expansion is designed to moor vessels of this size, requiring water depth sufficient to accommodate this range of drafts at low tide will prevent suspension of sediment into the water column. Further, the submerged vegetation habitat rule requires a water depth of four feet at mean low water in the area where the boat(s) will be moored. Accordingly, there is not conflict.

#### **N.J.A.C. 7:7-12.6 Maintenance dredging**

299. COMMENT: The dredging of the Maurice River has had observed effects on the Delaware Bay and the shellfish industry. It is urged that the coastal result ensure proper testing and also take history into account when regulating dredging. (10)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: Appendix G identifies the data and information that must be submitted to the Department as part of a permit application for all proposed dredging and dredged material management projects. This information includes a variety of sediment and dredged material testing requirements. In addition, Appendix G identifies a number of Best Management Practices that can be implemented to minimize the potential adverse impacts that could result from a dredging project and the management of the resulting dredged material.

300. COMMENT: The changes to the maintenance and new dredging rules are short-sighted. Recent studies show that 75 percent of the eel grass population in New Jersey exists solely in Barnegat Bay. However, studies also show that over development, which increases stormwater pollution entering the Bay, has greatly impacted and reduced of the amount of submerged vegetation in the Bay. The Department should not permit further destruction of this critical habitat under these rules. In addition, restoration of submerged vegetation has not been successful in Barnegat Bay due to the poor water quality. Therefore, mitigation is not likely to offset losses and exists only on paper. (62)

RESPONSE: In accordance with N.J.A.C. 7:7-9.6(b), dredging within submerged aquatic vegetation habitat is prohibited except where it can be demonstrated that there is no practicable or feasible alternative to avoid the vegetation, that impacts to the habitat area are minimized to the maximum extent practicable, and that any unavoidable impacts are mitigated. Under this

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rulemaking, no changes were made relating to the acceptability of dredging within submerged vegetation habitat.

In addition, the Department's 10-point Barnegat Bay Plan includes a number of initiatives that should improve water quality and habitat for submerged aquatic vegetation, including \$110 million in funding for stormwater mitigation projects to address the discharge of nutrients into the Barnegat Bay.

301. COMMENT: The proposed expansion of the definition of maintenance dredging is not supported. How will dredged material be tested to prevent the use of contaminated material as fill after a storm event? (15)

RESPONSE: Appendix G includes specific sampling and testing requirements, and associated evaluation criteria, for dredged material to be disposed of or beneficially used. Unless it meets one of the testing exclusions in Chapter III, Information requirement of All Projects, Section C, Testing Exclusions, of Appendix G, dredged material must be sampled and tested. Appendix G, Chapter V, Use Alternatives, Section E, Structural and Non-Structural Fill, discusses the testing requirements for dredged material to be used as structural and non-structural fill. The Department will evaluate any proposed fill uses on a project-specific basis, and an Acceptable Use Determination (AUD) is required for any such proposed use. As explained in the proposal at 46 N.J.R. 1072, an AUD is issued by the Department upon its finding that the dredged material admixture or product will be protective of human health and the environment and that all other necessary approvals have been obtained. Attachment G to Appendix G specifies the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

AUD application requirements for a dredged material beneficial use project. These requirements include a required comparison of the contaminant concentrations in the dredged material to the applicable Residential Direct Contact Soil Remediation Standards, N.J.A.C. 7:26D. Unless dredged material is being used as fill at a contaminated site undergoing remediation that has its own site-specific contaminant criteria, dredged material with contaminant concentrations greater than the Residential Direct Contact Soil Remediation Standards, N.J.A.C. 7:26D (as applicable to the site) cannot be beneficially used as fill material.

302. COMMENT: Maintenance dredging should be allowed in all areas that provide berthing for commercial and recreational vessels. It is important to note that the State's navigable channels are essentially "blue highways" that require the same level of maintenance as any other transportation infrastructure. The maintenance of these navigation channels should be predicated on pre-existing use and should not be subjected to exhaustive efforts to demonstrate previous dredging or depths. (83, 156)

RESPONSE: The Department agrees with the comment that the State's navigation channels are essentially "blue highways" that require the same level of maintenance as any other transportation infrastructure. Federal and State navigation channels have designated design depths and widths. Accordingly, dredging of these channels to the designated depth and width is considered maintenance dredging. Further, because maintenance dredging allows for the use of previously dredged navigation and access channels, marinas, lagoons, canals, and boat moorings, this type of dredging activity is conditionally acceptable within special areas, whereas new

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

dredging may be discouraged or prohibited because the new dredging activities would result in the destruction of special areas. The amendments to the maintenance dredging rule are intended to balance the protection of special areas with the need to provide for safe navigation and maintain commerce along New Jersey's waterways.

The dredging of a navigation channel beyond previously documented depths is considered new dredging. While new and maintenance dredging are similar in their potential water quality and biological impacts, new dredging also results in permanent physical changes in water depth, circulation, and sediment types. Dredged areas which are deeper than the surrounding waters or deeper than the connecting channels are known to have seasonally anoxic bottom waters. This results from poor vertical mixing and/or lateral circulation, formation of a thermocline (static cool bottom waters unable to mix vertically) and biochemical exhaustion of dissolved oxygen. Benthic organisms and finfish cannot survive in anoxic waters. In addition, new dredging can impact important biological resources, such as shellfish habitat and submerged vegetation habitat located within the vicinity of the dredging operation.

303. COMMENT: The proposed amendments relating to maintenance dredging, new dredging, dredged material, and dredged material management areas are supported. As stated in the proposal, the failure to maintain navigational depths of our waterways has far reaching impacts on our coastal communities. These changes are greatly needed to facilitate the extremely difficult permitting process and regulations that prevent needed maintenance and dredging projects from moving forward. (28)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rules.

304. COMMENT: Maintenance dredging is an expensive cost to marinas and anything that can be done to keep the cost of permitting down is appreciated. Sometimes the cost of professional fees is as much as the actual work. (148)

RESPONSE: The Department recognizes that the cost of permitting for a dredging project can be high. Appendix G has been designed to provide the Department the data and information it needs to evaluate the potential impacts of dredging and dredged material management projects, while at the same time not requiring the collection of data and information that contributes little to this evaluation. In addition, the testing exclusion section of Chapter III, Information Required of All projects, of Appendix G, includes a number of sediment testing exclusions. Sediment testing exclusions (such as not requiring further testing where the material to be dredged is sand that meets the exclusionary criteria identified in the Response to Comment 301 above) can reduce costs in those generic cases where the Department has determined potential impacts are minimal.

305. COMMENT: The amendments to the maintenance dredging rule, particularly the change adding flexibility in the types of proof that can be used to demonstrate that proposed dredging qualifies as maintenance dredging and the additional amendments that will result in more dredging projects being considered maintenance dredging, are supported. (28)

RESPONSE: The Department acknowledges this comment in support of the rule.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

306. COMMENT: Changing the requirements of what constitutes maintenance dredging to include channeled areas that have been historically dredged more than 10 years ago and that were historically used for navigation or mooring will significantly increase the number of projects that are considered maintenance dredging. The loosening of the definition means that fewer projects will be subject to the more stringent requirements of the new dredging rule. In addition, under the new rules, maintenance dredging would be permitted up to a historically dredged depth, which may be much deeper than the depth to which a channel has been maintenance dredged in recent years. As such, the amendments to the definition of maintenance dredging allow areas that have changed substantially over time to be made deeper to accommodate larger boats, and may potentially increase shoreline development farther into areas where it is not currently present. The amendments to the definition are also likely to increase the amount of dredged material that needs to be planned for disposal. Additionally, currently non-navigable channels containing submerged aquatic vegetation or shellfish habitat should be protected from dredging and development through provisions included in the maintenance dredging language. These areas provide various important ecosystem services including pollutant filtration, storm buffering, and habitat. (109, 162)

RESPONSE: The Department has no information to indicate that the change in the definition of maintenance dredging will result in a significant increase in the number of such projects, compared to those that would have otherwise been considered new dredging. Absent a previous dredging permit, the types of data and information needed to document that a proposed dredging

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

project should be considered maintenance dredging at N.J.A.C. 7:7-12.6(1)1 are quite stringent.

The definition of maintenance dredging prior to these amendments, limited such projects to the same depth, length, and width as a previous dredging operation. The amended definition limits such projects to the same depth, length, and width as a previous dredging operation, or historical water depths. Thus, any dredging projects that would result in changes that are different from previously approved man-made or natural conditions would be considered new dredging.

Further, the Department has no information indicating that the amended definition of maintenance dredging will result in a large increase in the number of such projects and the volume of associated dredged material that must be managed.

Regarding potential impacts of the revised definition of maintenance dredging on shellfish habitat and submerged aquatic vegetation, as explained in the Response to Comment 300, maintenance dredging within submerged vegetation habitat is prohibited except where it can be demonstrated that there is no practicable or feasible alternative to avoid the vegetation, that impacts to the habitat area are minimized to the maximum extent practicable, and that any unavoidable impacts are mitigated. Similarly, maintenance dredging within shellfish habitat is conditionally acceptable in accordance with N.J.A.C. 7:7-9.2(f) provided the disturbance to the habitat is minimized to the greatest extent practicable.

307. COMMENT: Newly proposed N.J.A.C. 7:7-12.6(a)1 allows dredging to water depths that exceed originally dredged depths to be considered maintenance dredging and not new dredging. Please clarify how dredging to a new, deeper water depth could be considered “maintenance dredging.”

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The revised definition of maintenance dredging at N.J.A.C. 7:7-12.6 is overly broad and has significant negative implications for future implementation of select special area rules, such as the shellfish habitat and submerged vegetation habitat rules. By authorizing dredging in areas that have not been disturbed in decades, the State effectively would be authorizing new dredging projects, not maintenance dredging. Most importantly, the level of protection through defined prohibited activities is significantly higher for projects classified as new dredging rather than maintenance dredging as the amended definition circumvents these protective standards, particularly for submerged vegetation habitat.

Also, the proposed new rule allows applicants to demonstrate the limits of previous dredging through the use of aerial photography; however, that data source is not adequate to make such determinations. Please clarify this provision and explain how aerial photographs can be used for such a purpose.

The proposed changes to this rule are not consistent with the legislative goal of protecting and preserving the coastal area from inappropriate development and should be withdrawn. (33, 90, 154)

RESPONSE: The Department disagrees that the amendments to the maintenance dredging rules are inconsistent with the legislative goal of protecting and preserving the coastal area from inappropriate development. For a project to be considered maintenance dredging, the applicant, in accordance with N.J.A.C. 7:7-12.6(a)1, must demonstrate through historical data, including, but not limited to, previously issued dredging permits, previous dredging contracts, historic bathymetric surveys, and/or aerial photography, that the proposed area to be dredged is limited to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the same length and width as a previous dredging operation, that the proposed water depth is the same as historical water depths within the proposed dredge area, and that the area has been historically used for navigation or mooring of vessels requiring the proposed water depth.

Absent previous dredging permits, the Department will require multiple types of evidence to verify that a proposed dredging project meets the definition of maintenance dredging. Aerial photography alone is generally insufficient for this purpose. Additional sources of information, including, but not limited to, the draft of vessels documented to have used the area or historic navigation charts, will be required in order to demonstrate that a project meets the definition of maintenance dredging. For example, the Department can provide a conservative estimate of the depth of the water at the time of the photograph based upon the size of vessels in the photography and the draft required by vessels of that size. Absent further information proving that a deeper channel or mooring area was actually present, the depth of any maintenance dredging allowed in such a case would be limited to the depth required by the vessels in the aerial photography.

Regarding potential impacts of the revised definition of maintenance dredging on submerged aquatic vegetation, maintenance dredging within submerged vegetation habitat is prohibited with limited exceptions identified in the Response to Comment 300.

308. COMMENT: The changes to the maintenance dredging rule will open significant areas of the State's intertidal and subtidal waters to dredging and allow dredging in areas where it was not previously allowed. The streamlining of maintenance dredging requirements within the boundaries of existing marinas are supported; however, the rule as proposed will allow

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

maintenance dredging in areas previously not permitted by the Department or the U.S. Army Corps of Engineers. The proposed changes will likely result in additional adverse impacts to natural resources such as shellfish and submerged vegetation, which are already under various threats. Additional impacts to these fishery resources will also have adverse economic impacts on the recreational and commercial fishing industries. (54)

RESPONSE: The shellfish habitat rule intends to strike a balance between protection of shellfish habitat and recreational boating-related uses, by allowing maintenance dredging in shellfish habitat where an area has already been previously dredged, and new dredging at existing public boat launching facilities and major mooring/docking facilities. Specifically, in accordance with N.J.A.C. 7:7-9.2(f), maintenance dredging is conditionally acceptable within shellfish habitat, provided the disturbance to such habitat is minimized to the greatest extent possible. New dredging within shellfish habitat is prohibited in accordance with N.J.A.C. 7:7-9.2(e), except when necessary to maintain the use of public launching facilities with 25 or more trailer parking spaces or marinas facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. Further, maintenance dredging within submerged vegetation habitat is prohibited, except in the limited circumstances identified in the Response to Comment 300. The Department did not amend the standards of the shellfish habitat or submerged vegetation habitat rules with respect to the acceptability of maintenance or new dredging.

As explained at 46 N.J.R. 1080, the Department anticipates that the proposed amendments to the definition of maintenance dredging will result in more dredging projects being considered maintenance dredging. Where maintenance dredging occurs, impacts to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

shellfish habitat and submerged vegetation habitat may occur. The maintenance dredging rule sets forth standards to protect these resources to the extent practicable while allowing for dredging to occur to provide for safe navigation and maintain commerce along New Jersey's waterways.

### **N.J.A.C. 7:7-12.9 Dredged material disposal**

309. COMMENT: The proposed rules make it easier to dredge and dump the dredge spoils into protected wetlands covering hatchlings of northern diamondback terrapins, destroying areas where horseshoe crabs inhabit shallow intertidal waters, the salty marsh banks and mudflats where ribbed mussels are found, the freshwater areas inhabited by northern river otters, and other sensitive locations, as well as near homes. These dredged materials are not clean. In 1996, it was reported that the mercury level in the feathers of seabirds from Maine to New Jersey was five parts per million. Todd Bates of the Asbury Park Press reported on September 22, 1996, that "...causes of the higher lead and mercury levels might include: dredging that stirs up pollutants in bottom muck; the relaxation of environmental laws or enforcement...even leaded paint from bridges in the New York-New Jersey harbor." Further, the residents at the end of Dock Road in Eagleswood Township, Ocean County, have been advised not to eat any crabs and fish from the creek near the Barnegat Bay due to health hazards. (94)

RESPONSE: As explained in the Response to Comments 277 and 278, if it is determined that threatened and endangered species habitat, critical wildlife habitat, wetlands, or other natural resources are present on or in the vicinity of the proposed dredged material management area, the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

proposed dredged material management area would be required to comply with all applicable CZM rules, such as the special area rules addressing wetlands, threatened or endangered wildlife or plant species habitat, or critical wildlife habitat. The adopted rules do not change the requirements for the disposal of dredged material in wetlands and aquatic habitats. Under this rulemaking, the Department has clarified that the standards for dredged material disposal in water areas at N.J.A.C. 7:7-12.9 do not apply to the beneficial use of dredged material. Further, N.J.A.C. 7:7-12.9(b), which sets forth the standards applicable to the evaluation of proposed dredged material disposal projects, has been updated to cite the current Federal documents that identify required sediment sampling and testing procedures for physical properties and chemical contamination.

**N.J.A.C. 7:7-12.11 Filling**

310. COMMENT: It is recommended that shore protection for property that has a sudden or recent (within the past five to 10 years) loss of shoreline be included as a filling activity that does not require mitigation. (83, 156)

RESPONSE: The filling rule allows for shore protection activities within intertidal and subtidal shallows without mitigation. Specifically, the rule at N.J.A.C. 7:7-12.11(d) allows for the establishment of living shorelines in this special area to address the loss of vegetated shorelines and habitat in the littoral zone provided the living shoreline complies with the living shoreline general water area rule at N.J.A.C. 7:7-12.23. Because a living shoreline project is a habitat

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

protection, restoration, or enhancement project that will result in a net gain of habitat functions and values, mitigation for the filling of a water area to establish a living shoreline is not required.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Subchapter 13. Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas**

**N.J.A.C. 7:7-13.1 Purpose and scope**

311. COMMENT: Proposed N.J.A.C. 7:7-13.1(d) exempts two single-family dwellings or two duplex dwellings from the impervious cover requirements of the chapter. The effect of this change will be to increase the amount of impervious cover in areas adjacent to coastal waters and to increase the volume of untreated stormwater runoff discharging into coastal waters. Has the Department conducted a cumulative impact analysis of this change to determine the long-term impacts to coastal water quality? Please provide the result of this analysis and the associated findings that the proposed change will not result in adverse impacts. Given the recognized impairment of coastal estuaries including the Barnegat Bay, how can the Department propose new rules that will have a direct adverse impact on coastal water quality? The assertion that this is managed or regulated at the local level is unsupported. Many municipal stormwater programs do not regulate coverage at this level, so the Department's assertion that municipal regulation will suffice to control the generation of stormwater is incorrect. (90)

312. COMMENT: The proposed changes at N.J.A.C. 7:7-13.1(d), which exempt two single-family or duplex dwellings from the impervious cover requirements, are opposed because of water quality concerns. The rationale in that chapter does not address the cumulative impacts of the proposed change on water quality, which is primarily driven by watershed inputs through non-point source pollution. (54)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

313. COMMENT: Proposed N.J.A.C. 7:7-13.1(d) exempts two single-family dwellings or two duplex dwellings from the requirements of the impervious cover limits. The Department asserts that the removal of this requirement is not detrimental to the environment because it is addressed at the local level. This is clearly not the case and is contrary to established law. In fact, CAFRA reflects a legislative determination that municipal land use control is inadequate to assure orderly and environmentally-sound development in the coastal area. *Mutschler v. New Jersey Dept. of Env'tl. Prot.*, 337 N.J. Super. 1, 13, 766 A.2d 285, 291 (App. Div. 2001) (citing *In re Egg Harbor Assocs.*, 94 N.J. 358, 368, 464 A.2d 1115 (1983)). Given that stormwater is a major source of degradation in New Jersey's waters, it is evident that municipal review of stormwater management is insufficient to address the problem. The solution is not to loosen standards and review, but to improve them so that New Jersey's waters can achieve water quality standards.

(118)

RESPONSE TO COMMENTS 311 THROUGH 313: The sites on which two single-family homes or duplexes could be constructed under general permit 4 at N.J.A.C. 7:7-6.4 are typically small bulkheaded infill lots located on back bays within existing residential areas. In many cases, these sites have already been disturbed and have existing impervious cover present. The amount of impervious cover on these sites will be limited by the lot size, the presence of any special areas, and local zoning requirements. Moreover, the general permit and the housing use rule contain standards that address stormwater runoff associated with the dwelling. Potential adverse impacts due to stormwater runoff are additionally addressed by municipalities, as required by local ordinances and the general permits issued to municipalities under the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department's Municipal Stormwater Regulation Program, for all projects that increase impervious surface by at least 0.25 acres or which disturb at least one acre of land. Thus, in effect, the Department already imposes minimum standards through municipal stormwater ordinances. For these reasons, the Department has exempted the development of two single-family homes or duplexes from the impervious and vegetative cover requirements of the CZM rules.

**N.J.A.C. 7:7-13.5 Determining if a site is forested or unforested**

314. COMMENT: While the summary of the changes to the definition of forest states that the changes are based upon the Department's "experience," no data is provided to support this position. The addition of one-inch saplings with a value of two points results in a 625-square-foot area with four one-inch saplings being defined as a forest. However, this does not meet the typical definition of a forest. The Summary states that the rationale for the change is the concern that large trees were not being considered in the calculations. As proposed, two large trees would be considered forest. In the example at proposed N.J.A.C. 7:7-13.5(d)5, the total score of 16 would be met if each plot contained four trees of one-inch diameter or each plot contained one tree each of 12-inch diameter as both  $8 \times 2 = 16$  and  $2 \times 8 = 16$ . (50)

315. COMMENT: The new method for determining whether a site is forested is of concern.  
(158)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE TO COMMENTS 314 AND 315: As explained at 46 N.J.R. 1084, it has been the Department's experience using the previous method of determining a forest that the method consistently resulted in an under-estimation of forest areas as the method tended to result in forest areas with smaller trees and those with larger trees that grow farther apart that should have been considered forest instead of being classified as unforested. To address the issue, the Department assembled a team that field tested three methods of forest identification and compared the results of those field tests with those methods employed under the prior rules. The methods included the Highlands method (see N.J.A.C. 7:38-3.9); a method currently under development by the State's Division of Parks and Forestry; and a modified version of the method previously codified at N.J.A.C. 7:7E-5.5. Consequently, the Department amended the coastal method for identifying forest to make it more similar to the Highlands method and to more consistently identify forest.

Further, as referenced in the proposal at 46 N.J.R. 1085, the adopted amendments are based upon data from the U.S. Forest Inventory (USFI) Field Procedures Manual (U.S. Forest Service), Forest Statistics for New Jersey 1987 and 1999 (Griffith and Widmann, 2001), and Forests of the Garden State Resource Bulletin NE163 (Widmann, 2005). The USFI program provides an overall analysis of tree size statewide and the percentage of such trees per acre in New Jersey's forests.

The commenter's example, while mathematically correct, is highly unlikely. It is important to note that the onsite methodology will only be applied in those cases where the Department and applicant disagree on whether an area meets the definition of forest after reviewing aerial photos and applying the grid system. A grid block must contain 33 percent or

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

greater forest cover in order to be considered forest. An applicant is not required to perform on site sampling unless the Department identifies additional areas of potential forest that were not identified by the applicant using aerial photography. Therefore, a site with four, small diameter trees would not appear forested on aerial photos, and would not be a forest using the grid analysis so there would be no need to apply the onsite methodology. However, an area that has been extensively planted with small trees should meet the forest definition using aerial photography and applying the grid system. These are captured by the revised definition of “forest.” Similarly, a site with a total of two, larger-diameter trees would likely not appear forested on aerials or by way of the grid analysis. However, large diameter trees naturally spread out in order to obtain sufficient nutrients and water. They will have a larger canopy and will be lower in density. Without the adopted amendments, such areas may have been excluded from the definition of forest when they would meet the “typical” definition of forest, mentioned by the commenter.

316. COMMENT: Proposed N.J.A.C. 7:7-13.5(c) allows the use of DEP aerial photography to determine the limit of forest vegetation on a proposed development site, rather than site-specific investigations at the time of permit application submission, which is problematic for several reasons. First, the Department’s photography cannot be maintained as a current data set and, therefore, may not accurately represent the limits of forest vegetation and be a reliable data source at the time of application. Second, as compared to a site-specific investigation, and unless a person is a trained photogrammetrist, aerial photo review is not adequate for the purpose of determining the limits of vegetation on a proposed development site.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

In addition, this proposed rule requires a further delineation in cases where the aerial photo review identifies “sporadic vegetation.” However, this term is not defined in the rule. Therefore, the rule proposed a standard which is not measurable and not clearly understood by the regulated public. (90)

RESPONSE: As explained at 46 N.J.R. 1084, the methodology for determining if a site is forested or unforested is consistent with that of the Highlands Water Protection and Planning Act Rules, with two exceptions. Consistent with the Highlands methodology, a forest is first identified using aerial photography. The Department believes that using aerial photography is the appropriate first step since it is easier and less costly than doing extensive sampling onsite. If an area includes areas of sporadic coverage that the applicant asserts do not constitute forest area, then the applicant is required to overlay a grid system on the photograph(s) to determine whether areas with sporadic coverage contain sufficient coverage to be identified as forest. The Department will provide this grid on its website at <http://www.nj.gov/dep/landuse/guidance.html>. The use of the grid to identify forest cover is a method consistent with the New Jersey No Net Loss Reforestation Act, N.J.S.A. 13:1L-14.1 et seq. As referenced in the proposal at 46 N.J.R. 1084, the grid methodology is based on the crown cover scale method which uses tree canopy coverage in aerial images for determining the urban tree cover (“Measuring and Analyzing Urban Tree Cover.” Nowak, David J., Rowan A. Rowntree, E. Gregory McPherson, Susan M. Sisinni, Esther R. Kerkmann, and Jack C. Stevens, 1996. *Landscape and Urban Planning*, issue 36, Elsevier Science B.V. PIIS0169-2046(96)000324-6. This document is available at [www.fs.fed.us/psw/programs/uesd/uep/products/cufr\\_97\\_DN96\\_31.PDF](http://www.fs.fed.us/psw/programs/uesd/uep/products/cufr_97_DN96_31.PDF)). The grid

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

methodology used to classify areas of sporadic coverage utilizing the grid system is not intended to identify the outer limits of the forest, but rather to identify areas within the forest that should be classified as forest.

**N.J.A.C. 7:7-13.17 Impervious cover limits for a site in the CAFRA area**

317. COMMENT: No changes are proposed to existing N.J.A.C. 7:7E-5B.4(e)2, proposed N.J.A.C. 7:7-13.17(e)2, even though this section contradicts the definition of impervious (non-porous) cover elsewhere in the rules. This provision states that for sites that are not in centers and not in the Coastal Metropolitan Planning Area, only, “the acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department” can be considered legal, existing non-porous cover. In all other planning areas under the rules, other types of paving, such as gravel, are also considered existing non-porous cover. However, the addition of gravel or pavers to the site would count against the allowed impervious cover under this sub-section. The rule is internally inconsistent and should be modified to include all legal non-porous cover as existing. (11, 50)

RESPONSE: Under the alternative at N.J.A.C. 7:7-13.17(e), the impervious cover limit for a site located within the Coastal Suburban, Coastal Fringe, Coastal Rural, or Coastal Environmentally Sensitive Planning Area is the acreage covered by buildings and/or asphalt or concrete pavement legally existing at the site at the time of the application to the Department. The impervious cover under this provision must be placed only where there are existing buildings and/or asphalt or concrete pavement. The rule is not internally inconsistent as this provision is intended to limit

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the adverse environmental impacts of the redevelopment by preserving existing open space. For example, this provision prevents the conversion of a semi-permeable surface such as a gravel parking lot to a higher intensity development. (See 30 N.J.R. 4176, December 7, 1998 and 31 N.J.R. 2042, August 2, 1999.)

318. COMMENT: N.J.A.C. 7:7-13.17 should be amended to refer to the definition of “site” at N.J.A.C. 7:7-1.5 when discussing total land area of the site. For example, N.J.A.C. 7:7-13.17(a)1 should be revised to read: “If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the non-porous cover limit is determined under (c) below. Note that the non-porous cover limit for such a site is calculated based on the acreage of the total land area on the site, as defined under N.J.A.C. 7:7-1.5, as opposed to the acreage of the net land area on the site.” (83, 156)

RESPONSE: The introduction to the definitions at N.J.A.C. 7:7-1.5 provides that the listed words and terms when used in the chapter have the meaning set forth in that section unless the context clearly indicates otherwise. Accordingly, since the term “site” is defined at N.J.A.C. 7:7-1.5, site, for the purposes of N.J.A.C. 7:7-13.17 would have the meaning as set forth at N.J.A.C. 7:7-1.5. The Department through this rulemaking deleted the phrase “as defined at” with reference to particular terms defined in the definitions section, since it would be expected that readers look to the definitions section for meanings of terms used in the rules; only when a term is defined in a rule other than the definitions section will the rules provide a cross-reference.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

319. COMMENT: Proposed Tables H and I delete the notation that currently defines the meaning of “sewer service area.” Unless this is explained elsewhere in the rule, this notation should be retained. (90)

RESPONSE: The note containing the definition of “sewer service area” included in Table H and Table I has been deleted since a new definition of sewer service area has been added at N.J.A.C. 7:7-1.5. The definition of “sewer service area” is the same as that contained in the Water Quality Management Planning rules, N.J.A.C. 7:15 and includes reference to the Department’s website where sewer service areas can be viewed.

320. COMMENT: Any development utilizing porous pavement to avoid non-porous coverage limits must be properly implemented, including pre-treatment of run-off to decrease nutrient loads and only be carried out in appropriate locations where the spoils can support such pre-treatment. (62)

RESPONSE: The Department’s Stormwater Management rules at N.J.A.C. 7:8, along with informative guidance from the Department’s Stormwater Management Best Practices Manual, set the established and requisite standards for proper siting, design, and use of porous pavement, including appropriate pre-treatment of runoff and detailed construction standards that consider the ability of underlying soils to infiltrate runoff.

#### **N.J.A.C. 7:7-13.19 Mainland coastal centers**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

321. COMMENT: There is concern regarding the impending expiration of mainland coastal center boundaries that had been re-established and extended until December 31, 2014, pursuant to the Permit Extension Act (P.L. 2012, c. 48). As these coastal centers have already been recognized by the State Planning Commission and its processes as being suitable growth areas with infrastructure in place, it is recommended that these centers be permanently reinstated. By doing so, municipalities and the regulated community would be able to rely upon these designations for future planning purposes and economic growth opportunities. (50)

RESPONSE: On December 26, 2014, the Permit Extension Act of 2008 at N.J.S.A. 40:55D-136.2 through 6 was further amended by P.L. 2014, c. 84. This Act further extended center designations in municipalities that had submitted an application for plan endorsement to the State Planning Commission as of March 15, 2007, and were in compliance with the prior rules at N.J.A.C. 7:7E-5B.6. In accordance with P.L. 2014, c. 84, these mainland coastal centers now expire December 31, 2015. As explained previously, the Department has initiated a stakeholder process to discuss changes to the rules governing the use, development, and protection of the State's coastal resources. A stakeholder meeting was held on September 8, 2014, to engage interested parties. As a result of that meeting, seven subcommittees were formed, one of which is tasked with coordination of the CZM rules' with the State Development and Redevelopment Plan and developing an appropriate method for determining the acceptable intensity of development for a site located in the CAFRA area.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

322. COMMENT: The proposed rule amendments discuss the Permit Extension Act of 2008 (PEA) as amended January 18, 2010, and September 19, 2012. N.J.A.C. 7:7-13.19(b) establishes the expiration of the current PEA and amendments, but makes no reference to future amendments of the PEA. It is recommended that this section reference expiration pursuant to the current and any future PEA amendments. (83, 156)

RESPONSE: As explained in the Response to Comment 321, P.L. 2014, c. 84 extended the expiration date of mainland coastal centers through December 31, 2015. The Department on adoption is amending N.J.A.C. 7:7-13.19(a) and (b) to reflect the new expiration date. The Department cannot include reference in the rules to future legislative action that may or may not occur. Should the Permit Extension Act be further extended, any expiration date included in such extension would control, making inclusion of such a provision in the rules unnecessary in any case.

323. COMMENT: A number of previously designated Coastal Centers sustained heavy damage as a result of Superstorm Sandy demonstrating that they are highly vulnerable to tidal surge. Based on the experience gained from Superstorm Sandy, it does not make sense to continue to encourage high density development that goes along with a coastal center designation in areas that are highly vulnerable to tidal surge. This would have the effect of putting more people and property in harm's way. The Department should review and revise the coastal center designations for centers that proved to be highly vulnerable to the impacts of Superstorm Sandy. (33, 90, 154)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department believes that the basis for the CAFRA and coastal centers and the assumptions made in delineating them remain valid. However, the Department also recognizes that resiliency and adaptation are important factors that should be considered when designating centers. To that end and as explained below, the Department has taken several actions all of which will inform the Department's approach to determining the acceptable intensity of development in the coastal zone and the center designation process.

The Department's Resilient Coastal Communities Initiative is assisting New Jersey communities to become more resilient to coastal hazards by providing them with the appropriate tools, information, guidance, and technical assistance needed to make informed decisions on mitigation and adaptation measures. Through this initiative, the Department is actively engaged with coastal municipalities to develop and implement strategies that reduce risk and vulnerability to coastal hazards such as flooding, storm surges, and sea level rise, and provide the necessary tools, guidance, and technical assistance for coastal resilience planning.

On January 20, 2015, the Department published a request for proposal for its Sustainable and Resilient Coastal Communities Grant Program (see 47 N.J.R. 299(b)). This funding opportunity seeks to fund a pilot comprehensive planning approach that will identify municipal actions in response to coastal hazards and protection of New Jersey's coastal resources while meeting the needs of the community. Anticipated deliverables of this grant program include recommendations for a planning and public process for coastal community long range viability that incorporates local needs and objectives; locally identified specific areas for growth and conservation, reduced cumulative and secondary impacts, strengthened coastal resource

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

protections, and more resilient adaptable communities. The recommendations could also assist in the systematic identification of successful mitigation strategies and local actions that in turn encourage additional participation by other municipalities. The Grant Program will expand New Jersey's current resiliency and adaptation efforts by extending support for comprehensive municipal planning and the incorporation of resiliency strategies which could in turn inform the center designation process.

The Department has also initiated a new coastal stakeholder process to discuss changes to the CZM rules governing the use, development and protection of the State's coastal resources. As part of this effort, the Department has convened seven stakeholder subcommittees, one of which is focused on the coordination of the CZM rules with the State Development and Redevelopment Plan, the Department's approach to determining the acceptable intensity of development in the coastal area, and the process for designating centers.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 15. Use Rules**

### **N.J.A.C. 7:7-15.2 Housing**

324. COMMENT: Proposed N.J.A.C. 7:7-15.2(e)2 appears to apply the filled water's edge rule to the development of one or two single-family homes. This provision should not include a residential dock as a water-dependent use that will trigger the filled water's edge rule. This would mean that, if a homeowner has a dock on a filled site, the homeowner would have to comply with the filled water's edge rule to add an accessory structure. There should be internal consistencies between proposed N.J.A.C. 7:7-15.2(e)2 with proposed N.J.A.C. 7:7-6.4(d), which only references a requirement to comply with N.J.A.C. 7:7-9.23(e) rather than the entire rule. It is requested that the Department confirm that the requirement to comply with the filled water's edge rule only applies in the conversion of sites from an existing water dependent use to residential use. (50)

RESPONSE: As explained at 46 N.J.R. 1087, the Department intended for the conditions of the general permit for the construction of one or two single-family homes or duplexes at N.J.A.C. 7:7-6.4 to be the same as the standards of the housing rule at N.J.A.C. 7:7-15.2(e). Accordingly, for the purposes of consistency with N.J.A.C. 7:7-6.4(d), the Department is amending N.J.A.C. 7:7-15.2(e)2 upon adoption to specify that where two single-family homes or duplexes are proposed on a filled water's edge site that has included a water dependent use at any time since July 1977, the proposed development must comply with the filled water's edge rule at N.J.A.C. 7:7-9.23(e).

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

325. COMMENT: Proposed N.J.A.C. 7:7-15.2(e)2 allows the development of one or two single-family or duplex dwellings in a filled water's edge site that has not included a water dependent use since July 1977. This provision further reduces the amount of filled water's edge sites available to support water dependent uses such as marinas, and public access to the waterfront, which the Department claims are so important to New Jersey. These limited sites should be preserved, as they have been for forty years under CAFRA, for future water dependent uses. Once again, the Department is promoting marina uses throughout the rule and yet promotes the loss and conversion of existing water dependent use areas elsewhere in the rule, which is shortsighted policy. In addition, what is the justification for selecting the July 1977 date as the cutoff? (90)

RESPONSE: In addition to complying with the specified special area rules, the Department determined that the development of two single-family homes or duplexes must also address historic water dependent uses as these uses should be protected where appropriate. While the Department's experience is that typically the lots subject to this rule are small in size and would preclude intense waterfront developments such as marinas, this is not always the case. Some lots may be larger in size and have pre-existing water-dependent uses. Accordingly, N.J.A.C. 15.2(e)2 requires that the development of two single-family homes or duplexes must also comply with the filled water's edge rule, at N.J.A.C. 7:7-9.23(e), if the site has included a water-dependent use at any time since July of 1977. The date of July 1997 is used because the Tidelands mapping, which is the baseline that is used to demonstrate that an area was formerly

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

tidally flowed, was prepared based upon aerial photography taken during this time frame in 1977.

The water's edge along New Jersey's ocean, bays, and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for waterborne commerce and recreational boating. Though an estimated 37 percent of the State's 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. Many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses. As a result, few sites contain space sufficient for operation of businesses providing facilities for recreational and commercial boating. Accordingly, it is important to restrict redevelopment of sites currently or recently occupied by water dependent uses to attempt to preserve this diminishing, significant resource. The amended rule seeks to accomplish this in appropriate instances.

326. COMMENT: The housing use standards at N.J.A.C. 7:7-15.2(e) complement the proposed revisions to proposed general permit 4 and are also focused on single-family homes and duplexes. The rationale provided speaks to limited expansion of single-family homes or duplexes that existed in 1993, while the rule proposal contemplates two single-family homes or duplexes and no prior existence constraint. Without a coast-wide vulnerability assessment that factors in projected sea level rise and more extreme storms in the future, the proposed standards do not meet the Department's stated objective of protecting the public health, safety, and the environment. Therefore, it is recommended that these provisions be removed until a coastal vulnerability assessment can be utilized and incorporated into coastal regulations. (33, 154)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department has considered public health, safety, and protection of the environment in developing the standards for the construction of single-family homes in the coastal zone. The standards of both general permit 4 at N.J.A.C. 7:7-6.4 and the housing rule at N.J.A.C. 7:7-15.2(e) protect public health and safety and the environment by requiring that the proposed development comply with standards that address coastal high hazard areas, erosion hazard areas, beaches, flood hazard areas, riparian zones, wetlands, wetlands buffers, and endangered or threatened wildlife or plant species habitat. As explained in the Responses to Comments 270 and 271, and 273, consistent with the FHACA Rules and NFIP, the Department is allowing for the construction of single-family homes in a flood hazard area provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk. Further, the CZM rules standards for development in V zones are more stringent than the minimum standards set by the NFIP. As explained in the Response to Comments 75 through 103, the NJCMP has focused on the need for resiliency since 2011, when it developed two assessment tools to ensure that coastal communities have consistent and comprehensive guidance to assess their vulnerability and capacity for resilience.

**N.J.A.C. 7:7-15.3 Resort/recreational**

327. COMMENT: The exemptions for restaurants, infill development, hotels, and commercial developments at marinas are opposed and the Department is urged to remove these exemptions.

(146)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The adopted amendments to the standards relating to marinas do not exempt the construction of restaurants, infill development, hotels, and commercial developments at marinas. Consistent with the amendments to the shellfish habitat rule, the amendments to the marina standards at N.J.A.C. 7:7-15.3(d)7 allow for the construction of new “infill” marinas in shellfish habitat in limited situations provided the requirements of N.J.A.C. 7:7-9.2 are satisfied. Further, new N.J.A.C. 7:7-15.3(d)8 allows for the construction of a restaurant at certain marinas provided specific conditions are met. These include: the marina facility supports 25 or more dockage units consisting of either dry dock storage or wet slips; in the case of an existing marina facility, the existing upland marina support facilities preserved to the maximum extent practicable such that the marina use on the site is not compromised and the existing wet slips servicing the marina are not be reduced in number except as may be necessary to reconfigure the wet slips to accommodate different sized vessels; in the case of a new marina, the marina includes the development of an appropriate mix of dry storage and berthing areas, and marina support facilities providing services such as showrooms, maintenance and repair, marina supplies, bait and tackle sales, boat sales, and the dock master’s office; the restaurant is set back a minimum of 15 feet from the shore protection structure and 25 feet from the mean high water line where no shore protection structure is present; the marina provides onsite pumpout facilities and restrooms for marina and restaurant patrons; and public access is provided in accordance with the public trust rights rule and public access rules, N.J.A.C. 7:7-9.48 and 16.9, respectively. The amendments to the standards for marinas do not include standards for the construction of hotels or commercial developments other than restaurants at these facilities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

328. COMMENT: The changes at proposed N.J.A.C. 7:7-15.3(d) allowing for the expansion of existing marinas and construction of restaurants at marinas are supported. (11, 50, 83, 156)

329. COMMENT: The changes allowing flexibility in enhancements to existing commercial development, such as the construction of restaurants at marinas, within the existing boundaries or where the facility improvements will not further degrade water quality or adversely impact existing natural resources are supported and encouraged. (54)

330. COMMENT: The amendments to the resort/recreational use rule are supported. (28)

RESPONSE TO COMMENTS 328 THROUGH 330: The Department acknowledges these comments in support of the rule.

331. COMMENT: It is recommended that the requisite amount of marina slips (25) that must be preserved for this rule to apply be revised to 10 to 15 slips. Many marinas in the coastal zone provide less than 25 slips and it is unreasonable to allow some marinas to benefit while restricting others. It is important to note that any facility which provides more than five rentable slips must comply with the standards relevant to marinas. (83, 156)

REPOSNE: As explained in the Response to Comment 266, the Department has determined, based on its experience reviewing coastal permit applications for activities at marinas, that a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

marina consisting of 25 dockage units consisting of either dry dock storage or wet slips is of a sufficient size that, after construction of the restaurant, it will continue to provide marina services to support the recreational boating industry.

332. COMMENT: The standards allowing for the construction of restaurants at marinas ignore every lesson learned from Superstorm Sandy. The allowance for restaurants at marinas is an open invitation to repeat the mistakes of the past. It is especially irresponsible post-Sandy since that event made it clear that repeating these mistakes will not only decrease property values in shore communities, but will encourage shore business owners and residents to ignore the threat to lives and property. (8)

333. COMMENT: Reducing the water-dependent activities at marina sites by permitting restaurants is foolish. These areas are heavily impacted by storms and to encourage development in these locations with the rationale that more intense development at marinas should be encouraged for economic gain is ridiculous. Development at marinas should be limited to user parking, repair facilities, and stores related to marine goods, such as bait and tackle and boating accessories. Marinas are the last place that restaurants should be located. (121)

334. COMMENT: Several changes to the rules encourage more commercial development in coastal areas, which Superstorm Sandy illustrated are extremely vulnerable to storm surge and flooding. Increased development in these areas will compromise the land's natural filtration and buffering services, and negatively impact water quality. The allowance of construction of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

restaurants at marinas (proposed N.J.A.C. 7:7-9.23(1)) creates a loophole that may be used to reduce the actual water-dependent use of the adjacent waterways. The standards require maintenance of marina services to the maximum extent practicable (proposed N.J.A.C. 7:7-15.3(d)8). Without a hard limit for the reduction of marina services associated with the building of non-water dependent uses, many marinas may emphasize the building of restaurant facilities and expansion of parking lots, which will in turn lead to higher quantities of storm runoff and trash entering waterways. Marina sites that convert landscaped areas that serve stormwater management functions into restaurant facilities and expanded parking lots should be required to demonstrate no net increase in stormwater runoff or pollutant loading from their property. (162)

335. COMMENT: The standards at proposed N.J.A.C. 7:7-15.3(d)8 are not protective of the existing important water dependent uses provided by marinas, since these standards allow for non-water dependent uses that may preclude marina uses. The requirement for maintenance of marina services to the “maximum extent practicable” represents a standard that will not sufficiently protect water dependent marina uses. (90)

RESPONSE TO COMMENTS 332 THROUGH 335: New Jersey’s waterfront communities are diverse, active lands, where people come to enjoy being in close proximity to the water and where the economy thrives. In an effort to assist in the economic recovery of marinas after Superstorm Sandy and to preserve existing marinas, the Department is allowing for the construction of a restaurant at certain new or existing marina facilities. The Department believes that allowing for the construction of a restaurant at these facilities will expand the public’s

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

opportunity for both visual and physical access and will provide marina facilities with a year-round use making them more economically viable, while assuring that marina functions continue to be provided.

A restaurant constructed under these rules must comply with the requirements of the CZM rules as well as the current construction codes which will address flood resistant construction techniques. Further, the proposed restaurant and any associated parking would be subject to the impervious cover limits set forth at N.J.A.C. 7:7-13.

The Department did consider the importance of the services identified by the commenters when developing the amendments. Accordingly, the CZM rules require that the new or existing marina facility at which the restaurant would be located maintain 25 or more dockage units consisting of either dry dock storage or wet slips. This requirement will ensure that the marina is of a sufficient size that, after construction of the restaurant, it will continue to provide marina services to support the recreational boating industry. Further, the rules require that the upland marina support facilities be preserved to the maximum extent practicable such that the marina use on the site is not compromised by the restaurant. Marina support facilities include boat rack systems and marina support buildings providing services such as showrooms, maintenance and repair, marine supplies, bait and tackle sales, boat sales, and dock masters office, but do not include a residential development. The rules also require that existing wet slips servicing the marina shall not be reduced in number except as may be necessary to reconfigure the wet slips to accommodate different size vessels. This provision is intended to preserve both the in-water and upland services provided by the marina facility prior to the construction of the restaurant. Last, the rules require that, where a restaurant is proposed as part of a new marina facility, the marina

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

facility must provide an appropriate mix of marina support facilities. This provision is intended to ensure that the new marina facility will support the boating industry.

336. COMMENT: Proposed N.J.A.C. 7:7-15.3(d)8vi will allow marinas to build new restaurants provided that the restaurant waste water discharges to a holding tank because of water quality concerns. Superficially this works as noted in the rule proposal since there is no true environmental impact; but that is entirely dependent on proper operation and maintenance and that wastes are not pumped out into the surface water directly or indirectly similar to the many leaking holding tanks on the Delaware Bay, such as what has happened historically on Money Island. Maintaining a septic tank, especially for commercial users, can be very expensive and some might find alternatives to doing proper maintenance more financially advantageous than doing the right thing. Further, these areas are subject to storm events that can damage the holding tanks. However, the rule proposal does not appear to fully discuss the economic impact of operating a holding tank or the costs of instituting a program to ensure the tank is functioning properly (for example, the tank is water tight and has proper working alarms and aeration) over time. Additionally, there does not appear to be any discussion regarding the regulatory authorities responsible for tracking that the tank is properly maintained, pumped out, and disposed of properly or the economic impacts of instituting this additional program or increase in case load to be borne by that authority.

The rule also appears to be in conflict with the Realty Improvement Sewerage and Facilities Act (RISF). This Act at N.J.S.A. 58:11-25 states, "No building permit for the construction of a realty improvement shall be issued by any municipal or other authority in this

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

State nor shall the construction of any realty improvement be begun until the board of health having jurisdiction shall have certified that the proposed water supply system and sewerage facilities for the proposed realty improvements are in compliance with the provisions of this act and the standards for construction of such water supply and sewerage facilities promulgated by the State Department as herein provided and those established by local ordinances, where such local ordinances prescribe higher standards than those promulgated by the State Department.”

Under the Act, a “realty improvement” is any proposed new residence or other building the useful occupancy of which shall require the installation or erection of a water supply system or sewerage facilities, other than one which is to be served by an approved water supply and an approved sewerage system. An “approved sewer system” is a sanitary sewer system which has been approved by the Department pursuant to Title 58 of the Revised Statutes, or any other law.

Currently, there are only two types of approved sewer systems: a physical connection to a New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A) permitted sewage system and an individual subsurface sewage disposal system approved under N.J.A.C. 7:9A. Holding tanks in both of the cited rules are not permitted for new construction (realty improvements). Most marina dump stations are allowed to exist because they aren’t serving a realty improvement, just the boats. A new restaurant would be considered a realty improvement. Therefore, the rule appears to be a violation of the RISF.

All sewage holding tanks need a Treatment Works Approval (TWA) from the Department in order to be constructed. There are no evaluations of the impact to the Department in terms of processing additional permits on an already overburdened program and the costs to obtain those permits by would be applicants. Due to the potential impacts on local authorities to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

ensure that those holding tanks are properly serviced and maintained and since no evaluation on that matter was completed from an economic impact basis, the Department should bear that responsibility instead. The cost of enforcement by the Department rather than local officials should be evaluated.

Finally, the rule appears to conflict with, or at least it is unclear how it will resolve issues related to, the Water Quality Management Planning (WQMP) Rules at N.J.A.C. 7:15. Holding tanks are a treatment works and any new construction must be consistent with the plan in order for a TWA to be issued. Under the WQMP rules, a development is either in a sewer service area or is on septic. The proposed rule now creates a new situation in which the restaurant will be consistent with neither. How are the new restaurant builders going to deal with this consistency issue? What is the economic impact of complying with that process? (140)

RESPONSE: The commenter is mistaken. The construction of a restaurant at a marina, including the treatment of any wastewater from the restaurant operation, is required to comply with all Federal, State, and local requirements, including the WQMP Rules.

The provision referenced, N.J.A.C. 7:7-15.3(d)8vi, does not require that restaurant wastewater be discharged to a holding tank. Instead, it provides that construction of a restaurant as a new or existing marina facility is acceptable provided the marina facility provides onsite pumpout facilities and restrooms for marina and restaurant patrons. Under N.J.A.C. 7:7-15.3, pumpout facilities apply only to boats. As defined at N.J.A.C. 7:7-1.5, "pumpout facility means a facility intended to receive the discharge of wastewater from a marine sanitation device. Pumpout facilities include, but are not limited to, fixed pumpout stations, dockside pumpouts,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

portable pumpouts, pumpout boats, and dump stations.” Further, a marine sanitation device or MSD is defined for the purposes of the Clean Water Act at 33 U.S.C. § 1322(a)(5) as “any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.”

Accordingly, a pumpout under the CZM rules applies only to boats (vessels). The requirement that the restaurant provide onsite pumpout facilities and restrooms adequate to serve both marina patrons and patrons of the restaurant at proposed N.J.A.C. 7:7-15.3(d)8vi is intended to protect water quality. In some instances, a restaurant located at marina may provide transient boat slips for marina patrons. This provision is intended to prevent boaters using these transient slips from dumping the sewage from their boat’s MSD into the water while docked.

337. COMMENT: The proposed new rule allows a non-water dependent restaurant use at a marina to be located only 15 feet from the mean high water line of a bulkheaded shoreline. This standard will result in more development closer to the tidal waters which will be subject to flooding and storm damages; will further limit public access along the waterfront; will “wall of the waterfront” adversely impacting coastal views and aesthetics; will preclude future marina uses within these filled water’s edge areas; and will lead to future marina expansions into wetlands, shellfish habitat, submerged vegetation, and sensitive shallow water habitats. All of these results conflict with the Department’s mission to protect, preserve, and enhance coastal resources. (90)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: With respect to the setback requirement, the setback requirements for the construction of a restaurant are consistent with the setback requirements for other structures at marinas under general permit 9 - construction of support facilities at legally existing marinas, N.J.A.C. 7:7-6.9. This setback requirement is not intended to address storm or flooding issues. Any restaurant proposed at a marina must also comply with current construction codes which will address flood resistant construction techniques.

The construction of a marina must comply with all applicable CZM rules including the shellfish habitat, submerged vegetation habitat, intertidal and subtidal shallows, and wetlands rules. In addition, the construction of a marina must also comply with the CZM rules' scenic resources and design rule, N.J.A.C. 7:7-16.10 which addresses a proposed development's impact on the views of the natural and built landscape. Further, as explained in the Response to Comments 332 through 335, the Department considered the importance of the services provided by marinas when developing the amendments and has incorporated requirements to ensure that the in-water and upland services provided by the marina are not compromised as a result of the construction of the restaurant.

**N.J.A.C. 7:7-15.10 Commercial facility**

338. COMMENT: The changes to the commercial facility rule requiring setbacks and conservation easements are supported. (54)

RESPONSE: The Department acknowledges this comment in support of the rule.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

339. COMMENT: With respect to N.J.A.C. 7:7-15.10(a)5, to the extent a conservation restriction is imposed, the restriction documents should include express provisions allowing the restriction to be vacated on their own terms based upon changed conditions without having to obtain Commissioner approval. (50)

RESPONSE: The Appellate Division has affirmed the Department's authority to secure conservation restrictions under the Coastal Area Facility Review Act. *In re Program Permit Rules*, 354 N.J. Super.293, 366-68 (App. Div. 2002). As explained in the Response to Comment 423, it has been the Department's experience that, either by oversight or design, without recording deadlines, conservation restrictions are often not recorded by owners or successors, which can result in unknowing purchasers acquiring the land with no knowledge of the permitting obligations. Thus, the lack of a date within which to record the conservation restriction imposes an undue burden on the Department to pursue property owners or monitor approved projects for recording; the lack of a deadline also creates enforcement quagmires. More importantly, the lack of a specific deadline for recording the conservation restriction could increase the number of innocent purchasers obtaining property without an understanding of the limitations applicable to that property.

In the event that the property owner or developer decides not to proceed with the project, the owner or developer can abandon and relinquish the permit, and the Department will issue a release of the recorded conservation restriction provided the requirements of N.J.A.C. 7:7-18.3 are satisfied.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

340. COMMENT: Proposed N.J.A.C. 7:7-15.10(a)5, (b)4, and (c)3 allow new hotels and motels, new retail, and new convention centers and arenas to be located as little as 15 feet from bulkheaded waters, which will lead to increased damages from coastal storm surge and flooding, and increased public recovery costs. In addition, the location of these large structures so close to the water will adversely impact public access, will adversely impact scenic coastal views and will further the walling off of New Jersey coastal waters. There is no justification provided for this new standard as new buildings of this type should be set back further from the water. (90)

RESPONSE: As explained in the Response to Comment 337, the CZM rules prior to this rulemaking did not contain a setback requirement for commercial developments on non-oceanfront sites and, therefore, commercial developments could be constructed immediately adjacent to a bulkhead. The Department believes that it is appropriate to apply the same requirement to commercial development. This setback requirement is not intended to address storm or flooding issues. Any commercial development proposed adjacent to a bulkhead must also comply with current construction codes which will address flood resistant construction techniques.

341. COMMENT: The rules do not appear to take resiliency lessons from Superstorm Sandy or predicted sea level rise into account in allowing new commercial development only 15 feet from the mean high water line of a bulkheaded shoreline. These structures will be at risk of damage from flooding or storm surge during storm events and the resulting increase in trash generation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

and decrease in pervious surfaces will lead to greater non-point source pollution in our coastal areas. (162)

RESPONSE: The prior commercial facility rule did not contain a setback requirement for commercial developments and, therefore, these structures could have been constructed immediately adjacent to a bulkhead. However, the CZM rules do require a 15-foot setback for residential structures located adjacent to existing or proposed shore protection structures. Accordingly, the Department determined it appropriate to include a setback for commercial properties adjacent to a bulkhead. All structures must be constructed in accordance with all Federal, State, and local regulations. The amendments adding a setback requirement for commercial facilities will not result in an increase of impervious cover. The amount of impervious cover is determined in accordance with N.J.A.C. 7:7-13 and no changes to the impervious cover limits have been made.

#### **N.J.A.C. 7:7-15.14 High-rise structures**

342. COMMENT: The language contained at N.J.A.C. 7:7-15.14(b)6 “requiring an increase in height and density” has been problematic when consulting municipal land use ordinances. The Department has interpreted this rule in such a way that, unless a local ordinance or master plan states that a height and density increase is “required” in the applicable zone, high rise structures are prohibited. It is recommended that N.J.A.C. 7:7-15.14(b)6 be amended to require that the proposed structure be in character with the surrounding transitional heights and residential

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

densities, or be in compliance with local zoning which is consistent with all applicable sections of this chapter. (83, 156)

RESPONSE: The development of a high rise structure must be consistent with all applicable CZM rules, including the scenic resources and design rule at N.J.A.C. 7:7-16.10 and buffers and compatibility of uses rules at N.J.A.C. 7:7-16.11, which address the compatibility of the building with the surrounding development.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 16. Resource Rules**

### **N.J.A.C. 7:7-16.12 Traffic**

343. COMMENT: The proposed amendment to provide more flexibility in the review of impacts to the level of service of a traffic system, necessary design modifications, or contributions toward an area wide traffic improvement is supported. (129)

RESPONSE: The Department acknowledges this comment in support of the rule.

344. COMMENT: Under the amendments to N.J.A.C. 7:7-16.12, how will a county agency be notified when their review is necessary and what is the required time frame for the agency's response? (129)

RESPONSE: The Department amended N.J.A.C. 7:7-16.12 to provide flexibility in the review of any potential effects on traffic by eliminating the requirement that both NJDOT and regional agencies review the design modifications or funding contribution. The agency responsible for reviewing the proposed impacts would be based upon jurisdiction. For example, where a coastal development affects traffic on a county road, the county agency responsible for that road would review the effect of the development and the appropriateness of design modifications or a funding contribution toward an area wide traffic improvement. The review of a proposed development's effects on traffic should be completed prior to the submittal of a coastal permit application to the Department since the applicant, as part of the coastal permit application, would

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

need to demonstrate compliance with the traffic rule, and the failure to secure a sign-off from the county agency would result in the application being incomplete.

## **Subchapter 17. Mitigation**

### **General comments**

345. COMMENT: The simplification of the mitigation requirements and the proposed changes in the mitigation subchapter at N.J.A.C. 7:7-17 are supported. For instance, it is appropriate that mitigation can be carried out on public as well as private property pursuant to N.J.A.C. 7:7-17.5(a). The flexibility at N.J.A.C. 7:7-17.2(e) to not require mitigation where environmental impacts are *de minimis* and where the applicant demonstrates avoidance and minimization of impacts is also supported. Further, the fact that mitigation can be provided for an impact to submerged aquatic vegetation pursuant to N.J.A.C. 7:7-17.10 and also support individualized mitigation requirements to address various CZM policies is supported. (50)

RESPONSE: The Department acknowledges this comment in support of the rule.

346. COMMENT: The CZM rule proposal does not fully address and should be consistent with the Federal Mitigation Rule. As a result of the unique status of New Jersey being one of two states to have assumed the Federal 404 permitting program, there can be many instances of overlapping State and Federal jurisdiction which require clarity. In the CZM rules, the USACE and Department both regulate non-assumed waters and wetlands. The consistent regulation of these waters and wetlands, and the mitigation of impacts via mitigation banks, mitigation sites,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

or an in-lieu fee program, must take into consideration impacts in assumed or non-assumed waters, and the use of the monies or mitigation of the impact in waters and wetlands in a consistent manner. (124)

RESPONSE: As defined at N.J.A.C. 7:7-17.1, “in-lieu fee program” means a program approved by the Department and the USACE that involves the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a government or non-profit entity to satisfy compensatory mitigation requirements for both State and USACE permits. An in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide mitigation is transferred to the in-lieu fee program. An in-lieu fee program does not refer to contributions to the Wetlands Mitigation Council. Currently, the State does not have an in-lieu fee program for wetlands impacts approved by the USACE for non-assumed wetlands and waters as compensation for impacts where both the Department and USACE require mitigation.

The Federal Mitigation Rule contains the same standards for both freshwater and tidal wetlands located within New Jersey’s coastal zone. In 1993, the Department entered into an assumption agreement with the United States Environmental Protection Agency (USEPA) to administer the permit program established pursuant to Section 404 of the Federal Clean Water Act. The assumption agreement obligates the State to maintain program compatibility, which means the State’s freshwater wetland regulatory program must be as strict as the Section 404 Federal program. While the Federal CZMA does not contain such a requirement for coastal wetlands, the Department is proposing to amend the mitigation standards of the CZM rules to reflect the standards and concepts of the FWPA Rules because they reflect current science.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Further, the adopted rules address situations in which the USACE and Department both have jurisdiction over non-assumed wetlands and waters. The adopted rules do consider impacts to assumed and non-assumed wetlands and waters and treat mitigation banks, mitigation sites and in-lieu fees in a consistent manner. The proposed changes to the mitigation standards in the CZM rules do not exceed the standards in the Federal Mitigation Rule.

347. COMMENT: Since the Department proposes sections addressing shellfish habitat and submerged vegetation mitigation, it is recommended that the rules include a section addressing critical wildlife habitat mitigation. The Department typically requires mitigation in the form of preservation of critical wildlife habitat through a deed restriction of an offsite location at a ratio of 2:1 or a monetary contribution of \$10,000 to \$20,000 per acre. However, the regulations do not specifically address the requirements. (50)

348. COMMENT: The Department should consider adding mitigation standards for threatened and endangered species habitat and critical wildlife habitat such that these special areas are provided with a framework to guide appropriate mitigation design. The Department has been requiring compensation for the loss of habitat through mitigation. Should the Department continue to require this type of mitigation, the standards should be included within the mitigation subchapter. Specifically, the definitions of “creation,” “enhancement,” “mitigation,” and “restoration” should include threatened and endangered species habitat and critical wildlife habitat. Further, mitigation standards should be included at N.J.A.C. 7:7-17.4 for threatened and endangered species habitat, and critical wildlife habitat and sections specific to the mitigation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

requirements for these special areas added. The mitigation standards should include safeguards to prevent the loss of core habitat or the displacement of existing listed species. (83, 156)

349. COMMENT: Because the CZM rules address more than waters of the U.S. inclusive of wetlands, please expand on mitigation for other CZM resources and the ability to develop mitigation sites and banks for all regulated coastal resources since Subchapter 17, Mitigation, addresses wetlands and aquatic habitats only. It is requested that the subchapter address other resources, such as critical wildlife habitat, with mitigation credits and bank procedures being established for such resources. (124)

RESPONSE TO COMMENTS 347 THROUGH 349: Although critical wildlife habitat mitigation was not part of this rulemaking, the Department recognizes the need to address mitigation for impacts to this habitat. On September 8, 2014, the Department held a stakeholder meeting to discuss potential changes to the use, development, and protection of the State's coastal resources. As a result of that meeting, seven subcommittees were formed, one of which is intended to address the CZM rules for threatened and endangered wildlife and plant species habitat, and critical wildlife habitat. The subcommittee met on September 22, 2014, to begin a conversation about how the Department should proceed in regulating these areas and what rule changes are necessary in order to effectively manage these special areas.

350. COMMENT: The proposed mitigation rules, as applied, will cause disproportionate impact on minorities and low income residents in the State. The proposed mitigation rules will divert

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

investment in clean water away from the poor while other State policies will increase the damage to already degraded ecosystems in poor communities.

There is a strong correlation between degraded environment and poverty and it is the foundation of the Federal Executive Order on Environmental Justice. The decision to propose the mitigation rules with many anti-urban, anti-stormwater policies virtually assures that major investments in mitigation will be diverted from poor communities in most need of restoration. The institutional biases that discriminate against urban areas also discriminate against the poor. The regulatory roadblocks include policies that: prohibit use of stormwater in mitigation; favor mitigation banks that provide wildlife habitat; favor mitigation sites that abut existing conservation land; require wetland mitigation sites to have cleaner sources of hydrology that than exist in existing streams in poor neighborhoods; require mitigation sites to be owned in fee simple (most remnant ecosystems that can be restored in poor neighborhoods have many small parcels and easements); and encourage placement of development that impacts the environment in low income communities without allowing local mitigation.

Subchapter 17 should be reviewed by the Department to identify as applied policies such as those above that create disproportionate impact on low income communities. These policies should be adjusted to give all residents in the State the hope that one day we will live near clean healthy coastal ecosystems. (125)

RESPONSE: The Department disagrees that the mitigation rules will cause a disproportionate impact on minorities and low income residents in the State. In accordance with N.J.A.C. 7:7-17.2(a), mitigation shall be similar in type and location to the resource(s) lost or impacted, and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

shall fully compensate for any ecological loss. In addition, N.J.A.C. 7:7-17.5(e) provides that the Department will not approve creation, enhancement, or restoration of a wetland in an area that is already of high ecological value. These provisions seek to ensure that mitigation will be performed close to the impact and will replace the functions and values lost or disturbed so that there is no bias against any income group.

351. COMMENT: For the purposes of mitigation, the Department relies upon “Compensatory Mitigation for Losses of Aquatic Resources,” adopted by the USACE and USEPA in 2008. This document was developed to assist the USACE in implementing Section 404 of the Clean Water Act. Review of this document shows that USACE is aware of, and values, the water quality treatment functions of wetlands. USACE recommends that water quality functions be replaced near to where they are disturbed. (See Fed Reg Vol. 73, No. 70 p. 19692.) In many areas of the urban coastal zone, stormwater runoff derived hydrology is the only available source of hydrology for mitigation sites and treating this water is the only way to address the water quality function in a mitigation design. Considering the Federal value placed on the ability of wetlands to purify water and the lack of discussion by the Department as to why it did not consider this wetlands value in the mitigation rules, the State rules are inconsistent with the Federal rule. (125)

RESPONSE: In 1993, the Department entered into an assumption agreement with the USEPA to administer the permit program established pursuant to Section 404 of the Federal Clean Water Act. The assumption agreement obligates the State to maintain program compatibility, which means the State’s freshwater wetland regulatory program must be as strict as the Section 404

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Federal program. While the Federal CZMA does not contain such a requirement for coastal wetlands, the Department determined to amend the mitigation standards of the CZM rules to reflect the standards and concepts of the FWPA Rules, N.J.A.C. 7:7A, because they reflect current science. The Department disagrees with the commenter that the CZM rules are inconsistent with the Federal Mitigation Rule. Like the Federal Mitigation Rule, the CZM rules require that the functions and values lost be replaced near to the area of disturbance.

352. COMMENT: The rule proposal shows the Department relies mostly upon an internal study from 2002 to draft the mitigation rules: “Creating Indicators of Wetland Status (Quantity and Quality): Freshwater Wetland Mitigation in New Jersey,” NJDEP, 2002 (hereinafter referred to as mitigation study). The mitigation study was prepared by the Department to determine if wetland mitigation sites approved under the FWPA Rules were successful.

The Department studied three kinds of wetlands, those supported with stormwater, those supported with ground water, and those supported by diversion of surface water. On page 61 of the mitigation study, the Department concluded that “Wetland Area Achieved remained relatively constant among sources of hydrology.” In other words, the mitigation study found that stormwater is as effective as any other water source to create wetlands.

As part of the mitigation study, the Department assembled a team to rate 90 previously created wetlands on the potential of these wetlands to provide desirable wetland functions and values. Wetland Study p. 9. The scientists then chose the wetland values that they felt were desirable. Id p. 17. It is clear from the list of scored factors that biologists and wetland scientists valued ecological function that supported wildlife habitat.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The water purifying ability of wetlands is usually cited as the most important public benefit of wetlands and was specifically cited by the New Jersey Legislature as the first and most important public benefit to be protected when it enacted the FWPA, at N.J.S.A. 13B:9-2.

Despite the science and the authoritative statement of public benefit, the authors of the mitigation study declined to include wetland function for treating surface water and groundwater. The authors do not explain in the study or in the proposed rules why it dismissed the water purification function of wetlands.

Common reed and cattail can grow rapidly in thick monoculture stands. It is this characteristic that helps makes them among the best aquatic species in removing contaminants and nutrients from urbanized nonpoint sources. These species also are highly adaptable to disturbed sites and are often the dominant species in highly degraded urban ecosystems. Common reed and cattails were found in the stormwater management facilities evaluated in the mitigation study evidencing water quality treatment functions.

It also appears the mitigation study included a process to give the water purifying function of wetlands a negative rating. In Appendix C of the mitigation study, the Department points out that common reed and cattails are nuisance and invasive species. The scientists were instructed to give negative weight when substantial nuisance species were found because they reduce the habitat values for wildlife while ignoring the water quality benefits of the plants. Given the bias in the mitigation study against purifying surface and ground water, the Department predictably concluded that “stormwater results in detriments to the quality of the wetlands achieved.” Wetland Study p. 61.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Demonstrating the need for stormwater treatment wetlands in the coastal zone, the Department has dedicated over \$100 million in financial assistance to State and local agencies to improve the water quality treatment function of wetlands and stormwater facilities to address Action Item #2 of the “Comprehensive Action Plan to Address the Ecological Decline of Barnegat Bay.” Further, other agencies, such as the USEPA and the Barnegat Bay Partnership, have developed other sources of data that, taken together, create a very strong case to allow construction of stormwater wetland mitigation sites in the urban areas of the coastal zone, including:

1. The declaration of the USEPA through the Barnegat Bay Partnership that non-point source pollution is a primary threat to Barnegat Bay;
2. Listings under Section 303(d) of the Clean Water Act show that non-point source pollution is either a main source or the only source of pollution; stormwater treatment wetlands are very efficient at removing pollutants that are found in urban non-point sources;
3. The removal of non-point pollution will improve habitat values throughout the coastal zone;
4. Recommendations by the USEPA Urban Waters Program that non-point source pollution be reduced in urban areas;
5. The statement by the USEPA’s Urban Water Strategic Framework that urban water will no longer be undervalued in the country, especially in underserved or economically distressed communities. In many disturbed urban ecosystems in New Jersey, common reed is the dominant species. Continued reference to common reed as invasive, and lacking ecological value, is inaccurate and is a contributor to undervaluing our urban landscapes. In many of New

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Jersey's urban coastal areas, almost all of the hydrology available for wetland mitigation is stormwater runoff derived; and

6. The State's policies encouraging redevelopment of the urban core because the State wants to prevent sprawl.

Based on the above, there is a public need to remedy non-point source pollution coastal zone. Wetlands are proven to purify non-point source runoff and have been successfully implemented in the State to improve coastal ecosystems. The decision to exclude stormwater from mitigation sites is contrary to the preponderance of the science, is contrary to existing public policy, and relies upon a biased mitigation study that reaches a biased recommendation that is the basis of the proposed coastal rule. (125)

RESPONSE: The Department did not rely solely on its mitigation study when contemplating the amendments to the CZM mitigation rules. Rather, the study results, combined with the Department's experience in instituting a mitigation requirement under CZM for the past 30 years, contributed to the Department's rules. While the commenter observes that the Legislature included in its findings in the FWPA, purification to surface and groundwater resources as an important wetland function, the legislature also listed the myriad of other benefits that freshwater wetlands provide including: natural protection against flood and storm damage, and soil erosion; maintenance of base flows for surface waters, especially during drought periods; and "essential breeding, spawning, nesting, and wintering habitats for a major portion of the State's fish and wildlife, including migrating birds, endangered species, and commercially and recreationally important wildlife." (See N.J.S.A. 13:9B-2.) Therefore, in addition to the water quality function

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

that all wetlands provide, not solely wetlands dominated by common reed, it is appropriate to consider the habitat function of a wetland, in addition to all other functions, when evaluating wetland value. Further, the goal of wetland mitigation, which is the creation, restoration, or enhancement of a wetland to replace another wetland lost as the result of permitting of an activity determined to be appropriate, is to replace all functions and values of the wetland; not solely the water quality protection provision.

The Department's mitigation study supports the Department's rule regarding excluding stormwater as a source of mitigated wetland hydrology. In fact, the Department studied 90 wetland mitigation sites. It categorized the source of the hydrology for each site into those that were supported by groundwater, sheet flow, stream diversion, and stormwater. The study's conclusion regarding the hydrology source states, "The data suggest that source of hydrology does have a bearing on the attainment of study goals. We found that, although Wetland Area Achieved remained relatively constant among sources of hydrology, stream diversion resulted in the highest average score of 61%, well above the mean value of 45% when all sites are combined. In terms of WMQA (Wetland Mitigation Quality Assessment) Index score, **stormwater-driven wetlands scored substantially lower than wetlands with other sources of hydrology. Stormwater-driven mitigation wetlands were also found to be more likely to have in excess of 50% cover of nuisance and invasive vegetation than mitigation wetlands driven by other sources of hydrology.** This suggests that stream diversion as a source of hydrology is more likely to result in improvements to wetland mitigation quantity, and **stormwater results in detriments to the quality of the wetlands achieved.**" (Emphasis added: "Creating Indicators of Wetland Status (Quantity and Quality): Freshwater Wetland Mitigation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

in New Jersey,” NJDEP, 2002. Page 61). Therefore, in order to achieve successful, high quality and functional wetlands, it is necessary to preclude the use of stormwater as the source of hydrology.

The prevalence of large stands of common reed is often an indicator of poor wetland function and/or site disturbance. Common reed forms a monoculture in wetland areas that are relatively dry as compared to other wetland sites, often dominates sites that are contaminated with hazardous or solid wastes, and is also found in disturbed non-wetland sites. Therefore, it is appropriate to conclude that wetland mitigation sites dominated by common reed do not have adequate hydrology to sustain more diverse wetland plant species, and are therefore not functioning at a high level, thus making them lower value than those containing other types of wetland vegetation.

The Department’s goal in each of the studies and/or circumstances cited by the commenter is to restore wetlands, including those in the urban environment, to a more healthy ecological condition by removing contaminants, restoring hydrology, removing invasive species like common reed and restoring the site with natural plant communities that provide all of the values and functions that wetlands provide. Wetlands may be more valuable in urban settings than elsewhere because of their scarcity. Thus each wetland must play a greater role in contributing to the ecological values and functions for the community. Because the Department study shows that wetlands formed by stormwater runoff are not healthy ecosystems, the Department will not allow the use of stormwater in any wetland mitigation system, including those in urban settings.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Stormwater basins do not provide the coastal resource benefits necessary to offset ecological loss resulting from proposed impacts to wetlands and other coastal resources. Accordingly, areas intended for stormwater management facilities cannot be considered as mitigation sites, including mitigation banks. In addition, the contribution of discharged stormwater to a mitigation site negatively affects the success of a mitigation project. Stormwater discharges should not be used as a source of hydrology for mitigation sites because the stormwater may contain: contaminants accumulated from the sites from which it originated, seeds or rhizome fragments of invasive species that would be introduced into the mitigation site, and some level of suspended sediments that would contribute to sedimentation adversely affecting the mitigation project. Additionally, projects supported by stormwater discharges may experience large sediment inputs when rapid storm events cause stormwater to discharge over the spillway without receiving any type of pre-treatment. In addition, and perhaps most important to the long-term success of a mitigation project, the stormwater discharge may not be a reliable source of hydrology.

For the reasons set forth above and because stormwater treated in accordance with best management practices is not treated for the parameters that can potentially adversely affect a mitigation project, stormwater is not an appropriate hydrology source for a wetland mitigation site.

When the Department requires mitigation, the purpose is to provide a complete, functioning system; not solely to provide a mechanism to clean stormwater from an adjacent site (also known as a stormwater detention basin), or to cleanse contamination (also known as a remediation system). While these are legitimate uses for constructed wetlands under other

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

programs, under the CZM rules, the Department is seeking to replace all the values and functions of natural wetlands lost with an equivalent wetland providing equivalent values and functions.

Therefore, the Department does not agree that the rules should be revised to allow point source discharge of stormwater to serve as the hydrology for mitigation sites.

353. COMMENT: The mitigation rules should be amended to facilitate consolidation of all State required compensatory mitigation into a single out-of-kind mitigation resource. This change will assist watershed managers in focusing on, and addressing, the most pressing watershed needs. For example, in Newark nonpoint source pollution may be the most important need of a watershed and therefore greater investment in the establishment of stormwater treatment wetlands should be made. In some of the lagoon communities, the watershed need may be the replacement of bulkheads with living shorelines. (125)

RESPONSE: As previously noted, wetland mitigation is as important, if not more important, in urban settings due to the scarcity of the wetland resource. It would be inappropriate to short-change urban areas by not providing them with the same level of wetland mitigation that is provided in non-urban settings simply because there are also non-point source pollution issues that must be addressed. Urban areas contain valuable wetland systems and when these systems are affected by permitting, they should be replaced or mitigated in-kind, to the same degree and in the same manner as everywhere else in the State. Providing stormwater detention basins does not provide the values and functions of wetlands and, therefore, it would be inappropriate to trade wetland mitigation for stormwater detention. For this reason, the Department does not

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

agree that it should allow out of kind mitigation so that stormwater and non-point source pollution is addressed while allowing the loss of complete, valuable wetland ecosystems.

#### **N.J.A.C. 7:7-17.1 Definitions**

354. COMMENT: The proposal Summary at 46 N.J.R. 1089 states the definitions of “credit purchase,” “mitigation banking instrument,” “mitigation bank site,” and “service area” are the same as the definitions of the same terms at N.J.A.C. 7:7A-15.1 in the FWPA Rules with minor amendments for clarity that do not affect meaning. The proposed amendments to these definitions do affect the meaning of these terms. (124)

RESPONSE: The commenter did not specify why they contend the amendments affect the meaning of the terms. However, the Department believes the minor changes proposed to these terms add clarity and do not change the meaning. The Department’s intent is to make the mitigation requirements consistent between the FWPA Rules and CZM zones to the extent practicable.

355. COMMENT: A “degraded wetland” at N.J.A.C. 7:7-17.1 is a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland that has been partially filled or excavated, contaminated with hazardous substances, or that has an ecological function substantially less than that of undisturbed wetlands in the region. The Department’s goal of consolidating all mitigation requirements in one place, facilitating clean-up of hazardous waste sites, and incentivizing brownfields redevelopment by establishing a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

framework for a 1:1 mitigation requirement (rather than a traditional 2:1 requirement) is acknowledged. However, the proposed definition is overly broad. This definition will likely result in a net loss of wetlands over time and should not become the default standard for coastal, flood hazard area, and freshwater wetlands permitting. The definition should be narrowed to focus only on contaminated sites. (33, 154)

RESPONSE: The definition of “degraded wetland” is not overly broad and will not likely result in a net loss of wetlands overtime. The definition of degraded wetland at N.J.A.C. 7:7-17.1 is identical to the definition of the term in the FWPA Rules at N.J.A.C. 7:7A-1.4. Degraded wetlands may be enhanced or restored to improve the characteristics, habitat and functions of the degraded wetland. Prior to these amendments, the CZM rules at N.J.A.C. 7:7E-3.27(h)9 required restoration of wetlands at a restoration to lost or disturbed ratio of 1:1, and the enhancement of wetlands at a ratio determined on a case-by-case basis. At new N.J.A.C. 7:7-17.13(b), the Department is increasing the restoration to lost or disturbed ratio from 1:1 to 2:1. In addition, the Department has clarified at N.J.A.C. 7:7-17.13 that the amount of enhancement required must ensure that the mitigation area results in wetlands of at least equal functions and values to those lost. These ratios are consistent with those in the FWPA Rules and have been proven to be effective in mitigating for the loss or degradation of wetlands and would apply to all wetland mitigation, regardless of whether the wetlands are tidal or non-tidal.

Further, the Department disagrees with the commenter that the definition should be narrowed to focus only on contaminated sites. While degradation of wetlands can result from

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

contamination, they can also be the result of a number of activities such as the placement of fill, hydrologic alteration, and agricultural activities.

356. COMMENT: Proposed definition of “degraded wetland” includes terms such as “impaired surface water flow,” “excessive drainage, and “ecological functions substantially less than that of undisturbed wetlands in the region,” all of which are vague and do not reflect measurable parameters that are understandable by the regulated public. Without measurable standards, there is no clear basis for such classification and the Department’s decision-making related to these areas will be arbitrary. (90)

RESPONSE: The Department disagrees that the definition of “degraded wetland” is vague and does not reflect measurable parameters. The definition relies on whether a wetland serves the functions that are protected by the Wetlands Act of 1970 and the Freshwater Wetlands Protection Act, and allows the Department to determine, for mitigation purposes, if the soils, vegetation and/or hydrology of a wetland system could be manipulated to heighten, intensify, or improve wetland functions. Given the large variation among the wetland types across the state and the constant advances in the science of wetland enhancement, overly prescriptive parameters in the definition of “degraded wetland” would be impracticable. However, the rules require that a mitigator evaluate the potential mitigation site to demonstrate that the wetland which was previously more ecologically valuable but has become degraded due to factors such as siltation, ditching, or filling, could be manipulated to improve the characteristics, habitat and functions of the wetland such that it will have values and functions similar to an undisturbed wetland. An

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

example of a degraded wetland is one that the surface water flow has been impaired due to siltation caused by soil erosion and where removal of the accumulated sediment would improve surface water flow of the wetland system. As stated in the Response to Comment 355 above, this definition is consistent with the definition of the term in the FWPA Rules and has proven to be effective.

357. COMMENT: The definition of degraded wetlands at N.J.A.C. 7:7-17.1 should be revised to include wetlands that support a dominance of invasive or non-native species or stands of vegetation that degrade wildlife habitats. (83, 156)

RESPONSE: “Degraded wetland” pursuant to N.J.A.C. 7:7-17.1 includes wetlands that have an ecological function substantially less than that of undisturbed wetlands in the region.

Undisturbed wetlands are likely to contain minimal invasive species or non-native species or stands of vegetation and thus have a higher ecological function as opposed to a disturbed wetland which is more likely to contain such species. Because the presence of invasive species or non-native species or stands of vegetation lowers the ecological function of a wetland, this situation is already addressed in the definition of “degraded wetland.” Accordingly, it is not necessary to identify wetlands that support a dominance of invasive or non-native species or stands of vegetation in the definition.

358. COMMENT: The Wetlands Mitigation Council is authorized under the FWPA. The proposed amendments to the CZM rules in effect change the FWPA. The Wetlands Mitigation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Council is, and should be, limited to freshwater wetlands and assumed areas. If the Department wishes to create a Council to serve the needs of the coastal program in non-assumed areas, the Department should amend the appropriate coastal statutes to form such a Council. (124)

RESPONSE: Under the Federal Clean Water Act and implementing regulations, there is no separation for regulatory purposes between coastal and freshwater wetlands. Rather all wetlands and waters are protected as “waters of the United States.” CAFRA, N.J.S.A. 13:19-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3 predated the Federal Clean Water Act and rules. They are silent on the use of monetary contributions to satisfy wetland mitigation requirements. When the Freshwater Wetland Protection Act established the Wetlands Mitigation Council in 1987, the Federal Clean Water Act was in effect. At that time, there were no specific Federal rules for “in-lieu fee programs,” which is the name eventually given by the USEPA and the USACE to programs like the Council program, that accept monetary contributions “in lieu of” undertaking wetland mitigation. Because the FWPA focuses on freshwater wetlands, the Council was also focused on addressing freshwater wetland monetary contributions. However, the FWPA does not prohibit the use of the Wetlands Mitigation Council for coastal wetland projects. The FWPA defines wetlands based on the three parameters; soils, hydrology, and hydrophytic vegetation. The Federal Regulations also use the three parameter approach to define wetlands, but do not distinguish between freshwater wetlands and coastal wetlands. In 2008, the ability to donate money to satisfy a mitigation requirement was codified by the USEPA and USACE in their 2008 mitigation rules (Federal Mitigation Rule). Again, the Federal Mitigation Rule did not distinguish between freshwater or coastal wetlands. The Federal rules also required

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

that all in-lieu fee programs nationwide come into compliance with the Federal rules by 2013.

This was especially important in New Jersey since the State operates its freshwater wetland program in place of the Federal 404 program. In 2013, the Department began to work with the USEPA to realign the Council program in accordance with the Federal mitigation rules. As part of that realignment, the in-lieu fee instrument that the Department proposed to USEPA includes the ability of the Department to use the Council/in-lieu fee program for all wetland mitigation monetary contributions that may occur under the FWPA, and the coastal permitting program, including CAFRA and Waterfront Development Law. Therefore, modifications to CAFRA and the Waterfront Development Law are not necessary.

359. COMMENT: The definition of “restoration” should be consistent with the definition in the Federal Mitigation Rules. (124)

RESPONSE: The adopted definition of “restoration” is consistent with the term as defined in the FWPA Rules at N.J.A.C. 7:7A-15.1. Under the Federal rules, restoration is defined as “the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation” (see 33 CFR 332.2, Definitions). While the adopted definition of “restoration” includes the reversal of a temporary disturbance which is not included in the Federal definition, the adopted definition also includes “the reestablishment of wetland characteristics and functions in an area that was once a wetland but is no longer,” which is

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

consistent with how the term as is defined in the Federal rules. It is very common for wetlands to be impacted temporarily, such as for the excavation of contamination from a wetland. In such a case, the permittee would be required to reverse the temporary impact by replacing the contaminated material with clean fill and grading the area to its pre-disturbed condition.

Therefore, the Department has determined that it is appropriate that the State definition of “restoration” include the reversal of temporary impacts.

360. COMMENT: The definition of “credit purchase” is vague and does not define what a credit is, does, or equates to, in terms of mitigation value. A “credit” is the amount of mitigation required to offset an impact. The impact should be defined as a unit of area such as acres. Then a credit would be the amount of mitigation to offset an acre of impact. A definition of “credit” consistent with the Federal Mitigation Rules should be added. (124)

RESPONSE: Under the definition of “credit purchase,” a credit purchase is a substitute for performance of restoration, creation, enhancement, or preservation by a permittee. Each credit counts for a certain amount of mitigation. Accordingly, a credit from a mitigation bank based upon preservation mitigation would reflect a greater number of acres mitigated than a credit from a mitigation bank based upon creation of wetlands. The definition of “credit” under the Federal Mitigation Rule refers to a “unit of measure” whereas the definition of “credit purchase” in the FWPA Rules and CZM rules is more specific by stating that the unit of measure will be acres. The definitions are similar and both define a credit. Therefore, an additional definition of “credit” is not necessary.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

361. COMMENT: Under the mitigation rules, substantial earthwork to create wetlands is frowned upon. However, the definition of “enhancement” includes substantial earthwork in the list of actions potentially required to generate enhancement mitigation. “Substantial” should be removed from the definition. (124)

RESPONSE: The definition of “enhancement” is consistent with the FWPA Rules at N.J.A.C. 7:7A-15.1. The Department disagrees with the commenter’s suggestion that “substantial” be removed from the definition. N.J.A.C. 7:7-17.5 is intended to ensure that mitigation sites are proposed in locations where they are likely to be successful. As explained in the Response to Comment 380, it is the Department’s intent to avoid sites where several feet of soil must be removed in order to achieve wetland hydrology as these sites would not be successful over time. However, in certain instances, substantial alteration of the soils, such as grading, on a mitigation site that does not include significant removal of soil to achieve wetland hydrology, is acceptable and these sites may be suitable for wetland enhancement.

362. COMMENT: The definition of “Wetlands Mitigation Fund” should be deleted. The Wetlands Mitigation Fund and Wetlands Mitigation Bank are not part of the CZM rules as these are only authorized under the FWPA for assumed areas. (124)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: For the reasons discussed in the Response to Comment 358, the Wetlands Mitigation Fund and Wetlands Mitigation Bank can be used as a mitigation alternative under the CZM rules. Accordingly, the definition of “Wetlands Mitigation Fund” is being retained.

363. COMMENT: Monetary contributions as a mitigation alternative should not be permitted under the CZM rules as this type of mitigation is only authorized under the FWPA. A new in-lieu fee program must be created to address monetary contributions as mitigation under CZM rules. (124)

RESPONSE: For the reasons discussed in the Response to Comment 358 a monetary contribution under the CZM rules is an acceptable mitigation alternative. Further, as explained in the same response, in 2013, the Department began to work with the USEPA to realign the Council program in accordance with the Federal Mitigation Rule. As part of that realignment, the in-lieu fee instrument that the Department proposed to USEPA includes the ability of the Department to use the Council/in-lieu fee program for all wetland mitigation monetary contributions that may occur under the FWPA, and the coastal permitting program, including CAFRA and the Waterfront Development Law. These provisions can be found within Section 1, Introduction of the In-Lieu Fee Instrument. Therefore, modifications to either CAFRA and the Waterfront Development Law, or the CZM rules that implement those acts, are not necessary.

**N.J.A.C. 7:7-17.2 General mitigation requirements**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

364. COMMENT: N.J.A.C. 7:7-17.2(a) which requires mitigation to be similar in type and location to the resource(s) lost or impacted and to fully compensate for any ecological loss is supported. However, monetary contributions to the shellfish fund have not been proven to replace lost resources in an in-kind manner and the use of this fund is not monitored or maintained in a controlled manner like wetland mitigation banks. In the proposal, there are no details as to shellfish mitigation requirements, while the wetland section has pages of specific requirements. Please include details and requirements for use of the shellfish habitat mitigation funds. (124)

RESPONSE: The Department initiated its dedicated account for shellfish habitat mitigation in 1999-2000 to ensure that no overall net loss of productive shellfish habitat occurs as a result of the construction of a dock, pier, or mooring at a single-family home. As set forth in the adopted rule at N.J.A.C. 7:7-17.9(b)2, staff reviews proposed disturbances to habitat for anticipated losses measured in square feet, the documented density of shellfish in the area proposed to be impacted, and the commercial value of the anticipated lost habitat. The Department then assigns a charge that is used by the Marine Fisheries Administration to conduct certain offsetting activities. These include activities related to the enhancement and/or restoration of shellfish habitat throughout State waters. The account is administered primarily by the Department's Division of Land Use Regulation. Accordingly, the account is controlled, monitored, and maintained by the Department. Funds from the account are used to purchase, rear, maintain, and plant shellfish seed; purchase, transport, and plant shell and other approved cultch materials; and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

fund field assessments and staffing necessary to delineate, map, and confirm candidate enhancement sites and shellfish areas and post-enhancement/restoration monitoring.

To date, a number of enhancement/restoration activities have been funded by the Department's dedicated account for shellfish habitat mitigation. The Barnegat Bay Shellfish Restoration Program (BBSRP), which is a collaborative endeavor involving the Marine Fisheries Association, Rutgers University, the American Littoral Society, and numerous community volunteers from the citizen volunteer group known as ReClam the Bay, is one project in which funds from the Department's dedicated account for shellfish habitat mitigation were used. Core elements of BBSRP are accomplished through experiential learning where volunteers raise clam and oyster seed in upland nursery systems until seed are large enough to become less susceptible to predation. The seed is then planted in Department-approved locations within Barnegat Bay. To date, the BBSRP has trained over 150 volunteers to raise clam and oyster seed for educational, and enhancement/restoration purposes. The Department's Marine Fisheries Administration provides funding to the BBSRP through the Department's dedicated account for shellfish habitat mitigation. This funding is used to purchase oyster larvae and shellfish seed. The Marine Fisheries Administration also provides training, consultation, and professional assistance in all phases of the program.

Prior to 2006, New Jersey had very limited experience with hard clam enhancement activities. Therefore, to address this lack of experience, beginning in 2006-2007, the Department's Marine Fisheries Administration established a hard clam seeding effort in the Sedge Island Marine Conservation Zone within the Barnegat Bay – taking advantage of the restriction of commercial shellfishing within the zone. Through the clam planting by this

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

project, the Marine Fisheries Administration will enhance local clam populations within the zone and monitor the efficacy of varying planting methods and seed sizes. As part of this project, the Marine Fisheries Administration issued a report entitled, "Report on Hard Clam Restoration Activities," (Calvo, 2009) which analyzed the first three years of the planting efforts, various enhancement methods, and the cost-benefit of varying seed sizes. The primary conclusion of this study is that larger clam seed planted at low densities over large areas performed at higher levels than other enhancement methods employed during the study. These findings have influenced all larger-scale shellfish plantings. To date, approximately 3.5 million hard clams have been planted within the Sedge Island Marine Conservation Zone.

Additional shellfish enhancement activities include the planting of 2.6 million hard clams at various locations within Barnegat Bay, (for example, Gulf Point), Great Bay, and the Navesink River. Overall, monitoring has shown that the growth rates of the planted clams are excellent. In addition, approximately two million oyster seed have been planted in the Great Egg Harbor River, Mullica River, and Barnegat Bay (for example, Good Luck Point). Oyster habitat also has been enhanced by the planting of approximately 12,000 bushels of oyster and clam shell in the Barnegat Bay and Mullica River. Further, an intermediate transplant of approximately 2,000 seed oysters (near sub or market size) from the Mullica River to the Great Bay market beds was conducted in 2006.

The hatchery which held the current seed purchase contract with the Department was destroyed by Superstorm Sandy. In an effort to increase the scale of the Department's shellfish enhancement program throughout the State and, in particular, Barnegat Bay, the Marine Fisheries Administration is currently working with the Department of the Treasury to develop a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

request for proposal for the purchase of hatchery-reared shellfish seed (hard clams and oysters) that will be used to conduct a large-scale seed planting program for the purposes of providing substantial improvements in the enhancement of shellfish stocks in the New Jersey Atlantic Coastal Bays. The purchase of this seed will be funded in part by the Department's dedicated account for shellfish habitat mitigation.

The programs together ensure that no overall net loss of productive shellfish habitat occurs.

365. COMMENT: The rule at N.J.A.C. 7:7-17.2 effectively imposes a penalty for out-of-kind mitigation by requiring the applicant to demonstrate that the mitigation would result in an increase in the ecological functions and values of the resources prior to the loss or impact. Imposing such a requirement will discourage creative, viable mitigation options. The rules should allow for out-of-kind mitigation to be of the same ecological function as the resource prior to loss or impact without requiring an increase in the ecological functions and values. (11, 50)

RESPONSE: Under the FWPA and FWPA Rules, out-of-kind mitigation is permissible provided that it provides equal functions and values to those lost. Further, the Federal Mitigation Rule provides that the overall goal of compensatory mitigation is to offset unavoidable adverse impacts to wetlands and waters. Therefore, the proposed mitigation requirements for out-of-kind mitigation, which called for out-of-kind mitigation to result in an increase in ecological functions and values, were more stringent than FWPA Rules and Federal Mitigation Rule. This was not the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department's intent. Rather, as explained at 46 N.J.R. 1089 in the Summary of the overall goals of Subchapter 17, the mitigation standards under the CZM rules differ from the mitigation standards for projects involving freshwater wetlands under the FWPA Rules. To remedy the inconsistency between the FWPA Rules and the CZM rules, the proposal Summary reflected the Department's intent to amend the wetland mitigation standards of the CZM rules to reflect the standards for wetlands mitigation in the FWPA Rules. To address this inconsistency, the Department is amending N.J.A.C. 7:7-17.2(a) upon adoption to provide that the Department will consider proposals for out-of-kind mitigation provided the mitigation meets the goals and objectives of the mitigation subchapter and the mitigation provides ecological functions and values equal to those lost. For example, out-of-kind mitigation may be acceptable where a tidal wetland is dominated by phragmites and the applicant proposes to create a maritime forest. However, out-of-kind mitigation may not be acceptable where an applicant is impacting a pristine maritime forest consisting of native trees and shrubs and is proposing to mitigate impacts to the forest with a low-marsh tidal wetland since the mitigation may not provide equal ecological functions. In this case, the applicant would have to document to the Department how the mitigation project meets the requirements of the mitigation subchapter.

366. COMMENT: The Department is commended for adding a N.J.A.C. 7:7-17.2(e) which allows for subjective consideration for mitigation requirements in projects where environmental impacts are *de minimus* and where the applicant has demonstrated avoidance and/or minimization. This standard provides for common sense application of the Federal Mitigation Rule to projects in the coastal zone without significantly impacting the environment. (83, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support on the rule.

367. COMMENT: Proposed N.J.A.C. 7:7-17.2(d) allows the Department to waive the requirement for mitigation in cases where the development impacts are determined to be *de minimus*. There is no definition of this new standard or any defined metric for how these determinations will be made. This lack of clarity makes the standard subjective at best and meaningless at worst. (90)

RESPONSE: N.J.A.C. 7:7-17.2(d) provides that mitigation is not required for certain types of filling in accordance with N.J.A.C. 7:7-12.11(f). N.J.A.C. 7:7-17.2(e) provides that mitigation is not required where the impact to a coastal resource is determined by the Department to be *de minimus* and where the applicant demonstrates that the impacts were avoided and minimized. While the rules recognize the importance of requiring appropriate compensation for impacts to coastal resources, the rules also recognize that there may be limited instances where the benefits to be obtained by requiring mitigation are so limited that the costs to perform the mitigation are not justified. Accordingly, a specific square footage or other measure of what will be considered *de minimus* would not be appropriate as what will be considered *de minimus* depends upon several factors. For example, a loss of .01 acres of wetlands dominated by phragmites may be considered *de minimus* in a particular case, while a similar loss of coastal wetlands dominated by spartina alterniflora or spartina patens may not be considered to be *de minimus*.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

368. COMMENT: The rule at N.J.A.C. 7:7-17.2(h)3 precludes utilization of discharged stormwater in connection with the hydrology for a proposed wetlands mitigation site.

Stormwater systems can be designed and engineered to effectively utilize discharged stormwater as part of the hydrology for a proposed wetland mitigation site. The rule should be modified to allow such use. (50)

369. COMMENT: The Department should revise the proposed mitigation rules that prohibit use of stormwater in mitigation sites and that prohibit stormwater facilities in wetland mitigation banks. Wetlands are one of the few systems that remove nutrients, the primary cause of degraded water quality in much of the coastal zone. With restoration, these urbanized ecosystems could be engineered to purify surface water and groundwater and address a serious problem throughout the coastal zone. Therefore, it is both socially advisable and technically feasible to create wetland mitigation sites and wetland mitigation banks in the urban area that will remove contaminants in nonpoint source runoff including stormwater. This not only improves local ecosystems, it can improve the quality of downstream ecosystems as well. The proposal to exclude stormwater in mitigation is arbitrary and will frustrate attempts to clean up coastal ecosystem.

Some larger developments in urban areas will have to fund stormwater management facilities. Allowing applicants to integrate stormwater management facilities into mitigation sites creates incentives to abandon more expensive and much less effective stormwater systems such as underground sand filters and underground chambers which cannot remove dissolved contaminants. Developers could afford to build larger sites and integrate multiple ecosystem

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

functions to dramatically improve the habitat quality. Allowing applicants to combine stormwater with mitigation can improve both the economic and ecosystem functions on their sites leading to more sustainable results.

It is recommended that the Department redraft the regulations related to stormwater mitigation and wetland mitigation banking. In particular, the Department should delete the last sentence of N.J.A.C. 7:7-17.2(h)3 concerning use of stormwater as a hydrology source and delete N.J.A.C. 7:7-17.5 (d), which provides that stormwater management facilities are not considered mitigation. (125)

RESPONSE TO COMMENTS 368 AND 369: For the reasons explained in the Response to Comment 352, stormwater basins do not provide the coastal resource benefits necessary to offset ecological loss resulting from proposed impacts to wetlands and other coastal resources.

When the Department requires mitigation, the purpose is to provide a functioning system; not to provide a mechanism to clean stormwater from an adjacent site (also known as a stormwater detention basin), or to cleanse contamination (also known as a remediation system). While these are legitimate uses for constructed wetlands under other programs, under the CZM rules, the Department is seeking to replace the values and functions of natural wetlands lost with an equivalent wetland providing equivalent values and functions. Therefore, the Department does not agree that N.J.A.C. 7:7-17.2(h)3, should be revised to allow point source discharge of stormwater to serve as the hydrology for mitigation sites.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

370. COMMENT: Regarding the timing of mitigation, while the need to ensure that mitigation is accomplished in a timely manner is understood, the rules must provide flexibility to allow mitigation to occur at the appropriate point in the process. N.J.A.C. 7:7-17.2 should be modified to add “or timing as required by the permit.” (11, 50)

RESPONSE: N.J.A.C. 7:7-17.2(i) provides that mitigation shall not commence until the Department has approved a mitigation proposal through an authorization under a general permit; an individual permit; an enforcement action; or an approval of a mitigation proposal submitted to comply with a condition of an authorization under a general permit or an individual permit. Further, N.J.A.C. 7:7-17.3(a) specifies when mitigation must be performed depending upon whether the mitigation is for a non-temporary permitted disturbance, a permitted temporary disturbance, or a disturbance that resulted in a violation. These provisions ensure that mitigation occurs prior to, or concurrent with, the regulated activity, thereby reducing the period during which the functions and values of the impacted resource are lost.

The rules do provide flexibility in timing of the mitigation. Under N.J.A.C. 7:7-17.7(h), all mitigation plans are required to include a schedule identifying the sequence of mitigation activities and estimated completion dates. This mitigation schedule is specific to the mitigation property and project.

371. COMMENT: Understanding mitigation potential is critical prior to expending the resources required to plan and design a development and mitigation project for Department review. It is recommended that the Department add a new subsection at N.J.A.C. 7:7-17.2, which states that

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the Department can evaluate potential mitigation projects for purposes of providing applicants with predictability and pre-application guidance concerning proposed location areas, conditions, and types of mitigation for development projects that are deemed by the Department to be consistent with the purpose and intent of the CZM rules. (83, 156)

RESPONSE: The Department concurs with the commenter that pre-application communication can be a valuable tool in ensuring a proposed mitigation project achieves the necessary functions and encourages a prospective applicant to request a conceptual review of the mitigation area prior to submitting a mitigation proposal and/or prior to buying land for mitigation. Indeed, prospective applicants already hold the ability to request a pre-application conference as explained below. A conceptual review will help a prospective applicant avoid purchasing land and subsequently finding out that the land is not suitable for mitigation.

N.J.A.C. 7:7-17.6, Conceptual review of a mitigation area, specifies the information that must be provided to the Department for a conceptual review of a mitigation area. This is similar to a pre-application conference on a project for which a permit is being sought and is also consistent with the FWPA Rules at N.J.A.C. 7:7-15.10. In addition, a prospective applicant has the ability to request a pre-application conference pursuant to N.J.A.C. 7:7-22. A pre-application conference under that section is a meeting between the Department and a prospective applicant to discuss the applicant's project and the application procedures and standards that will apply to the project. If an applicant suspects that the proposed development may require mitigation, an applicant can request the presence of a mitigation staff member at the pre-application meeting.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-17.4 Amount of mitigation required**

372. COMMENT: The rules at N.J.A.C. 7:7-17.4(b) should be modified to allow for the enhancement of previously encumbered areas. The existence of restrictions should not be a disincentive to mitigation, particularly with the proliferation of use of conservation restrictions.

(11, 50)

RESPONSE: N.J.A.C. 7:7-17.4(b) does not preclude an area from being used as mitigation if it is encumbered by an easement. The regulations do however require that in order to use the encumbered portion of a property, the applicant must demonstrate that the encumbrance will not prohibit compliance with the mitigation requirements. This ensures that the applicant has full legal authority to utilize the site for the purposes of mitigation.

**N.J.A.C. 7:7-17.5 Property suitable for mitigation**

373. COMMENT: Mitigation banks should be allowed on public lands. (124)

RESPONSE: Mitigation, as defined at N.J.A.C. 7:7-17.1, means activities carried out in accordance with N.J.A.C. 7:7-17 in order to compensate for the loss or disturbance of wetlands, intertidal and subtidal shallows, submerged aquatic vegetation, riparian zones, or shellfish habitat. A mitigation bank is an operation in which these resources are restored, created, enhanced, or preserved for the purpose of providing compensatory mitigation. Accordingly, a mitigation bank is allowed on public land provided all of the requirements of N.J.A.C. 7:7-17, including the criteria at N.J.A.C. 7:7-17.5(c), are met.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

374. COMMENT: N.J.A.C. 7:7-17.5(b) is supported. Easements have been used successfully in New Jersey and other states to control land rights on mitigation sites and banks. Please specifically identify all types of mitigation in the rule definition, in particular mitigation banks. It is requested that this provision be clarified to ensure it includes mitigation at mitigation banks (124)

RESPONSE: N.J.A.C. 7:7-17.5(b) is intended to apply to all types of wetland mitigation alternatives. Mitigation banking is a type of mitigation alternative. Therefore, for the purposes of clarity, the Department is amending N.J.A.C. 7:7-17.5(b) on adoption to delete the specific reference to “creation, restoration, and enhancement.”

375. COMMENT: Proposed N.J.A.C. 7:7-17.5(c) appears to contradict N.J.A.C. 7:7E-9.26(h)7i which provides that offsite mitigation cannot be conducted on public property unless publicly funded. (124)

RESPONSE: N.J.A.C. 7:7E-9.26(h)7i has been deleted as part of this rulemaking and is no longer part of the rules. Under the adopted rules, mitigation can be carried out on both private and public lands in accordance with N.J.A.C. 7:7-17.5. The criteria for mitigation on public land under the CZM rules differ from the FWPA Rules because the criteria in the FWPA rules are set by statute. The Department under this rulemaking has modified the criteria for mitigation performed on public property under the CZM rules because it has been the Department’s

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

experience that the FWPA rules may prevent government entities from undertaking ecologically beneficial projects on public lands. Under the CZM rules, mitigation may be conducted on public property where the public entity is willing to allow a conservation restriction to be placed on the mitigation area, or it can be demonstrated that an existing conservation restriction will protect the area in perpetuity; and where the land was acquired using Green Acres funding, the Department's Green Acres Program approves the use of the area for mitigation. These criteria are intended to ensure that mitigation is conducted in suitable locations and does not negatively affect the public's access to and use of the existing public lands.

376. COMMENT: The Department should relax requirements that mitigation sites be acquired in fee simple and be made subject to onerous conservation easements. Many of the best wetland mitigation sites in urban areas are located along wetland ditches and degraded streams. These sites are suitable for linear treatment trains that cross dozens, if not hundreds, of properties with multiple utility and drainage easements. (125)

RESPONSE: These rules do not limit mitigation to lands owned in fee simple. N.J.A.C. 7:7-17.5 states that the Department shall approve mitigation only on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of the CZM rules. Further, the N.J.A.C. 7:7-17.2(l) requires that a mitigation area be permanently protected from future

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

development by a conservation restriction. This requirement ensures that there is no net loss of the resources through the preservation of the mitigation site in perpetuity.

377. COMMENT: N.J.A.C. 7:7E-9.26(h)7i, which provides that any mitigation carried out offsite shall be on private property, except for publicly funded projects, should be enforced. See for example, the East Cape May Associates project in Cape May. (124)

RESPONSE: Through this rulemaking, the Department has deleted N.J.A.C. 7:7E-9.26(h)7i. Under the adopted rules, mitigation can be carried out on both private and public lands in accordance with N.J.A.C. 7:7-17.5 without the requirement that the mitigation be publicly funded. With respect to East Cape May Associates v DEP, this is a longstanding inverse condemnation action. The mitigation in that case is authorized by N.J.S.A. 13:9B-22.b, N.J.A.C. 7:7A-17.1, and N.J.A.C. 7:7-1.10, which authorize, consistent with the aforementioned rules, the relaxation of the strict regulatory substantive standards when necessary to avoid a taking, as long as no irreversible damage occurs to the disturbed natural resources. The authorized mitigation on State-owned property serves as a balance to keep costs down for the property owner and to help the State avoid a taking, and the mitigation itself will ensure no irreversible loss to the natural resources.

378. COMMENT: N.J.A.C. 7:7-17.5(d) indicates that the installation of, or improvement to, an existing public facility intended for human use, such as a ball field, nature trail, or boardwalk, shall not constitute mitigation. Removing public lands that provide passive recreation (that is,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

parks and trails) as available mitigation sites precludes the leveraging of both public and private investment to improve natural characteristics and resources of a publicly-owned site. This requirement also negatively impacts municipal and county projects by limiting the use of their own public lands. The safeguard of the use of public lands should be a clear demonstration of environmental and public benefits. It would be in the public's interest to keep this option for mitigation open. For example, the creation of a riparian zone along a waterway located within a public park would expand vegetative buffers adjacent to regulated water and benefit flood storage capacity. Passive use of these areas would not reduce the function and value that an expanded riparian zone would provide. Given the many important ecological functions that a healthy riparian zone provides, the elimination of the ability to mitigate for the loss of this special area on public lands would restrict an applicant's ability to further protect the State's natural resources and water supply and preclude use of mitigation to improve resource function and value on public lands. For the reasons discussed above, the Department should revise this requirement. (83, 156)

RESPONSE: Through implementing the mitigation requirements of the CZM rules and FWPA Rules, the Department found that some mitigators mistakenly view mitigation as the creation or enhancement of open space for human use, rather than compensation for the habitat values and other natural functions lost through a disturbance. Accordingly, the Department at N.J.A.C. 7:7-17.5 is making it clear that certain activities are not considered mitigation. These activities include the installation of or an improvement to a public facility that is intended for human use, such as a baseball field or nature trail, or a stormwater management facility such as a basin.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-17.5 does not prohibit or preclude the creation of a riparian zone along a waterway located within a public park provided the proposed mitigation area meets the requirements of N.J.A.C. 7:7-17.

379. COMMENT: The Department will not approve sites for mitigation where there is an ecological risk. The Department defines ecological risk as the potential to result in the reintroduction of contamination to ecological communities. This is a very vague standard that could be used to arbitrarily prohibit locating a mitigation site anywhere in the urban coastal zone. Almost all urban areas contain contaminants in runoff, surface water, and ground water. Currently these contaminants are washed directly into the ecosystem without treatment. Banning a mitigation site that can remedy this problem because it contains these contaminants is arbitrary. The Department should amend N.J.A.C. 7:7-17.5(g) to clarify that stormwater treatment wetlands will not be barred under this rule due to the contaminants contained in hydrology that supports the wetland if the wetland is intended to treat these contaminants. (125)

RESPONSE: The mitigation requirements are not intended to discourage mitigation in the regions of the State where there is contaminated property. The rules do not allow mitigation on a contaminated site until all areas of contamination are identified and remediation has been completed in order to reduce the potential to reintroduce contamination to the environment or expose humans to contamination.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

380. COMMENT: Pursuant to N.J.A.C. 7:7-17.5(h), the Department may determine that a proposed mitigation site is unsuitable if a substantial amount of soil removal is required in order to achieve suitable wetland hydrology. It is recommended that this provision be eliminated or revised as its ambiguity may allow for unpredictable and varied implementation of the standard. Further, in New Jersey finding a mitigation site is very challenging. A mitigation site should not be eliminated as long as it meets the provision of the State Soil Erosion and Sediment Control Act and associated regulations. (83, 156)

RESPONSE: N.J.A.C. 7:7-17.5 is intended to ensure that mitigation sites are proposed in locations where they are likely to be successful. It is the Department's intent to avoid sites where several feet of soil must be removed in order to achieve wetland hydrology. The Department has reviewed proposals that included in the removal of more than 12 feet of soil in order to obtain appropriate wetland hydrology. In these cases, these mitigation sites would be less likely to be successful over time because they are located within an area where a wetland is not likely to naturally occur. However, in certain instances, substantial alteration of the soils, such as grading, on a mitigation site that does not include significant removal of soil to achieve wetland hydrology, is acceptable. Such sites may be suitable for wetland enhancement.

381. COMMENT: Why must mitigation banks be owned in fee simple and transferred in fee simple and mitigation sites not be transferred or owned in fee simple? Mitigation sites and banks should be treated equitably. The control of the land on which mitigation will be performed through a mitigation bank should be the same as N.J.A.C. 7:7-17.5(b), that is, the bank lands

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

must be owned in fee simple and under the full legal control of the mitigation banker, unless it is demonstrated that the banker has legal rights to the property sufficient to enable compliance with all requirements of the CZM rules. (124)

RESPONSE: N.J.A.C. 7:7-17.5(b) pertains to all types of mitigation alternatives including permittee responsible mitigation and mitigation banking. However, the requirement at N.J.A.C. 17.22(j)2 applies only to mitigation banks. The requirement to transfer a completed mitigation bank to a non-profit or government entity is intended to ensure that the land has a steward whose goal is the perpetual protection of that property. This is important because mitigation banks generally represent many acres of wetland impacts conducted in multiple locations on behalf of multiple property owners, so it is important for the public benefit of those mitigated wetlands to ensure that the site is protected by, and becomes part of, a public or non-profit land protection program. Further, mitigation banks are located on properties obtained by the banker for purposes of mitigation and generally encompass the entire site, making the site easier to transfer to an interested recipient.

When permittees conduct their own mitigation on the same site as the permitted impacts, the mitigation sites are a portion of a larger development site. The presumption is that the property owner will act as a steward to the mitigation site since it is part of their overall property. Further, because the site is part of a larger single parcel as a whole, it may not be practicable for portions of sites to be transferred to a non-profit or governmental agency. Finally, although offsite permittee-responsible wetland mitigation sites do not have to be donated to a non-profit or government entity, such lands may be located adjacent to preserved land or in an area of interest to government or non-profit entities. In those cases, the Department requires the placement of a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

conservation restriction. While it is not required that the land ownership be transferred, the permittee may voluntarily transfer the property to the interested entity so that they will not retain long-term responsibility for the property upon completion of the mitigation project.

#### **N.J.A.C. 7:7-17.6 Conceptual review of a mitigation area**

382. COMMENT: With respect to N.J.A.C. 7:7-17.6(c), pre-application guidance provided by the Department in the context of a mitigation proposal should be binding if the approval is granted and the specific mitigation requirement is a condition of the approval to be reviewed subsequent to issuance of the approval. (50)

RESPONSE: The guidance provided as a result of the conceptual review of a proposed mitigation area or mitigation proposal is not binding because of the limited nature of the information supplied and since, as a result of the conceptual review, the direction of the mitigation project may change. The conceptual review provisions of N.J.A.C. 7:7-17.6 are consistent with those of the FWPA Rules at N.J.A.C. 7:7A-15.10. Until the Department receives a complete mitigation proposal, it cannot provide a final decision as to whether the proposed mitigation meets the requirements in the rules.

#### **N.J.A.C. 7:7-17.7 Basic requirements for mitigation proposals**

383. COMMENT: The proposed changes at N.J.A.C. 7:7-17.7 to streamline the process, though commendable, may not provide sufficient time (only 90 days) for the mitigation activities to be

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

reviewed and approved by the Department, and initiated by the permittee prior to the start of permitted activities. (54)

RESPONSE: Mitigation proposals received concurrently with an application for an authorization under a general permit or an individual permit are generally reviewed as part of the permit review so mitigation can be addressed through the permit issuance. If an applicant does not submit a mitigation proposal concurrently with the application for a general permit authorization or individual permit, then, in accordance with N.J.A.C. 7:7-17.7, the applicant is required to submit the mitigation proposal at least 90 calendar days prior to the commencement of regulated activity authorized by a permit. As explained in the Response to Comment 387, the Department is modifying N.J.A.C. 7:7-17.8(a) on adoption to clarify that the 30-day time frame for completeness review applies only to mitigation proposals that are submitted to comply with a condition of a coastal permit. When a mitigation proposal is submitted as part of a coastal permit application, it is reviewed with the application and subject to the time frames in Subchapter 23 applicable to the review of coastal permit applications. Further, the Department has shortened the time frame to make a decision on the completeness of the submission from 60 calendar days under the prior rules to 30 calendar days so that any potential problems are identified early in the process. It is the Department's intent to review and issue a decision on a mitigation proposal in a timely manner to avoid a delay in the commencement of the permitted activity and associated mitigation. While the Department uses its best efforts to issue mitigation decisions within the referenced time frames, in accordance with N.J.A.C. 7:7-17.2(i), mitigation cannot commence until the Department has approved the mitigation proposal.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

384. COMMENT: The requirement to determine the specific cause of the elimination of the submerged vegetation at N.J.A.C. 7:7-17.7(j)2 is too burdensome and should be removed. (11, 50)

RESPONSE: N.J.A.C. 7:7-17.7(j) requires that a mitigation proposal to restore a submerged vegetation habitat that previously supported submerged vegetation habitat must include information sufficient to document that the area which is proposed to be restored previously supported submerged vegetation but no longer does, the specific cause of the elimination of submerged vegetation, and that the specific condition(s) or action(s) that caused the elimination of submerged vegetation has ceased. These requirements are the same as those that were codified at N.J.A.C. 7:7E-3.6(d) prior to the consolidation of the rules accomplished through this rulemaking. It is important that the mitigator demonstrate that the area proposed for submerged vegetation habitat mitigation previously supported submerged vegetation because mitigating for this resource can be very difficult if the location is not appropriate to support the vegetation. Requiring a mitigator to document the causes of the elimination of the submerged vegetation assists the Department in determining the appropriate location for submerged vegetation habitat mitigation. If the proposed mitigation site once supported submerged vegetation and no longer supports such vegetation, the reasons for the elimination of the vegetation, such as changes in turbidity or water depths, will assist the mitigator in choosing a site that will have a better likelihood of success.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-17.8 Department review and approval of a mitigation proposal**

385. COMMENT: The time frames set forth at N.J.A.C. 7:7-17.8 are supported. It is requested that the rules be amended to provide that the Department will respond to the submission within 60 days. (124)

RESPONSE: Most monitoring reports are submitted in December and January. In most cases, Department review of a monitoring report includes a visit to the mitigation site. Due to the timing of the submission, it is not always feasible or practical to conduct the site inspection during the winter months, resulting in a delay in completing the review. Although the Department makes every effort to review mitigation monitoring reports in a timely manner, it is not always feasible to respond within 60 days of submission.

386. COMMENT: Please apply the timing provisions set forth at N.J.A.C. 7:7-17.8 to the review of mitigation bank proposals. (124)

RESPONSE: N.J.A.C. 7:7-17.8 applies to all mitigation proposals. Since a mitigation bank is a type of mitigation proposal, the time frames set forth in this section apply to mitigation bank proposals.

387. COMMENT: The rule at N.J.A.C. 7:7-17.8(a) should include a final decision deadline for the Department to make a decision on a mitigation proposal. (11, 50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: Mitigation proposals received concurrently with an application for an authorization under a general permit or an individual permit are generally reviewed as part of the permit review so mitigation can be addressed through the permit issuance. If an applicant does not submit a mitigation proposal concurrently with the application for a general permit authorization or individual permit, then, in accordance with N.J.A.C. 7:7-17.7, the applicant is required to submit the mitigation proposal at least 90 calendar days prior to the commencement of regulated activity authorized by a permit. The Department is modifying on adoption, N.J.A.C. 7:7-17.8(a) to clarify that the 30-calendar-day time frame for completeness review applies only to mitigation proposals that are submitted to comply with a condition of a coastal permit. When a mitigation proposal is submitted as part of a coastal permit application, it is reviewed with the application and subject to the time frames in Subchapter 23 applicable to the review of coastal permit applications. Further, as explained at 46 N.J.R. 1092, the Department has shortened the time frame to make a decision on the completeness of the submission from 60 to 30 calendar days so that any potential problems are identified early in the process. It is the Department's intent to review and issue a decision on a mitigation proposal in a timely manner to avoid a delay in the commencement of the permitted activity and associated mitigation. The absence of a decision is not an approval of the proposal. As a help to users of the rule, the Department is adding a cross-reference to the completeness review provision at N.J.A.C. 7:7-17.7 for mitigation proposals.

**N.J.A.C. 7:7-17.9 Requirements for shellfish habitat mitigation**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

388. COMMENT: What are the performance requirements for the monies paid into the shellfish fund? What has the success rate of the program been to date in terms of habitat lost and habitat replaced? (124)

389. COMMENT: How will the Department mitigate for loss of shellfish habitat as proposed under the rule? What is the formula the Department uses to calculate this loss? Information on the activities of the Shellfish Mitigation Council is not readily available, including how much mitigation money has come in, from what locations and where and how it is being spent. Mitigation for loss of the resource, always the last resort after avoidance, must have a nexus to the impact. The Department has not provided information that its current shellfish mitigation program is sufficiently ensuring there is no net loss of shellfish habitat, but yet proposes to expand the regulations to allow further shellfish habitat impacts. (90)

RESPONSE TO COMMENTS 388 AND 389: The construction of docks, piers, moorings, and marinas results in a downgrading of the shellfish growing waters to prohibited status for the harvesting of shellfish. While these areas are still considered habitat, they are lost to the harvesting of shellfish. The Department's Marine Fisheries Administration has been involved with various shellfish enhancement programs that are aimed to increase existing hard clam and oyster populations and enhance productivity on existing habitat. Unlike mitigation under the FWPA which has an established Wetlands Mitigation Council, there is no Shellfish Mitigation Council. As indicated in the Response to Comment 364, the Department's dedicated account for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

shellfish habitat mitigation was established in 1999-2000 in response to amendments to the CZM rules.

The account is administrated primarily by the Department's Division of Land Use Regulation. Accordingly, the account is controlled, monitored, and maintained by the Department and fund uses similarly monitored by the Department to ensure desired results are achieved. Funds from the account are used to ensure overall no net loss of habitat. Funds are used in a variety of ways designed to maintain and improve the shellfish resource including not only to purchase, rear, maintain, and plant shellfish seed, and purchase, transport, and plant shell and other approved cultch materials, but also for field assessments and educational/training efforts. Accordingly, no one ratio or other performance standard appropriately measures all the uses to which funds may be dedicated. However, these programs have been successful to date and have ensured no net loss. Since September 2008, the Department has received \$2,726,194.74 as mitigation for impacts of shellfish habitat permitted under the CZM rules. The Department's Marine Fisheries Administration has focused its enhancement/restoration efforts in areas where habitat has historically existed because the ability of the habitat to recover is greatest in these areas. The table below provides a breakdown by year of the monetary contributions received. See the Response to Comment 364 for a summary of the various enhancement/restoration projects funded through the Department's dedicated account for shellfish habitat mitigation as well as information on the volume of clam and oysters planted in various projects and the monitoring results of projects undertaken utilizing these funds. Pursuant to N.J.A.C. 7:7-17.9(b)2, the amount of the monetary contribution is based upon the area of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

shellfish habitat covered by structures and moorings, the documented shellfish density on the property, and the commercial value of the resource.

<b>Year</b>	<b>Monetary contribution received</b>
2008	\$125,806.80 <sup>1</sup>
2009	\$105,389.26
2010	\$673,768.38
2011	\$762,918.28
2012	\$768,532.04
2013	\$112,457.49
2014	\$169,665.29
2015	\$7,657.20 <sup>2</sup>

<sup>1</sup> Reflects only contributions received from September 2008 through December 2008.

<sup>2</sup> Reflects only contributions received from January 1, 2015 through January 22, 2015.

390. COMMENT: The requirement for imposition of a conservation restriction at N.J.A.C. 7:7-17.9(b)1 should be removed. The requirement is unnecessary as other legal protections exist to limit and regulate bulkhead development. If the requirements for authorization for bulkhead construction or reconstruction are satisfied, the Department should have the ability to grant the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

approval. Consideration of impacts to shellfish habitat is one of the factors in connection with substantive application review and, therefore, the resource is protected without the need for a conservation restriction. (50)

RESPONSE: The requirement for the placement of a conservation restriction on a non-bulkheaded shoreline, prohibiting the construction of a shoreline protection structure other than stone rip-rap or other similar sloped revetment at N.J.A.C. 7:7-17.9(b)1i, and the requirement for placement of a conservation on a previously bulkheaded shoreline prohibiting replacement, reconstruction, or rehabilitation of the bulkhead with anything other than non-polluting material at N.J.A.C. 7:7-17.9(b)1ii, are not new requirements and were previously located at N.J.A.C. 7:7E-3.2. These provisions are necessary in order to ensure that the impact upon which the compensatory payment into the mitigation fund was based is not increased by future activities resulting in further, increased, unacceptable impacts to the shellfish resource.

391. COMMENT: The Department is commended for clarifying the factors used in determining the monetary contribution at N.J.A.C. 7:7-17.9. However, to implement this provision, it is recommended that the Department's Bureau of Shellfisheries provide a scientifically accepted, reliable, and reasonable survey protocol to determine shellfish density. (83, 156)

RESPONSE: Because there is such diversity in the physical characteristics of bay and river bottoms throughout the State, it is extremely difficult to establish a universal standard survey protocol to establish shellfish density at one point in time within an area for which no shellfish

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

density data is available. Collecting good quantitative data requires choosing and adapting appropriate equipment and methodology that can efficiently sample for shellfish and shellfish habitat in a given area. The investigator conducting a survey must examine factors such as bottom composition, water depths, current, weather conditions, and tides when conducting a survey at a particular site. For example, if the investigator uses equipment such as a rake (as mentioned in the “Lockwood Guidelines”) to sample an area and the bottom conditions do not allow the rake to collect shellfish effectively, the data collected does not properly quantify the true density of an area at that particular point in time. Before performing a shellfish survey, the Department recommends that the proposed methodology be reviewed by its Bureau of Shellfisheries.

392. COMMENT: The proposed changes to the shellfish mitigation requirements with regard to conservation restrictions on adjacent lands at N.J.A.C. 7:7-17.9(b)1i should follow the coastal engineering hierarchy established at N.J.A.C. 7:7-15.11 to prevent the new rules from promoting additional shoreline hardening. Shoreline hardening encourages development up to the water’s edge. This practice disrupts several natural biogeochemical processes and contributes to the degradation of water quality, with various adverse impacts to aquatic resources. (54)

RESPONSE: The conservation restriction requirement is intended to ensure that shoreline hardening does not occur. Accordingly, if a dock, pier, mooring, or marina is associated with an unbulkheaded shoreline, the conservation restriction will prohibit the construction of a shoreline protection structure other than a rip-rap or other similar sloped revetment (hybrid shore

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

protection structure). If the dock, pier, mooring, or marina is associated with a pre-existing bulkheaded shoreline, the conservation restriction will prohibit the replacement, reconstruction, or rehabilitation of the bulkhead with anything other than a non-polluting material. Further, as explained in the Response to Comments 144 and 145, while the Department adopted a new coastal engineering rule in 2013, the rule adopted at that time continued the standards from the repealed rule with changes to the organization of the rule and changes to emphasize and clarify the Department's shore protection and/or storm damage reduction priorities and facilitate a more resilient shoreline. The Waterfront Development Law at N.J.S.A. 12:5-3b (P.L. 1981, c. 315, commonly referred to as the Zane amendment) exempts certain recreational docks and structures, such as bulkheads, that legally existed prior to January 1, 1981, from the need to obtain a waterfront development permit. Therefore, a legally existing bulkhead constructed prior to January 1, 1981, may be replaced in the same location without a permit.

**N.J.A.C. 7:7-17.10 Requirements for submerged vegetation habitat mitigation**

393. COMMENT: It is suggested that a dedicated Submerged Vegetation Habitat Mitigation Fund under N.J.A.C. 7:7-17.10 be established. This fund could underwrite the cost of State established and maintained beds of submerged vegetation in areas owned, located, designed, and maintained by the State for maximum environmental benefit, such as portions of the Barnegat Bay. (83, 156)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

394. COMMENT: The submerged vegetation habitat rule should be revised to include the concept of a mitigation fund similar to the mitigation fund provision of the shellfish habitat rule.

(11, 50)

RESPONSE TO COMMENTS 393 AND 394: With respect to shellfish habitat mitigation, the determination of the resource value is based upon the commercial value of the resource. Such determination is not equally applicable to submerged vegetation. Adding a dedicated submerged vegetation habitat fund would transfer the mitigation obligation for impacts to submerged vegetation from the permittee to the Department. At this time, the Department does not have a program that is dedicated to the restoration and long-term management of submerged aquatic habitat.

395. COMMENT: The proposed rules will likely accelerate the losses of submerged vegetation from the State's coastal waters. Temporary disturbances to submerged aquatic vegetation beds should be treated the same as permanent disturbances at N.J.A.C. 7:7-17.10(c); if denuded of vegetation, such areas should be replanted and monitored to ensure success. The proposed rules at N.J.A.C. 7:7-17.10(d) appear to allow for removal of plants from healthy beds within the State's waters for transplantation to the mitigation site. This practice results in disturbances to existing eelgrass beds, which are widely recognized as declining in abundance and density (Kennish *et al.*, 2010; Fertig *et al.*, 2012). Because the Barnegat Bay is home to more than 75 percent of the State's eelgrass habitat, this practice would also primarily result in additional degradation of the Barnegat Bay. The Department should require use of eelgrass (and other)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

nursery stock; this requirement would help promote and support development of a much-needed eelgrass and submerged aquatic vegetation culture industry in New Jersey. (54)

RESPONSE: In relocating the mitigation requirements for the temporary disturbance of submerged vegetation, previously codified at N.J.A.C. 7:7E-3.6(b)1, to N.J.A.C. 7:7-17.10(b), a portion of the mitigation requirement was inadvertently deleted. Specifically, to ensure that the disturbed area is restored to its preconstruction contours and conditions, the mitigation for the impacts may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. As explained at 46 N.J.R. 1093, the Department intended to apply the mitigation requirements associated with the temporary disturbance of submerged vegetation habitat through direction drilling to all temporary disturbances, including the replanting and monitoring requirements. Accordingly, the Department is amending N.J.A.C. 7:7-17.10(b) upon adoption to reinsert those requirements. With respect to the transplanted material, the transplanting of existing plants from an existing bed to the mitigation site is permitted as is the planting of seeds collected from existing beds. The rule does not preclude the use of plants obtained from nursery stock; however New Jersey does not have a nursery from which to obtain plants. Experimental work being conducted in New Jersey has shown that using seeds to revegetate an area is generally effective and cost-effective.

396. COMMENT: It is imperative that the State take additional steps to make eelgrass mitigation monitoring consistent with other wetlands mitigation requirements. The monitoring period

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

should be extended to five years, to ensure that at least three monitoring events over which mitigation can be assessed. Further, in light of the recent steep declines in eelgrass abundance and density, the mitigation ratio should at a minimum be two acres of mitigation for every acre of impacts (2:1), with a shoot density requirement equal to the affected area. (54)

RESPONSE: In accordance with N.J.A.C. 7:7-17.10(d), monitoring and replanting is required to be carried out on a biannual basis for a minimum of three years, thus ensuring a minimum of six monitoring events to assess the mitigation. Further, because N.J.A.C. 7:7-17.10(d) requires mitigation in the form of restoration, the proposed rules require restoration of submerged vegetation habitat for permanent impacts to submerged vegetation habitat, which is generally a restoration to lost or disturbed ratio 2:1 ratio. This ratio is consistent with the commenter's recommendation.

**N.J.A.C. 7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation**

397. COMMENT: The proposed rule at N.J.A.C. 7:7-17.11(f) goes beyond the coastal statutes because it directs permittees to provide mitigation via the FWPA; the coastal statutes must be changed. (124)

RESPONSE: Wetlands are defined under the coastal rules as an area inundated at a frequency to normally support hydrophytic vegetation. Similarly, the Freshwater Wetlands Protection Act defines wetlands based upon the three parameter test; soils, hydrology, and hydrophytic

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

vegetation. Thus, unmapped coastal wetlands may also fall within the Freshwater Wetland Protection Act definition of wetlands. The CZM rules recognize that development in freshwater wetlands within the coastal area is also subject to the Freshwater Wetland Protection Act. Therefore, under N.J.A.C. 7:7-17.11(g), if upland preservation or in-lieu fee payment in accordance with N.J.A.C. 7:7-17.11(f) is not feasible, then mitigation through a land donation in accordance with the FWPA Rules is required. The FWPA Rules at N.J.A.C. 7:7A-15.19 establish the rules governing land donation. A land donation will be approved only if the amount of land donated is sufficient to ensure that the functions and values provided by the donated land will fully compensate for the loss of functions and values caused by the impact. For example, a land donation may be acceptable where an upland area is immediately adjacent to an intertidal and subtidal area which may benefit from the stability and protection of the adjacent lands thereby adding to the functions and values provided by the intertidal and subtidal shallow area.

398. COMMENT: The proposed rules at N.J.A.C. 7:7-17.11(c)1 provide that where onsite creation is not feasible, mitigation at a single-family home or duplex property that is not part of a larger development 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.

All permittees should be directed to a mitigation bank. Lost aquatic resources do not differentiate between impacts that are derived from homeowners or not. An impact to an aquatic resource is an impact regardless of project proponent. The mitigation for that loss should be no

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

different and not be provided special status. Such status is irrelevant to the wetland function and value lost and the State's obligation to see that it is mitigated. Mitigation banks are promoted and designed to aggregate small impacts into larger mitigation areas of higher ecological value. Homeowner impacts are often small and difficult to mitigate; an ideal use of mitigation bank credits.

The State Wetlands Mitigation Fund should not be provided exclusive sole source proprietorship of all mitigation to homeowners. The State should not assume, via acceptance of money, the mitigation obligation of homeowners. Such assumption results in delays of mitigation until after the fact, mitigation out-of-kind, mitigation in different watersheds from the impact, and often no mitigation as historically the fund has collected money for more acres of impacts than have been replaced using prescribed mitigation ratios. Both the Federal and State agencies promote mitigation banking and encourage the private sector to take great risks and investment of funds to produce mitigation credits. This proposal contradicts the Federal and State rules and regulations on mitigation and mitigation banks. Mitigation banks provide for advanced mitigation in the same watershed as the impact. Essentially, the State program of mitigation does not comply with the mitigation requirements imposed upon other permittees and mitigation providers as detailed in these proposed CZM Rules, as well as other Land Use rules. The monetary contribution is an in-lieu fee regardless of Department's assertions. Mitigation performed by the State, mitigation providers, and mitigation bankers should be held to the same standards and be required to occur within the same watershed as the impact. This rule proposal exerts an economic impact on mitigation bankers and is inconsistent with, and less stringent than, the Federal Mitigation Rule. (124)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: N.J.A.C. 7:7-17.11(c)1 continues the provision previously codified at N.J.A.C. 7:7E-3.15(j) and is intended to streamline the mitigation requirements and make the costs associated with such mitigation affordable for a single-family or duplex property owner. This concept is similar to the FWPA Rule's streamlined provisions for mitigation associated with an authorization under a general permit. Specifically, the FWPA Rules at N.J.A.C. 7:7A-15.21(d) allow a single-family property owner to make a monetary contribution to the Wetlands Mitigation Council at a reduced and affordable rate. The adopted rule requires that the monetary contribution be in the amount of the value of the land filled and the cost of creation of intertidal and subtidal shallows of equal ecological value to those which are being lost. Single-family homeowners are more likely to have limited resources and to have a potential takings claim if they are unable to obtain approvals to develop a lot. Consequently, requiring a full mitigation monetary contribution may prove counterproductive if it makes development costs prohibitive and results in a takings claim. Accordingly, where onsite creation is not feasible, the Department has determined that it is appropriate to allow a single-family or duplex property owner to mitigate impacts through a contribution to the Wetlands Mitigation Fund.

399. COMMENT: The rules should be revised to require the Department to respond to post-monitoring report submitted under N.J.A.C. 7:7-17.11(j) within 60 days of submittal. (124)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: While the Department makes every effort to review mitigation monitoring reports in a timely manner, for the same reasons explained in the Response to Comment 385, it may not always be feasible to respond within 60 days of submission.

400. COMMENT: The Department is encouraged to maintain a number of existing requirements at N.J.A.C. 7:7-17.11 regarding mitigation in intertidal and subtidal shallows, tidal waters, and watersheds. The current rules are designed to ensure that mitigation is nearby to the site where the impacts will occur, that is, onsite, or within the same HUC-11, or within an adjacent HUC-11, or within the watershed management area, and not just anywhere within the estuary as proposed under N.J.A.C. 7:7-17.11(d). (54)

RESPONSE: Similar to the prior mitigation requirements for intertidal and subtidal shallows, N.J.A.C. 7:7-17.11(d) provides that where mitigation for the filling of intertidal and subtidal shallows at properties other than single-family home or duplex properties is not feasible onsite, or where mitigation for the filling of tidal waters is not feasible onsite, then mitigation shall be performed offsite through creation, at a creation to loss ratio of 1:1. Analogously, rather than requiring offsite mitigation within the same HUC-11 or an adjacent HUC-11, the adopted rule provides that offsite mitigation be performed within the same estuary as the filling or through the purchase of credits from a mitigation bank within a service area that includes the site of the filling. By allowing the offsite mitigation site to be located within the same estuary, rather than only within the same HUC-11 or adjoining the HUC-11, the Department is providing adequate flexibility in locating a potential mitigation site that will still provide in-kind mitigation within

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the resource area affected by the impacts. HUC-11s and watershed management areas all drain into the same estuary. Therefore, the effects and benefits to the estuary system as a whole will still occur whether the mitigation is performed within a HUC-11 or adjoining the HUC-11 in which the filling occurs. As with any mitigation that is not performed at the site where the impact occurs, the site does experience a loss; however, the overall estuary ecosystem benefits from the mitigation. Thus, the mitigation is appropriate because credits are purchased from a mitigation bank which serves the property where filling has occurred.

401. COMMENT: The Department is encouraged to maintain a number of existing requirements regarding mitigation in intertidal and subtidal shallows, tidal waters, and watersheds. The rule prior to these amendments required replacement of similar resources (in-kind), such as subtidal shallows for subtidal shallows and tidal marsh for tidal marsh. While the value of flexibility under certain circumstances, such as hybrid living shorelines, is recognized, the Department is encouraged to identify situations in which the current restrictions would be considered permissible, for example, a priority for restoring specific declining or rare resources. Otherwise, there is concern that the cheapest and most convenient mitigation will be pursued, irrespective of the natural resources that are damaged. For this reason, while land acquisition as an important tool for protecting water quality and natural resources is supported, there is concern regarding the promotion of upland land acquisition as a mitigation alternative for impacts to wetlands, and especially for impacts to intertidal and subtidal shallows. This practice does not replace the impacted resources and will result in further degradation of waterbodies and adverse impacts to increasingly imperiled aquatic resources. (54)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The overall goal of compensatory mitigation is to offset unavoidable adverse impacts to natural resources. When the Department determines that an out-of-kind mitigation is an appropriate form of mitigation, the out-of-kind mitigation allowed is based on the site-specific ecological functions and values of the resources lost compared to the ecological functions and values of the resources of the proposed mitigation site. Therefore, it is not possible to set forth a standard process for out-of-kind mitigation. While the Department agrees that land acquisition is an important tool for protecting water quality and natural resources, this type of mitigation alternative is low in the mitigation hierarchy and therefore is only permitted if all other mitigation options have been ruled out. Under certain circumstances, the protection of upland habitat can greatly benefit the habitat of intertidal subtidal shallows, tidal wetlands, and tidal waters and, therefore, is a mitigation option that may be acceptable in offsetting a loss of a special resource.

**N.J.A.C. 7:7-7.12 Requirements for riparian zone mitigation**

402. COMMENT: The mitigation requirements for impacts to riparian zones are supported. However, there is often confusion when impacts to regulated resources have overlapping footprints. In these situations, mitigation should be allowed to be performed within the same footprint. (124)

RESPONSE: The Department agrees that there is often confusion when impacts to regulated resources have overlapping footprints. For this reason, the Department currently makes, and will

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

continue to make, every effort to review all mitigation requirements simultaneously and provide guidance to applicants when requested to most efficiently and effectively address all mitigation requirements in a comprehensive manner. Further, to the extent that the resources to be impacted by the permitted activity overlap, the mitigation or compensation for those activities may also overlap. For example, if an applicant is required to mitigate for wetlands and riparian zone impacts, the Department will work with the applicant to locate a site within a riparian zone in which to perform the wetland mitigation so that there is no need to find separate sites for both wetland mitigation and riparian zone compensation.

#### **N.J.A.C. 7:7-17.13 Requirements for wetlands mitigation**

403. COMMENT: N.J.A.C. 7:7-17.13(e) is supported. However, in some cases post construction monitoring can begin in the same calendar year and still comply with beginning in the first full growing season after the mitigation project is completed. (124)

RESPONSE: Where construction of the mitigation site is completed early in the growing season, the first year of monitoring would end at the conclusion of the growing season that same year. Therefore, in this case, monitoring of the mitigation site could begin in the same calendar year as the completion of construction.

404. COMMENT: The Department is commended for including language in the rules at N.J.A.C. 7:7-17.13(b) that allows for case-by-case determinations as to the effectiveness of mitigation at a ratio of less than two to one. (11, 50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rule.

405. COMMENT: With respect to N.J.A.C. 7:7-17.13(b), wetland buffer areas should be counted toward mitigation acreage since they are required to be included as part of mitigation.

(11, 50)

RESPONSE: Where a regulated activity impacts wetlands, mitigation is required in order to compensate for the loss or disturbance of those wetlands. In accordance with N.J.A.C. 7:7-17.13, the wetlands created or restored must provide equal ecological functions and values as those of the wetlands lost. While wetlands buffers are important as they minimize adverse impacts to the wetlands, they do not provide equal ecological functions and values as wetlands. Therefore, consistent with the FWPA Rules at N.J.A.C. 7:7A-15.8(b), N.J.A.C. 7:7-17.3(b) provides that the wetlands buffer is not counted in the acreage of mitigation provided by the wetlands creation or restoration.

406. COMMENT: Runoff with contaminants should be directed to stormwater treatment wetlands where socially advisable and technically feasible. These wetlands can remove some or most of the contaminants entering the facility. Therefore, rules requiring transition areas should be eliminated for stormwater treatment wetlands and N.J.A.C. 7:7-17.13(b) should be revised accordingly. (125)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: N.J.A.C. 7:7-17.13(b) provides that when the Department requires mitigation for an impact to wetlands, and creation or restoration is the mitigation alternative, that wetlands must be created or restored at a creation or restoration to lost or disturbed ratio of 2:1, unless the applicant demonstrates that creation or restoration at a ratio of less than 2:1 will provide equal ecological functions and values. However, in no case will the creation or restoration to lost or disturbed ratio be reduced to less than 1:1. Further, subsection (b) requires that the mitigation project include a wetlands buffer, but that the wetlands buffer will not be counted in the acreage of mitigation provided by the wetlands creation or restoration. The inclusion of wetland buffer area is necessary to ensure that mitigated wetlands are not degraded by adjacent activities.

Because the Department does not consider stormwater treatment facilities mitigation under N.J.A.C. 7:7-17.5(d)2, if someone constructs wetlands to treat stormwater, no buffer is required to these wetlands. However, such wetlands would not satisfy mitigation requirements that may be applicable to a regulated activity under these rules.

407. COMMENT: The Department should have express authority under N.J.A.C. 7:7-17.13(e) to allow lesser time if it is established that mitigation is complete and successful. (11, 50)

RESPONSE: N.J.A.C. 7:7-17.13(e) provides the Department with the ability to modify the frequency and/or duration of required reporting if it determines that some other frequency and/or duration ensures the success of the mitigation. As explained at 46 N.J.R. 1095, this provision is intended to give the Department flexibility to either increase or decrease the frequency and/or duration of required reporting. As indicated in the hypothetical example provided in the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

proposal summary, such flexibility is necessary because in some instances, mitigation sites may be successful after three years, and, therefore, two more years of monitoring would not be necessary. A more specific example involving the temporary disturbance of a phragmites dominated marsh was additionally provided in the proposal where monitoring for less than the five-year period may be appropriate provided the lesser monitoring will ensure that the site has returned to pre-existing conditions and that there are no erosion problems or concerns. Alternatively, the Department may require additional monitoring beyond five years where it is determined that the site needs additional time to achieve success.

**N.J.A.C. 7:7-17.14 Wetlands mitigation hierarchy**

408. COMMENT: The first choice for mitigation in the hierarchy set forth at N.J.A.C. 7:7-17.14(b) should be mitigation bank credits consistent with the Federal Mitigation Rule. With the exception of watershed management area 13, mitigation banks serve all of the State's 20 watershed management areas with more than 300 credits in inventory where one credit mitigates for one acre of impact. There is no reason for the mitigator to be required to first consider onsite mitigation and then be required to prove no offsite mitigation is feasible before mitigation bank credits may be purchased. (124)

RESPONSE: The fundamental objective of compensatory mitigation is to offset environmental losses resulting from unavoidable impacts to wetlands, not assist mitigation banks. Therefore, where onsite mitigation is feasible, that mitigation is preferred as it provides the most direct offset to the specific wetlands complex impacted by the permitted activity.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The intent of the FWPA Rules, CZM rules, and Federal Mitigation Rule is ensure that the mitigation alternative used is the most environmentally beneficial and that best replaces the losses that occurred through the impact. While the Federal Mitigation Rule does prefer mitigation banks, it is not a requirement that all mitigation is compensated through the purchase of credits from a bank. The Federal Mitigation Rule authorizes other mitigation alternatives if those alternatives are more environmentally beneficial than the purchase of credits from a bank. By way of example, for hazardous waste remediation projects where contaminated soils maybe excavated, the Department has determined that in most cases it is more environmentally beneficial to restore the impacts onsite than to purchase credits from a mitigation bank or perform mitigation offsite. However, it is not the Department's intent to prefer offsite permittee responsible mitigation over purchase of credits from a bank. Therefore, the Department has determined to modify on adoption the wetlands hierarchy at N.J.A.C. 7:7-17.14(b) to accord the same preference to mitigation performed offsite in the same drainage area or estuary as the impacts and the purchase of credits from a mitigation bank with a service area that includes the area of impacts. As explained at 46 N.J.R. 1089, to remedy the inconsistency between the mitigation standards for projects involving tidal wetlands under the existing CZM rules and for projects involving freshwater wetlands under the FWPA Rules and ensure the State's tidal wetland mitigation program reflects current science, the Department proposed to amend the wetland mitigation standards of the CZM rules to reflect the standards for wetlands mitigation in the FWPA Rules. Under the FWPA Rules at N.J.A.C. 7:7A-15.6, when mitigation does not occur on site, the applicant must explore the purchase of credits from a mitigation bank with a service area that includes the area of impact or perform mitigation at a suitable offsite location.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

409. COMMENT: Please explain how upland credits are generated in a mitigation bank that restores uplands and their applicability as mitigation. Will the CZM Rules permit the generation of critical wildlife credits on uplands? (124)

RESPONSE: The mitigation subchapter of the CZM rules addresses mitigation for impacts to multiple special areas, including wetlands, riparian zones, intertidal and subtidal shallows, shellfish, and submerged vegetation. The Department included upland areas within the definition of “mitigation bank” to allow the Department to expand its mitigation banking program in the future to include riparian zones. At this time, the Department does not allow upland critical wildlife habitat mitigation banks. The Department recognizes, however, the need to address mitigation for impacts to critical wildlife habitat. As a result of the September 8, 2014, stakeholder meeting, the Department has convened a stakeholder subcommittee to review the CZM rules to determine what amendments may be appropriate to address protection of, and mitigation for, impacts to threatened and endangered wildlife and plant species habitat and critical wildlife habitat, including mitigation banking. The subcommittee, which consists of representatives of various programs within the Department, the development community, the environmental community, wetland mitigation bankers, consultants, and attorneys, met on September 22, 2014, to begin a dialogue about how the Department should proceed in regulating these areas and what rule changes may be useful to effectively manage these special areas.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

410. COMMENT: The requirement to provide the Department with a list of six sites within the same drainage area or estuary to accommodate required mitigation in the context of offsite mitigation at N.J.A.C. 7:7-17.14(e) is unduly burdensome. No more than two sites should be required. (11, 50)

RESPONSE: The mitigation hierarchy set forth at N.J.A.C. 7:7-17.14 establishes a preference for restoration, creation, or enhancement of wetlands and wetland mitigation banking over monetary contributions, in-lieu fee payments, and upland preservation. The requirement to provide six sites when demonstrating that offsite mitigation is not feasible ensures that the applicant has adequately searched for a suitable mitigation site prior to being allowed to make a monetary contribution, an in-lieu fee payment, or preserve uplands. It has been the Department's experience implementing a similar provision under the FWPA Rules at N.J.A.C. 7:7A-15.11(c) that this provision has not been burdensome to applicants. Offsite permittee-responsible restoration, creation, or enhancement, and the purchase of credits from a mitigation bank are preferred over monetary contributions and in-lieu fee payments because contributions to a fund transfers the responsibility to mitigate for impacts to wetlands from the permittee who is impacting the resource, to the Department. In addition, a permittee-responsible restoration, creation, or enhancement project is constructed, as required by the rules, prior to or concurrently with the permitted activity, whereas mitigation at a bank is in most cases constructed prior to the permitted disturbance. Upland preservation is the least preferred option because it is out-of-kind mitigation (resource for resource) and in-kind mitigation is preferred over out-of-kind mitigation in most cases. For these reasons, the Department has determined that it is important for an

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

applicant to demonstrate that they have adequately searched for a suitable mitigation site prior to mitigating for the permitted impacts through one of the mitigation options lower in the hierarchy.

411. COMMENT: The Department should amend N.J.A.C. 7:7-17.14 to expressly consider the priority of water treatment values in watersheds within 303(d) listed waters. (125)

RESPONSE: N.J.A.C. 7:7-17.14 sets forth the hierarchy of mitigation alternatives to be followed when mitigation is required for impacts to wetlands. As stated in the Response to Comment 351, mitigation under the CZM rules focuses on replacing the functions and values lost. Therefore, in addition to the water quality function that all wetlands provide, it is appropriate to consider all other functions, such as habitat function, when evaluating wetland value. Further, the goal of wetland mitigation, which is the creation, restoration, or enhancement of a wetland to replace another wetland lost as the result of permitting, is to replace all functions and values of the wetland; not solely the water quality protection provision.

**N.J.A.C. 7:7-7.15 Requirements for credit purchase from an approved mitigation bank**

412. COMMENT: Under N.J.A.C. 7:7-17.15(a) and 17.22(d), the Department will evaluate the values and functions lost as a result of the impacts and determine the number of credits required to ensure that the mitigation results in wetlands or intertidal and subtidal shallows of equal functions and values to those lost. While this sounds reasonable in terms of functions and values, please explain what this means to wetland mitigation bankers who receive Department approval for a set number of mitigation credits. How is a mitigation banker to understand the mitigation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

value of a bank's credits, if the State will decide their value on a case-by-case basis after the bank is approved and built? (124)

413. COMMENT: Since a mitigation credit is defined most commonly as the amount of mitigation required to offset one acre of impact, will the same analysis be made when evaluating mitigation for wetlands lost through a monetary contribution under the in-lieu fee program? (124)

RESPONSE TO COMMENTS 412 AND 413: The Department determines how many credits a mitigation operator may receive or sell based upon the increase in values and functions created as a result of the proposed mitigation bank in accordance with N.J.A.C. 7:7-7.22. N.J.A.C. 7:7-17.15(a) describes the process used to determine the number of credits permittees must purchase from an approved mitigation bank to compensate for proposed impacts. This provision is intended to ensure that the amount of credits purchased from a wetland mitigation bank represents an equivalent increase in functions and values to offset the impacts to functions and values resulting from the permitted activity. The number of credits required will vary depending on the individual circumstances of the impact, but in all cases the credits required will be the number determined to ensure that there is no loss in functions and values. To the extent the commenter is asking the price that should be charged for credits, the Department does not specify any price, but anticipates that bank operators will set prices taking into account factors such as the costs involved in establishing and operating the mitigation bank as well as market forces.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-17.16 Requirement for an in-lieu fee payment**

414. COMMENT: Please explain the difference between an “in-lieu fee” and a “contribution” to the Wetlands Mitigation Council. Why is an in-lieu fee called a contribution? It seems this is a fee required to be paid, is not voluntary, and is not tax deductible. Contributions do not go to the Wetlands Mitigation Council; they go to the Wetlands Mitigation Fund. As per the FWPA, monetary “contribution” means giving money to the Wetlands Mitigation Fund. (124)

415. COMMENT: N.J.A.C. 7:7-17.16 addresses the requirements for an in-lieu fee payment. Because an in-lieu fee program in New Jersey’s coastal zone would include non-assumed wetlands and waters, this section must be revised to specify that Federal approval of the program is required. (124)

RESPONSE TO COMMENTS 414 AND 415: Both a monetary contribution and in-lieu fee payment are monetary payments to an entity to satisfy mitigation requirements. Under the rules, a monetary contribution is not voluntary nor is it tax-deductible.

The FWPA at N.J.A.C. 13:9B-13 refers to monetary payments to the Wetlands Mitigation Fund as “contributions.” Accordingly, the FWPA and CZM rules use the term “contribution” when referring to a monetary payment to either the Wetlands Mitigation Fund. Under the freshwater wetlands permitting program, monetary contributions are made to the Wetlands Mitigation Fund which is managed by the Council.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

As indicated in response to Comment 358, the Department is in the process of seeking approval from the Wetlands Mitigation Council and USEPA of an in-lieu fee program under the freshwater wetlands permitting program. Because New Jersey's coastal zone contains wetlands and waters which are under the jurisdiction of both the Department and the USACE, in order to accept mitigation through the in-lieu fee program in these areas where both the USACE and the Department require mitigation, approval of the in-lieu fee program by the USACE would instead be required since the in lieu fee program in the coastal zone would address non-assumed waters. Until such approval is obtained, where mitigation is required for impacts to wetlands or waters under the jurisdiction of the Department and USACE, mitigation in the form of an in-lieu fee payment would not be an acceptable mitigation alternative. Rather, a mitigation alternative acceptable to both the Department and USACE would be required, as is currently the practice where concurrent jurisdiction occurs. In addition, when the Department is the only government entity requiring mitigation and it has been determined that a monetary payment is acceptable then the payment would be a monetary contribution. As indicated in the proposal Summary at 46 N.J.R. 1090, the references to this option, including the definitions of "in-lieu fee program" and "in-lieu fee program instrument," are added to the rules to facilitate the implementation of an in-lieu fee program for mitigation should a program be approved by the USACE for use in New Jersey's coastal zone.

Similar to the contributions referenced above, an in lieu fee involves a monetary payment to a government or non-profit entity to satisfy compensatory requirements for both the State and the USACE approvals. An in-lieu fee program in New Jersey's coastal zone must still be approved by the Wetlands Mitigation Council and USACE. Because the Federal program

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

utilizes the term “in lieu fee,” the CZM rule refers to a payment that would be made under that program after approval is obtained by that term. Even after Federal approval of the in lieu fee program for wetlands under the jurisdiction of the Department and USACE is obtained, the in lieu fee program would only address mitigation for impacts to those wetlands. Consistent with the above referenced terminology from the FWPA, the CZM rules would continue to refer to compensatory payments for other wetlands as contributions.

**N.J.A.C. 7:7-17.17 Financial assurance for mitigation projects; general provisions**

416. COMMENT: The proposed financial assurance requirements are opposed. (11, 50)

RESPONSE: Financial assurances have been a long-standing requirement of both the CZM rules and the FWPA Rules, and are critical to the success of a mitigation project. A mitigation project will only provide the benefits it is designed to provide to compensate for impacts from a regulated activity if it is completed and post-project monitoring and maintenance is performed in accordance with the rules and the terms of the approval for the specific mitigation project. An unacceptable loss in resource benefits would occur if the person or entity responsible for performing the mitigation either refuses to or becomes financially unable to perform all aspects of the mitigation project, including any required follow-up. Financial assurance is a mechanism that ensures that a sufficient amount of money will be available for use to complete a mitigation project or reconstruct a failed mitigation project and monitor and ensure the project achieves the designed results in the event that a mitigator is unable to perform or complete the project. The financial assurance requirements at N.J.A.C. 7:7-17.18 through 17.21 were developed in

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

consultation with the Department's Site Remediation Program and modeled after those in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-5.

The financial assurance requirements are intended to put in place an efficient system for establishing, reviewing, and approving financial assurance documents. Financial assurances have ensured that the requisite mitigation is implemented when development projects have failed.

**N.J.A.C. 7:7-17.18 Financial assurance; fully funded trust fund requirements**

417. COMMENT: Under N.J.A.C. 7:7-17.18(j), permittees should be able to draw down on financial assurance for work completion. (50)

RESPONSE: N.J.A.C. 7:7-17-17(i) and (j) address the release of the financial assurance.

Specifically, N.J.A.C. 7:7-17.17(i) allows for the portion of the financial assurance associated with the construction costs to be released upon the Department's determination that construction of the entire project has been successfully completed in accordance with the approved mitigation proposal. The Department will not release a portion of the financial assurance associated with the construction costs for the completion of segments or portions of a mitigation project since the success of the mitigation project is tied to the construction of the site as a whole. N.J.A.C. 7:7-17.17(j) allows for portions of the financial assurance for maintenance costs to be released when the Department determines that the mitigation project or bank is successful in accordance with N.J.A.C. 7:7-17.11(k), 17.13(g), or 17.22(j), as applicable.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-17.22 Mitigation banks**

418. COMMENT: The Department will determine a mitigation bank to be successful if the mitigation bank operator, in accordance with N.J.A.C. 7:7-17.22(j)3, provides the government agency or charitable conservancy to which the mitigation bank is transferred with a maintenance fund. However, the Federal government will not accept mitigation banks which are subject to a State conservation restriction. It is requested that the Department negotiate a resolution to this issue so mitigation bank lands may be transferred to Federal agencies when located in New Jersey. (124)

RESPONSE: The commenter does not specify which Federal agency refuses to accept such a mitigation bank or the circumstances involved if a specific property was not accepted. The Department is unaware of circumstances where mitigated land has been offered to a Federal entity and rejected, since the only Federal entity in New Jersey that may be appropriate to hold mitigated lands is the U.S. Fish and Wildlife Service. A conservation restriction must be placed on all wetland mitigation projects and wetland mitigation banks; without such protection, the Department cannot ensure that mitigated wetlands will be protected in perpetuity. This requirement is consistent and applied equally to all mitigated sites regardless of whether the site is used for permittee-responsible mitigation or for a mitigation bank. The rule provides options for the transfer of a mitigation bank and does not limit the transfer to Federal agencies. The Department believes the placement of a conservation restriction on the land is critical to the long term success of the project and therefore will not waive or lift a conservation restriction for a mitigation bank transferred to the Federal government. With no restrictions on the land, the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Federal government could more readily sell the property and/or modify the land for other purposes that may not protect for the wetlands.

419. COMMENT: N.J.A.C. 7:7-17.22(e) explains that the banking instrument approved by the Department includes a schedule to release credits. The release of credits will be based on meeting specific performance standards. N.J.A.C. 7:7-17.22(e)2 should be revised to allow the release of up to 20 percent of the credits to reflect the functional uplift produced and economic investment to establish hydrology. N.J.A.C. 7:7-17.22(e)4 should be revised to allow up to 20 percent of the credits to be released to reflect that if vegetation can meet the performance standards in year one, the mitigation bank is proven to be on a positive trajectory towards success. In addition, this provision should be revised to apply to a full growing season rather than an entire one-year period. N.J.A.C. 7:7-17.22(e)5, 6, and 7 should be revised to apply to two, three and four full growing seasons rather than a two-, three-, and four-year period, respectively, consistent with mitigation sites. N.J.A.C. 7:7-17.22(e)8 should be revised to allow for the release of up to 10 percent of the credits when the performance standards have been met for five consecutive years. Holding 20 percent of the credits until year five is punitive as the Department has many protections to ensure year five compliance, such as financial sureties and the ability to stop the sale of released credits. In addition, there is low a probability of failure in year five because success is measured by credit release. For mitigation bankers, the release of credits takes a great deal of time; even after monitoring proves the bank meets criteria and a report is submitted, it can be many months before a credit release is approved by the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

At that juncture, only the market for mitigation credits controls whether any buyers may exist for released credits. (124)

RESPONSE: Unlike permittee-constructed mitigation for a single project, a mitigation bank is a mitigation alternative where mitigation is provided for multiple types of wetland impacts associated with multiple projects for multiple permittees at a single site. Generally, due to the scope of the impacts compensated by a permittee-constructed mitigation site as opposed to a mitigation bank, it is much easier to find a solution for a failed permittee-constructed mitigation site than a failed mitigation bank. Accordingly, there is a significantly higher ecological risk associated with the failure of a mitigation bank. Failure of the bank means that compliance with the CZM rules and compensation for the losses associated with many permitted activities may not occur within a timely manner. Therefore, it is necessary for the Department to hold credits in reserve to ensure that the mitigation bank is successfully meeting certain milestones and compensating for the impacts for which mitigation is required.

The credit release schedule set forth at N.J.A.C. 7:7-17.22(e) is the same as the FWPA Rules at N.J.A.C. 7:7-15.23, with one exception. The Department is allowing for a credit release in years two and four, provided performance standards have been met. This is appropriate because the establishment of tidal wetlands is more predictable, and occurs at a faster rate in comparison with freshwater wetlands. This modification is not punitive to wetland mitigation bankers, but rather supports them and authorizes a greater number of credits to be released each year.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 18. Conservation restrictions**

### **N.J.A.C. 7:7-18.1 Conservation restriction form and recording requirements**

420. COMMENT: The Department is commended for including provisions specifically providing that form conservation restrictions may be altered in consultation with Department to address site specific conditions. (11, 50)

RESPONSE: The Department acknowledges this comment in support of the rule.

421. COMMENT: The 90-day time frame from issuance of permit for recording of conservation restrictions at N.J.A.C. 7:7-18.1(c)3 is unduly burdensome. The requirement should be removed and replaced with a requirement for recording prior to the start of work. Projects that are approved in many instances are not developed and in such cases the placement of restrictions on the land are unnecessary and create an undue burden, as the restriction is only required based on the impacts associated with the development. Additionally, where the applicant is a contract-purchaser, owners are often unwilling to record until transfer of the property to the contract-purchaser. Therefore, it is suggested that the Department require submission of proof of recording of conservation restrictions as part of the construction notification process. (11, 50)

RESPONSE: The requirement that the conservation restriction be recorded in the Office of the County Clerk or registrar of deeds and mortgages and that proof of recordation be provided to the Department is intended to ensure that there will be proper notice to future owners and other interested parties of restrictions applicable to the area subject to the conservation restriction and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

also ensures that the conservation restriction is enforceable. The 90-calendar-day time frame will allow sufficient time for an applicant to complete the restriction and complete the filing process. Should a permit be obtained to construct a development on a property that is subject to an agreement of sale, the parties may include provisions in the contract of sale warranting that the contract seller will cooperate to assure that the conservation restriction is filed within the 90-day time frame.

**N.J.A.C. 7:7-18.2 Additional requirements applicable to a conservation restriction for mitigation areas**

422. COMMENT: The rule at N.J.A.C. 7:7-18.2(a)1 requires the owner of the land subject to the conservation restriction (that is, the mitigation site) to notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted. However, the rule does not specify when the notification should be given to the county and to the municipality. Replacing the “and/or” with “and” will eliminated confusion by requiring notice to both entities. (129)

RESPONSE: Since the placement of a conservation restriction to satisfy a Department requirement affects the owner’s ability to conduct activities on a portion of the property, it is important to notify a county or municipality that such a restriction exists when submitting an application for a land use to these government agencies. The phrase “and/or” is used because an applicant may not be required to receive approval from both the municipality and the county. Therefore, it is not always necessary to notify both government agencies.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-18.3 Reservation of rights**

423. COMMENT: The concept at proposed N.J.A.C. 7:7-18.3(b) which provides the Department with the ability to release conservation restrictions where no site disturbance or authorized activities have occurred is supported. However, the entire process is only made necessary because of the fact that the Department is imposing an arbitrary requirement to record conservation restrictions within 90 days of the issuance of approval. If the 90-day time frame is removed, the entire process at N.J.A.C. 7:7-18.3(b) would be unnecessary. The 90 day time frame for recording conservation restrictions creates an unnecessary burden upon applicants, landowners, and the Department. (50)

RESPONSE: The Appellate Division has affirmed the Department's authority to secure conservation restrictions under the Coastal Area Facility Review Act. *In re Program Permit Rules*, 354 N.J. Super. 293, 366-68 (App. Div. 2002). For the reasons explained in response to Comment 339, the lack of date within which to record the conservation restriction imposes an undue burden on the Department to pursue property owners or monitor approved projects for recording; the lack of a deadline also creates enforcement quagmires. The current model conservation restriction form includes a proviso which reserves to a property owner or developer the right to make de minimus changes with no need to proceed through the public process normally mandated by N.J.S.A. 13:8C-1. Under N.J.A.C. 7:7-18.3, in the event that the property owner or developer decides not to proceed with the project, the owner or developer can abandon

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

and relinquish the permit, and the Department will issue a release of the recorded conservation restriction provided the requirements of N.J.A.C. 7:7-18.3 are satisfied.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 21. Emergency Authorizations**

### **General comments**

424. COMMENT: Proposed N.J.A.C. 7:7-21 does not include a requirement that the DEP publish notice of any request for emergency permit authorization or any notice of emergency authorization granted by the Department. The only notice requirement is at the time of submission of a follow-up application. In addition, the proposed rule deletes the existing requirement that a formal application be submitted within 10 days of emergency authorization and replaces it with a requirement that an application be submitted within 90 days, or more. As a result, the public will have no notice of any emergency authorization requests or decisions until the formal application has been received by the Department, which can be 90 days after the authorization or more. In addition to eliminating agency transparency in the decision making process, this provision conflicts with the statutory requirement that the public receive timely notice of any application to conduct regulated activities and that the public have adequate opportunity to comment to DEP on the scope and potential impacts of activities being undertaken. Requests for emergency permit authorizations should be made available in an online database as they occur and the Department should publish a notice of receipt of emergency authorization requests and a notice of decisions granting emergency authorizations in the DEP Bulletin. (90, 162)

RESPONSE: The Department is not eliminating transparency in the decision making process. The rules at N.J.A.C. 7:7-21.3(c) provide that the Department will publish notice of the issuance of an emergency authorization in the DEP Bulletin within 20 calendar days after the verbal

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

decision to issue an emergency authorization. In response to this comment, the Department is now publishing notice of all emergency authorizations received and issued by the Department in the DEP Bulletin. As explained in response to Comment 194, the public, through Dataminer, can search land use permits by file number; however permit decisions cannot be viewed or printed from Dataminer. The Department is currently working towards making these decisions available to the public.

In accordance with N.J.A.C. 7:7-21.1, the Department will issue an emergency authorization only if it is demonstrated that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and that the threat, severe loss, or degradation can only be prevented or ameliorated through undertaking a regulated activity and the threat, severe loss, or degradation is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity. Accordingly, public notice of a request for an emergency authorization is not required since the need to remedy the emergency situation outweighs the need to provide public notice of the request.

## **Subchapter 22. Pre-application conferences**

### **N.J.A.C. 7:7-22.1 Purpose and scope**

#### Pre-application conferences

425. COMMENT: Pre-application guidance provided by Department staff should be binding. Applicants rely upon the pre-application guidance provided by the Department when assessing the viability of development opportunities and in pursuit of development approvals, often at

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

significant cost. The Department's diversion from pre-application guidance often has a prejudicial effect. Applicants should have the ability to meaningfully rely upon pre-application guidance provided by the Department to create stability and certainty in the approval process, and to avoid costly delays. (50)

RESPONSE: The pre-application conference is intended to be an informal forum where the Department and potential applicant can frankly discuss the positives and negatives of a proposed application, and what may need to change in a formal application for Department approval. Since formal detailed plans are not required for a pre-application conference, and the fact that any material submitted by the potential applicant does not undergo complete and thorough Department review to confirm its accuracy and relevance, it would be inappropriate for the Department to be bound by guidance provided in this context.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

### **Subchapter 23. Application Requirements**

#### **N.J.A.C. 7:7-23.2 General application requirements**

426. COMMENT: Proposed N.J.A.C. 7:7-23.2(c) should be revised to allow contract purchasers to be able to submit applications without the signature of the owner of the site so long as the contract allows the contract purchaser to obtain authorizations for a project on the site. (50)

RESPONSE: The Department views a contract purchaser who has a binding contract that authorizes the contract purchaser to submit permit applications for a project as a de facto agent. Accordingly, a contract purchaser with such an authorization in its contract of sale can submit an application in accordance with N.J.A.C. 7:7-23.3(c)2. The contract purchaser with such authorization should submit the complete contract (purchase price redacted) to the Department as part of its application for the permits and approvals.

427. COMMENT: The municipality or county in which a project is to be located should be the co-applicant on every development application received by the Department. This will ensure that when an applicant certifies that certain actions will occur, the municipality or county will be held accountable if the applicant such actions. (42)

RESPONSE: It would be inappropriate to expect or require local government to effectively guarantee that every development subject to this chapter within its boundaries to comply will be completed in accordance with the DEP rules. The requirements are set by the Department not by the municipalities. Thus, the Department holds the permittee responsible for compliance with the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department's rules and any permit conditions and any permit conditions and incorporates safeguards, such as the financial assurance requirements specified in N.J.A.C. 7:7-13 to guarantee that required mitigation projects are completed, to ensure performance in appropriate circumstances. In the event that a permittee violates a Department permit or approval, then the Department should and will ensure compliance not the municipality which did not approve or set conditions for the development.

**N.J.A.C. 7:7-23.6 Additional requirements specific to an application for an individual permit**

428. COMMENT: The rule at proposed N.J.A.C. 7:7-23.6(b) should be revised to clarify that the overall purpose of an environmental impact statement (EIS) for an individual permit application is to demonstrate compliance with the applicable rules. Therefore, the EIS requirement is akin to the compliance statement requirement applicable to applications for a general permit authorization. Further, N.J.A.C. 7:7-23.6(b)1iii requires discussion of the "potential impacts from construction and operation of the facility." This is very broad and is not needed for most projects, as compliance with the CZM rules demonstrates that impacts, if any, are acceptable under State law. (50)

RESPONSE: The purpose of a compliance statement is to demonstrate that the proposed project satisfies the requirements of the general permit for which authorization is being sought. The requirements of each general permit are established in consideration of a proposed development's impacts on the built and natural environment. Compliance with the requirements

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

of a particular general permit will mean the requirements of the CZM rules that apply to the development or activity governed by a particular general permit are met. The purpose of the EIS is to assist the applicant and the Department in assessing the effects of a proposed development or activity on the natural resources at the project site and surrounding region and in determining the proposed development's compliance with the CZM rules. The scope of the EIS for each individual permit application is determined based on the scope of the project and its environmental impacts. Unlike the general permit, which identifies the requirements with which a proposed project must comply, an applicant for an individual must determine the CZM rules applicable to the proposed development or activity and demonstrate compliance with those rules. Further, the EIS must, as necessary based on site-specific and project-specific circumstances, include support by relevant experts for the assessments, discussions and statements made in the EIS, specify the qualifications of the preparers, and provide references and citations to all information, reports, or treatises that are mentioned in the EIS but not contained in the document itself.

The type and scope of developments and activities subject to an individual coastal permit are diverse, ranging from the construction of three single-family homes to the construction of a sand mining facility or convention center. Accordingly, N.J.A.C. 7:7-23.6(b)1iii requires that the EIS include a narrative describing the potential impacts from the construction process, and as applicable, the operation of the development after completion. For example, an EIS for the construction of a new bridge would include a description of the potential impacts of the construction activity on the waterway, including impacts to special areas (such as shellfish waters), impacts to navigation, and water quality impacts. As another example, an individual

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

permit is required for the construction of certain wind turbines located in the coastal area. In this case, the individual coastal permit not only authorizes the construction of the wind turbine itself, but also the operation of the turbine after completion. Therefore, in this case, the EIS must also include a description of the impacts of the operation of the development on the natural and built environment.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Subchapter 24. Requirements for an Applicant to Provide Public Notice of an application**

**N.J.A.C. 7:7-24.1 Purpose and scope**

429. COMMENT: Combined public notice is positive, but proposed N.J.A.C. 7:7-24.1(d) should be clarified as the language required in the public notice differs among the land use rules, especially the FWPA rules. Proposed N.J.A.C. 7:7-24.1(d) does not resolve the problem of requiring a 200-foot public notice when the combined application is submitted for an application that includes a CAFRA permit and other permits, and then again (often within a couple of weeks) for the start of the CAFRA public notice period. For a combined project, one round of letters to the 200-foot list should be sufficient in almost every case. (50)

RESPONSE: The Department has aligned the requirements for an applicant to provide public notice of an application across the coastal, flood hazard area, and freshwater wetlands permitting programs to the extent the statutes allow. Certain aspects of the rules governing the permit process will differ among the three permitting programs because they are tailored to the respective enabling statutory authorities. The application review process for an individual CAFRA permit is established by CAFRA, while the application review process for waterfront development and coastal wetlands individual permits is established by the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. In 1993, amendments to CAFRA eliminated mandatory public hearings on permit applications but required the Department to establish in its rules conditions under which a hearing would be held. Accordingly, the Department created a mechanism in the rules for notifying interested parties of the opportunity to request a public hearing on an application. However, rather than require notice to property owners within 200 feet of a project

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

site at the time of application and again in advance of the public hearing, if one is to be held, and at the start of the comment period, the rules provide that the initial notice of the application be through newspaper notice, which is less burdensome to the applicant. Individual notice to property owners is required if a public hearing is to be held and to open the public comment period.

**N.J.A.C. 7:7-24.2 Timing of public notice of an application**

430. COMMENT: Proposed N.J.A.C. 7:7-24.2(a) requires notice be provided no later than the date the application is submitted to the Department. Only one notice should be allowed at the time of application, and notice should not be required until the Department declares an application otherwise complete for review. By requiring notice only when the application is deemed complete, the Department would address concerns of potential delay for applications due to required demonstration of compliance with public notice requirements. Further, the completeness determination may cause an applicant to withdraw an application or to make revisions to be reflected in the notice. (50)

RESPONSE: The requirement at N.J.A.C. 7:7-24.2(a) that all applications other than an application for a CAFRA individual permit provide public notice of the application no more than 30 calendar days prior to submitting the application and no later than the date the application is submitted to the Department is the same as in the FHACA rules at N.J.A.C. 7:13-16.1(b) and is designed to ensure that the notice of an activity is given in a timeframe that allows for meaningful public comment. The application review process for an individual CAFRA permit is

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

established under the Act at N.J.S.A. 13:19-8 and 9, while the application review process for a waterfront development and coastal wetland individual permit is established under the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. Therefore, for the reasons described in the Response to Comment 429, the public notice requirements differ between a CAFRA individual permit application and an individual permit application for a waterfront development and coastal wetlands permit.

431. COMMENT: The comma after submarine cable at proposed N.J.A.C. 7:7-24.3(f) should be removed to clarify that the additional notice is only required for submarine cables in the Atlantic Ocean as in the previous rule. (50)

RESPONSE: The public notice requirement set forth at N.J.A.C. 7:7-24.3(f) is the same as the prior rules at N.J.A.C. 7:7-4.2(a)3ii, with the exception that the Commercial Fishing Communications Association is not included in the list of entities because it is no longer in existence. The notice at N.J.A.C. 7:7-4.2(a)3ii applied to both an application for a waterfront development permit for the installation of a submarine cable in the Atlantic Ocean as well as an application for a waterfront development permit for sand mining in the Atlantic Ocean. For the purposes of clarity, the Department is modifying N.J.A.C. 7:7-24.3(f) on adoption to add “in the ocean” after “submarine cable.”

### **N.J.A.C. 7:7-24.3 Contents and recipients of public notice of an application**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

432. COMMENT: Proposed N.J.A.C. 7:7-24.3(a) seeks to reduce the number of documents that are submitted to a municipality and its commissions and boards. This proposal will reduce access to the documents. Zoning, Planning Board, and Environmental Commission members and governmental officials will now have reduced access as they must share the documents. It also reduces the ability of the public to access the documents because there are fewer documents available. This provision is contrary to the goal of providing adequate notice and opportunity to comment on projects. The existing requirements in N.J.A.C. 7:7 should remain. (62, 118)

RESPONSE: The Department does not agree that only requiring the submission of one complete application to the clerk of the municipality in which the site is located and not three copies, with one copy provided to the planning board and one to the environmental commission as required prior to these amendments, reduces access to the documents. The rules at N.J.A.C. 7:7-24.3(b) require notice to the planning board and environmental commission consisting of a brief description of the project, a site plan, and the form notice letter that the Department makes available on its website. The notice is the same as the notice for construction code officials. It has been the Department's experience that the submission of a complete application to the planning board and environmental commission is generally unnecessary as these entities ordinarily only need to review certain aspects of the application. If it is determined, based upon the review of the project description, site plan, and notice letter, that additional information contained within the complete application is required, such information can be obtained from the complete application on file with the municipal clerk or from the Department.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**N.J.A.C. 7:7-24.4 Additional notice requirements for public notice of an application for a CAFRA individual permit**

433. COMMENT: Proposed N.J.A.C. 7:7-24.4(a) requires a request for a public hearing to be made within 15 days of the date of the notice and to provide the specific nature of the issues to be raised at the hearing. These time frames severely restrict the public from accessing the records, reviewing the material, and then making a request for a public hearing that complies with the rules and therefore impacts the rights of the public. (118)

RESPONSE: In 1993, the amendments to CAFRA provided the Department with the discretion to hold a 30-day public comment period on a CAFRA permit application in lieu of a public hearing. As a result of this change, the public expressed the need for a procedure to notify them of the opportunity to request a public hearing on a CAFRA permit application. To address this need and to meet the application review time frames specified in CAFRA, the Department amended the Coastal Permit Program Rules at N.J.A.C. 7:7-4.3(a) and (b) and determined it appropriate to provide the public with an opportunity to request a hearing on the application via publication of notice in the newspaper. (See 32 N.J.R. 864(a); March 20, 2000 and 32 N.J.R. 3784(b); October 16, 2000). N.J.A.C. 7:7-24.4(a) carries forward this requirement. Further, the Department requires under N.J.A.C. 7:7-24.4(a) that the public notice be published after the application is submitted to the Department to ensure that the application is available for the public to review, both at the Department and at the office of the municipal clerk. In response to this notice, an applicant must submit a written request explaining the nature of the issues to be

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

raised at the hearing. Based upon the Department's experience implementing this public notice requirement since 2000, the 15 day period to request a public hearing is sufficient.

434. COMMENT: A provision should be added at N.J.A.C. 7:7-24.4(b)4 to limit public notice to property owners within 200 feet of the disturbance for a small project on a large property or to waive such notice entirely. There are times when a small activity on a very large site requires a permit. This is already allowed in the FWPA rules and for certain waterfront development activities. (50)

RESPONSE: The FWPA rules address development within freshwater wetlands, transition areas, and State open waters, and the Department's review of the proposed project is limited to the impacts on that resource. Under CAFRA, the Department reviews the impacts of the proposed development on the natural and built environment and thus the scope of the Department's review is much broader. The Department at N.J.A.C. 7:7-24.4 (b)4 has identified the situations in which public notice to property owners within 200 feet of the site can be reduced or eliminated based on the scope, location, and anticipated impacts of the proposed development. Because a small project on a large property may have impacts to multiple special areas, resources, and existing development, the Department has determined that it is not appropriate to reduce or eliminate public notice to property owners within 200 feet of the site as suggested by the commenter.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Subchapter 26. Application Review**

### **General comments**

435. COMMENT: It appears that proposed new N.J.A.C. 7:7-26 does not address the “Checklist Law” (N.J.S.A. 13:1D-101). This law provides that once an applicant submits all of the checklist items, the application must be deemed complete for review and the 90-day time frame must commence. This applies to all applications except for CAFRA applications. Furthermore, the distinction under proposed N.J.A.C. 7:7-26.2 between administrative and technical completeness is not authorized under the Checklist Law. This section of the regulations must be revised in order to meet the requirements of the checklist law. (50)

RESPONSE: The rules as adopted satisfy the requirements of both the Checklist Law, N.J.S.A. 13:1D-101, and the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. The Checklist Law provides a 30-day review period to determine administrative completeness (see N.J.S.A. 13:1D-102) while the Construction Permits Law allows the Department 20 working days to request any additional information needed to deem the application complete for review (see N.J.S.A. 13:1D-30). The laws therefore set separate review periods and the Checklist Law specifically recognizes the dichotomy between administrative and technical completeness. The Checklist Law is therefore satisfied since the rule proscribes a shorter time frame to determine administrative completeness than that allowed under that law. The Checklist Law does not, however, require, as suggested by the commenter, that the 90-day review period commence upon determination of administrative completeness. Where the Checklist Law is meant to provide the Department with a framework for determining administrative completeness, the 90-day review

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

period under the Construction Permits Law provides the Department with the ability to determine whether additional information is required to conduct its review, that is, whether the application is technically complete. Only upon receipt of that information does the 90-day review period commence. Therefore, the two review periods must be read together and, to do so, the rules draw the distinction between administrative and technical completeness and utilize the shorter of the two available time frames in order to satisfy both laws. Accordingly, the 90-day time period for review commences upon receipt of all information the Department is entitled to seek under both the Checklist Law and Construction Permits Law.

436. COMMENT: Proposed N.J.A.C. 7:7-26 will seriously restrict the right of the public to review and comment on projects. It also will hamper the Department's ability to fully review, investigate and collaborate the submissions by the applicant.

For example, the total time period for Department review of a project is 120 days including a 30-day extension. The public's opportunity to comment is only 60 days. This proposed regulatory section does not account for complex projects and does not necessarily provide for meaningful opportunity for the public to review the submissions and prepare meaningful comments. These proposed rules do not take into account standard procedures at the Department.

The first problem is the manner that the Department handles requests for file reviews on permit applications. Once an OPRA request is filed, the Department will then take up to seven business days in order to respond to the request. The response by the Department is not the production of documents but merely a response that documents are available. Experience over

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the last several years demonstrates that, once an OPRA response is received, the scheduling of a review of the submissions can take several weeks. Requesting copies of records can take even longer to accomplish. This serious delay in providing access to or copies of the records severely limits the public's ability to review the file and to provide meaningful comments to the plan. It severely hampers the public's ability to engage professionals to review the documents and provide expert review of the submissions. It is these public comments that have led to reduced environmental impacts and better projects. Public review and comment also serves as a check on the submissions by the applicant by providing independent ground-truthing of the submissions.

If the Department intends to strictly comply with these regulatory requirements, then it must provide timely access to the records without the lengthy delays currently experienced by the public. The Department could accomplish this by requiring all documents to be submitted in electronic form. The Department can then either provide access to these documents through DataMiner or another web portal; or the Department would be in the position to forward the requested documents immediately upon receipt of a request for access to the records.

Another concern with strict enforcement of these rules is that the time frames do not account for the complexity of the proposals. In many instances, the Department has met, if not beat, the required time frames set forth in the regulations. In a few instances the Department has not met the strict requirements. In most cases these exceedances are the result of the complexity of the project, inadequate and/or misleading information that was supplied by the applicant. The Department and the public should be afforded sufficient time to fully review the project instead of being hampered by an arbitrary deadline.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The Department should also put in place a mechanism to inform the public when revisions to a project are submitted by the applicant. It is extremely frustrating to have reviewed the initial submissions of the applicant only to learn at the 11th-hour that there are substantial revisions to those submissions. Also, substantial revisions should reset the clock on the Department's time requirements for review. (118)

RESPONSE: The right of the public to review and comment on projects is not hampered by the timeframes set forth at N.J.A.C. 7:7-26. The time frames for the review of CAFRA permit applications are established by the Act at N.J.S.A. 13:19-8 and 9--and the review timeframes for waterfront development and coastal wetlands permits are established under the Construction Permits Law, N.J.S.A. 13:1D-29 et seq.

Pursuant to N.J.A.C. 7:7-24.3(a), a copy of the entire application for an authorization under a general permit-by-certification, an authorization under a general permit, an individual permit, a mitigation proposal, and a major technical modification must be submitted to the municipal clerk in which municipality in which the site is located. This provision ensures that, should interested persons want to review the information contained within the application, they may contact the municipal clerk or the Department. Further, in accordance with N.J.A.C. 7:7-26.1(g), the Department publishes in the DEP Bulletin notice of receipt of each new application, the status of the application during review (that is, milestones such as administratively complete, and technically complete), and the decision to approve or deny the application.

With respect to the Open Public Records Act (OPRA), the Department has seven calendar days to process a request for access to government records; however, such requests may

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

be processed earlier provided the record is currently available and not in storage or archived. The Department makes every effort to provide the requester with all identified responsive records in a prompt manner. If the records identified are less than 30 pages in length, the records are faxed to the requester upon receipt from the respective program. This typically occurs within five business days from the date the response is issued. Similarly, all identified electronic documents are e-mailed to the requester upon receipt from the respective Program and within five business days from the date the response is issued. Where the records requested is greater than 30 pages in length or is not available in an electronic format, the requester may schedule a file review or request records to be copied and mailed for a fee. Ordinarily, file reviews are scheduled within three to seven business days from the date the requester calls the Office of Record Access. In some instances where the records are in storage, archived or involves multiple Programs, scheduling a file review can take up to two weeks. However, the Office of Record Access makes every effort to expedite requests with a time constraint. Such requests are given special consideration and a file review is scheduled immediately.

The focus of this rulemaking is the alignment of the coastal, freshwater wetlands, and flood hazard area permitting process rules across the three land use permitting programs to the extent the statutes allow. The standardization of the process for obtaining a permit across the land use permitting programs will make it easier for applicants to understand and comply with the rules of each permitting program especially when they must obtain more than one permit. Further, the alignment of the rules is intended to facilitate the electronic submittal of land use permit applications in the future. Currently, the public, through Dataminer, can search land use

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

permits by file number; however permit decisions cannot be viewed or printed from Dataminer.

The Department is currently working towards making these decisions available to the public.

With respect to providing a mechanism to inform the public when revisions to a project are submitted, new N.J.A.C. 7:7-26.1(d) provides that an applicant may submit a revised application at any time during the review process. If a revised application is submitted, the applicant must send a copy of the revised portions of the application to the municipal clerk of each municipality in which the development site is located and must send notice explaining the revisions to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the revised application. This provision will ensure the application previously sent to the clerk in accordance with N.J.A.C. 7:7-24.3(a) is complete and up to date and that any person whom the Department determines would likely be affected by the revised application is also notified of the revisions. The applicant must document that this notice was provided as required. Further, N.J.A.C. 7:7-26.1(d)1 requires that, if an applicant submits a revised application within 30 calendar days prior to the deadline for decision on the application, the revised application must state that the applicant consents to a 30-calendar day extension so that the Department will have sufficient time to review the revised application and render a decision.

#### **N.J.A.C. 7:7-26.1 General application review provisions**

437. COMMENT: Since, for purposes of a completeness determination, an applicant must demonstrate that it has submitted a complete application for a Tidelands instrument under

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-26.1(f), there should be a corresponding requirement that the Bureau of Tidelands issue a written completeness determination. (50)

438. COMMENT: Pursuant to N.J.A.C. 7:7-26.1(f), land use applications cannot be deemed complete for review until the applicant has possession of all Tidelands instruments or has submitted a complete application for a Tidelands instrument. Currently, the Bureau of Tidelands has appropriately required a proposed project to be consistent with the land use regulations prior to consideration for a Tidelands instrument. In many cases, the project design is not finalized until after the review and decision by the Division of Land Use Regulation. It is burdensome to force applicants to apply for a Tidelands instrument when the project design has not been finalized and a chance exists for modifications to occur subsequent to Department requests. For example, Department required modifications to a docking structure would also modify the area that would be subject to a Tidelands license. This standard forces excessive cost and unpredictability on applicants. The Department should consider the removal of this requirement. As an alternative, the Department could consider the inclusion of a permit condition as a safeguard, as is currently the standard practice for the Department. (83, 156)

RESPONSE TO COMMENTS 437 AND 438: Because tidelands are public lands, a person wishing to construct a structure on State-owned Tidelands must obtain written permission from the State and pay a fee in order to use these lands. The Department cannot issue a permit to an applicant for activities on lands which they do not own or lands which they do not have permission from the property owner to occupy. Accordingly, under N.J.A.C. 7:7-26.1(f), an

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

applicant must demonstrate that they have submitted an application for a Tidelands instrument to obtain permission to conduct the regulated activity since they do not own the land on which the activity will be located. An applicant can contact the Division of Land Use Regulation's Technical Support Center at (609) 777-0454, via e-mail at [LURTechSupport@dep.state.nj.us](mailto:LURTechSupport@dep.state.nj.us), or by using an online contact form at [www.nj.gov/dep/landuse/contact.html](http://www.nj.gov/dep/landuse/contact.html) to inquire as to the status of their Tidelands application.

During the review of any coastal permit, the proposed project may change necessitating revisions to the submitted site plan. The application requirements for an authorization under a general permit or for an individual permit at N.J.A.C. 7:7-23.4(a)4iv require that the applicant depict on the site plan the limits of any existing or proposed Tidelands instrument. In most cases, the site plan submitted to the Department as part of the coastal permit application is the same site plan submitted to the Bureau of Tidelands with the tidelands application. Therefore, the revised site plan required for the Department to render a decision on a permit application would be the same site plan that would be submitted to the Bureau of Tidelands. Accordingly, the Department does not agree that it is burdensome to require an applicant to apply for a Tidelands Instrument when the project design has not been finalized.

**N.J.A.C. 7:7-26.6 Department decision on an application that is complete for review**

439. COMMENT: Pursuant to N.J.A.C. 7:7-26.6(h), the Department is eliminating an applicant's right to waive a timely review. It is recommended that the Department remove this standard and continue to allow for this provision on a case-by-case basis. Certain situations warrant this right, especially when applicants are caught in State or municipal planning processes that

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

unintentionally cause delays in the review of the project. The removal of this provision forces excessive costs and unpredictability on an applicant, including duplicate application fees and costs to prepare multiple or recurrent applications. Removal of this option is not in the public interest because of the resulting escalating costs for projects without commensurate resource benefits. (50)

RESPONSE: The time frames for the Department's review and decision on a waterfront development application are established by the Construction Permits Law and for a CAFRA application by the Coastal Area Facility Review Act. These laws mandate that the Department take certain actions within prescribed time periods. The Department cannot ignore or extend these statutory time frames for any reason, even where an applicant wishes the Department to do so. Applicants caught in State or municipal planning processes that unintentionally cause delays in the review of a project can withdraw an application under N.J.A.C. 7:7-26.8 and reapply, which resets the application review time frames, without paying additional application fees, provided certain requirements are satisfied, as set forth at N.J.A.C. 7:7-26.9.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**Subchapter 27. Permit Conditions; Extension, Modification, Transfer, Suspension, and Termination of Authorizations and Permits**

**N.J.A.C. 7:7-27.2 Conditions that apply to all coastal permits**

440. COMMENT: The rules at N.J.A.C. 7:7-27.2(d)3 should require the recording of approvals prior to the commencement of authorized activities rather than within an arbitrary 30 or 90 day time frame. If the project is never undertaken, the recording is unnecessary. (50)

RESPONSE: Unfortunately, the Department has learned from past experience that, either by oversight or design, without recording deadlines, permits are often not recorded by owners or successors, which can result in unknowing purchasers acquiring the land with no knowledge of the permitting obligations. Thus, the lack of date within which to record the permit imposes an undue burden on the Department to pursue property owners or monitor approved projects for recording; the lack of a deadline also creates enforcement quagmires.

441. COMMENT: The Department should have the discretion to allow for an alternative time frame for completion of mitigation under N.J.A.C. 7:7-27.2(d)5. (11, 50)

RESPONSE: The time frames specified at N.J.A.C. 7:7-27.2(d)5 ensure that mitigation is accomplished as near in time as possible to the occurrence of the impacts, reducing the period during which the functions and values of the impacted resource are lost.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

442. COMMENT: N.J.A.C. 7:7-27.2(d)7 should be revised to state that all permit conditions shall be satisfied “prior to commencement” unless the permit or approval contains an alternative specific time frame for completion. The language regarding completion of conditions within six months if there is no specified time frame should be eliminated. (50)

RESPONSE: The requirement that conditions shall be completed within six months if there is not specified timeframe has been a longstanding provision of the Coastal Permit Program Rules. This requirement ensures that all conditions are completed in a timely manner.

**N.J.A.C. 7:7-27.3 Extension of an authorization under a general permit or for a water development individual permit for activities waterward of the mean high water line**

443. COMMENT: Minor revisions to projects, even after approval, are not uncommon. The rule at N.J.A.C. 7:7-27.3(b)3 should recognize this practical reality by providing that approvals may be extended where the regulated activities have not been “substantially” revised. (11, 50)

RESPONSE: The Department agrees that minor modifications to projects after approval are not uncommon. However, before the Department can extend the period during which an activity authorized by an individual or general permit may be conducted for an additional five-year period, it is important that the Department know that no changes have occurred since the original approval so that it can ensure that the extension does not authorize conduct of an activity that in anyway varies from that originally approved. Since a modification is required to address any change in the approved project (see N.J.A.C. 7:7-27.5), including changes in the permitted

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

development, activity, or project, and the extension provides an additional period of approval equal to that provided when the Department initially reviewed the project, the Department believes it is appropriate to require that the permit extended be only one that remains unchanged from what it initially approved or one that has gone through the modification process under N.J.A.C. 7:7-27.5; the Department will not extend an authorization that is not in compliance with the rules, including the need to obtain a modification to reflect a change, no matter how minor it may be considered. Should the project change be truly minor, obtaining the required modification to reflect the change will be a straight-forward process. Upon obtaining the modification reflecting the change, the permittee may then obtain an extension, as specified in N.J.A.C. 7:7-27.3(b)3.

**N.J.A.C. 7:7-27.4 Transfer of an authorization under a general permit or an individual permit**

444. COMMENT: The automatic transfer of permits pursuant to N.J.A.C. 7:7-27.4(a) is supported; however, there is no reason for submission of information by the new owner pursuant to N.J.A.C. 7:7-27.4(b). Under CAFRA, at N.J.S.A. 13:19-14, permits run with the land and apply to the new land owner without conditions. The rules should be revised to be made consistent with the statute. (11, 50)

RESPONSE: The CZM rules address developments under CAFRA, the Waterfront Development Law, and Wetlands Act of 1970. N.J.A.C. 7:7-27.4 is not inconsistent with CAFRA. The information required under N.J.A.C. 7:7-27.4(b) is necessary to ensure that the Department will

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

continue to have accurate information as to the owner and the activities being conducted on the site to which the transferred permit applies.

**N.J.A.C. 7:7-27.5 Modification of an authorization under a general permit or an individual permit**

445. COMMENT: At proposed N.J.A.C. 7:7-27.5(b), the approval of a modification of an authorization under a general permit or an individual permit should be valid for a five-year term. (11, 50)

RESPONSE: A modification of an authorization or a permit and the extension of an authorization or permit are separate actions. A modification under N.J.A.C. 7:7-27.5 addresses changes to the permitted activity. An extension of the duration of an authorization or permit under N.J.A.C. 7:7-27.3 extends the duration of an authorization or permit for one five-year period. The modification of a permit does not preclude a permittee from obtaining an extension. It should be noted that an extension applies only to an authorization under a general permit for which the application was deemed complete for review on or after the effective date of these rules, and to an individual waterfront development permit for activities waterward of the mean high water line.

446. COMMENT: The addition of a “minor technical modification” at proposed N.J.A.C. 7:7-27.5(d) is supported. (11, 50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: The Department acknowledges this comment in support of the rule.

447. COMMENT: There appears to be an omission in proposed N.J.A.C. 7:7-27.5(e).

Reference to subsection (d) should be added since, if the requirements of subsection (d) are met, subsection (e) is not applicable. (11, 50)

RESPONSE: The commenter is correct that N.J.A.C. 7:7-27.5(e), which describes a major technical modification of an authorization or individual permit as a change not addressed under named subsections of this section, should include reference to subsection (d) since, if the proposed modification of a project meets the requirements for a minor technical modification set forth in subsection (d), a major technical modification would not be required. N.J.A.C. 7:7-27.5(e) instead incorrectly references subsection (b), which establishes that the term of an authorization under a general permit of an individual permit cannot be extended by a modification. Accordingly, the Department is amending N.J.A.C. 7:7-27.5(e) on adoption to delete reference to subsection (b) and add reference to subsection (d).

448. COMMENT: Proposed N.J.A.C. 7:7-27.5 should be revised to impose a 90-day decision deadline for modification applications consistent with the Construction Permits Law. (11, 50)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: Applications for modifications of an authorization under a general permit or an individual permit are not subject to the Construction Permits Law. Accordingly, the Department is not imposing a 90-day decision deadline.

449. COMMENT: Minor modifications at proposed N.J.A.C. 7:7-27.5(d) should include changes in the layout of an approved development or project that occur solely within areas of approved cover or non-porous materials. (50)

RESPONSE: A minor technical modification applies to a change in the design or layout of a project, including any associated changes to an approved plan or other document, which does not result in new or additional impacts to any special areas other than a special urban area, governed by N.J.A.C. 7:7-9.41, the Hudson River waterfront area, governed by N.J.A.C. 7:7-9.46, and Atlantic City, governed by N.J.A.C. 7:7-9.47. Minor technical modifications may include, for example, changes in materials or construction techniques or a reduction in the intensity of development on the site, such as the elimination of a permitted structure or activity or a reduction in the footprint of the project. The placement of a building on approved cover or impervious surfaces may require the review of calculations to ensure compliance with the Stormwater Management rules, N.J.A.C. 7:8. Accordingly, such changes are appropriately reviewed as a major technical modification.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

### **Subchapter 29. Enforcement**

#### **N.J.A.C. 7:7-29.6 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities**

450. COMMENT: The proposed language at N.J.A.C. 7:7-29.6(f) that provides that “any violation of a Department permit or authorization, emergency authorization, exemption under N.J.S.A. 12:5-3.a, applicability determination, and/or Tidelands instrument or the conditions thereof” is a knowing violation is opposed. “Knowing violations” may result in significant monetary penalties, such as \$25,000, and potential criminal actions. (50)

RESPONSE: Where a permit, authorization, or exemption has been secured and the recipient fails to comply with the requirements of that document, or exceeds the limits of the authorization, the violation is presumptively determined to be knowing, but that presumption is rebuttable (see N.J.A.C. 7:7-29.6(f)1). The fact that such permit, authorization, or exemption was secured evidences a degree of familiarity with the regulatory requirements. Where the specific limitations and requirements are spelled out as conditions of the permit, authorization, or exemption, the recipient has full knowledge of those requirements and thus a violation is “knowing.” However, the Department reserves some discretion where there has been an obvious attempt to comply and the violation is inadvertent. For example, a permit may include a requirement that a silt fence to be installed and maintained throughout construction. If no silt fence has been put up, that would be considered a knowing violation. If a silt fence has been put up but becomes dislodged due to the wind, the absence of the required silt fence may not be considered knowing because there was an attempt to comply with the requirement. Similarly,

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the degree of non-compliance would be a consideration in determining whether a physical violation is knowing. The presumption may also be rebutted by the recipient by providing information concerning extenuating circumstances, such as a necessitated change in construction techniques that led to the non-compliance. In certain circumstances, a minimal departure from an approved plan's disturbance limits may reasonably go unnoticed by the permittee, whereas a larger departure should be recognized immediately and avoided.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Appendix G. The Management and Regulation of Dredging Activities and Dredged**

### **Material in New Jersey's Tidal Waters**

451. COMMENT: Appendix G, Chapter I, Purpose, provides that “these policies and procedures have been developed to ensure that proposed dredging projects and the management of dredge material are conducted so as to minimize the potential for adverse impacts to the environment and public health.” This should be the overriding purpose, as well as protection of “public welfare,” which has generally been construed to include protection of private property against pollution and loss of value. However, it appears from an initial appraisal of the Appendix G procedure, that an unstated purpose is to facilitate and promote more dredging, subject to less scrutiny and less public involvement and generally to use the policies of the Department to promote more commercial uses. (119)

RESPONSE: Appendix G does not facilitate or promote dredging. This regulatory appendix establishes the policies and procedures which the Department will use to conduct reviews of permit applications for dredging activities in tidal waters and the management of the dredged material. All dredging and dredged material management projects must comply with the CZM rules.

As explained in the Response to Comment 146, both the NJCMP and the CZM rules are founded on eight broad coastal goals. The coastal goals express results that the NJCMP strives to attain. Each coastal goal is accompanied by related policies that set forth the means to accomplish that particular goal. The intent of the supplemental goal of managing dredging in an environmentally sound manner, promoting environmentally sound and economically feasible

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

dredged material management practices, and preserving historic dredged material placement sites at N.J.A.C. 7:7-1.1(c)4iv, is to manage dredging in an environmentally sensitive manner where there is a demonstrated need. Managing dredging in this manner will be protective of the public's welfare and the environment.

452. COMMENT: Under Chapter II, Overview, B. Permit Review Process, the Department establishes procedures for pre-application conferences which appear to be limited to participation by the applicant for dredging approval (often, the State itself) and the Department. There appears to be no provision for public notice of or public participation in this conference which is intended to establish the parameters for the project and the review process going forward. This oversight should be corrected, so that the public receives adequate advance notice of the conference and can attend and participate to the extent appropriate. (119)

RESPONSE: Chapter II, Overview, C. Permit Review Process provides that pre-application conferences in accordance with Subchapter 22 are recommended prior to the submittal of a permit application to discuss the proposed project, required permits, sampling and testing protocols, and other information which must be submitted with the application. As explained at N.J.A.C. 7:7-22.1, a pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project and the application procedures and standards that will apply to the project. While recommended, pre-application conferences are not mandatory, and the Department's guidance provided as part of the conference does not constitute a commitment to approve or deny an application. At the time of the pre-application

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

conference, there is no formal application to the Department. Under the previous rule, public notice of and public participation in a pre-application meeting was not required. This practice has been continued through this rulemaking. As plans that may be formulated at this point are preliminary, the Department believes there would be little gained from public input prior to any plans being finalized and that the opportunity provided once the actual project is designed and submitted through an application is more valuable and efficient and provides a robust opportunity for the public's more focused input to be obtained and weighed.

453. COMMENT: Under Chapter II, Overview, B. Permit Review Process, the Department states that "to some degree, each proposed project will be evaluated by the Department on a case-by-case basis." While the need for a highly individualized scrutiny of each project is understood, case-by-case review may lend itself to arbitrary decision-making, unrestrained by specific guidelines. To correct this, the Department must clarify that the larger and more intensive a project, the more intensive and stricter its scrutiny of the project. The Department must specifically clarify that it will comprehensively review and search for less harmful alternatives. The Department must commit itself to full examination of the long-term cumulative and secondary impacts of each dredging and dredging disposal project by requiring each applicant to submit a comprehensive environmental impact statement (EIS) that will be subject to public comment and public hearing. An EIS or, at a minimum, an environmental assessment for minor projects should be mandatory for each dredging project, regardless of whether it comes within the purview of a CAFRA jurisdictional project. (119)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

RESPONSE: All dredging and dredged material management projects are reviewed for consistency with the CZM rules, and other applicable Federal, State, and local requirements. Thus, such applications are not subject to an arbitrary decision making process. Where an upland CDF requires an individual CAFRA or waterfront development permit, public notice of an application is required under N.J.A.C. 7:7-23.4, the requirements of which are set forth at N.J.A.C. 7:7-24. In accordance with N.J.A.C. 7:7-26.2(g) for an individual waterfront development permit application and N.J.A.C. 7:7-26.5 for an individual CAFRA permit application, the Department will hold a fact-finding public meeting/hearing if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding meeting. Further, an applicant in accordance with N.J.A.C. 7:7-23.6 is required to submit an environmental impact statement (EIS) as part of the application. The purpose of the EIS is to assist the applicant and the Department in assessing the effects of a proposed activity on the natural resources at the project site and surrounding region and in determining the proposed activity's compliance with the CZM rules. The scope of the EIS for each individual permit application will be determined based on site-specific and project-specific circumstances, that is, the scope of the project and its environmental impacts. Appendix G, Chapter IV, B(2) requires consideration of long-term cumulative and secondary impacts. Accordingly, the EIS would be required to address such impacts.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

454. COMMENT: The rule does not consider the effects of climate change, sea level rise, and the proper siting of new and rebuilt confined disposal facilities which may be impacted by further storms. CDFs should not be permitted in V zones. The coastal high hazard area rule should be amended so that no new or reconstructed CDFs are allowed within V zones as they can be affected by storm surges which could overtake the berms and redeposit potentially contaminated dredged spoils in open waters or on public or private property. (46, 119)

RESPONSE: In its review of an application for dredging activities, the Department evaluates the material and areas to be dredged, as well as the area in which the dredged material will be placed. The dredged material placement on land rule, N.J.A.C. 7:7-15.12, provides that dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of dredged material is required to determine the acceptability of the placement of the material within a particular CDF. Further, as explained previously, on September 8, 2014, the Department initiated a new stakeholder process to discuss changes to the CZM rules governing the use, development and protection of the State's coastal resources. As part of this effort, the Department has formed seven stakeholder subcommittees, one of which is focused on the 1997 Dredging Technical Manual (herein adopted as Appendix G). Through this subcommittee, the Department's standards relating to upland CDFs and the siting of these facilities will be reviewed, particularly in areas where they could be impacted by storms, such as V zones.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

455. COMMENT: The definition of “reconstruction” operates as a loophole under CAFRA.

The Department has held that construction of a new CDF within the footprint of an existing CDF is not subject to CAFRA, despite the fact that the new CDF would require extensive reconstruction of the berms around the facility that would have to be raised to accommodate the volume of dredged material to be placed within the CDF. The reconstruction of a new CDF within the footprint of the existing facility is the equivalent of the reconstruction of a high-rise hotel in the footprint of a low-rise motel so long as the high-rise was constructed in the same footprint of the pre-existing development. The rules need to be modified to remove this loophole and at a minimum, include a reasonable vertical or height dimension, as well as recognition that increased intensity of use removes the project from the category of reconstruction, regardless of spatial consistency. (119)

RESPONSE: In its review of an application for dredging activities, the Department evaluates the material and areas to be dredged, as well as the area in which the dredged material will be placed. In addition to requiring a waterfront development permit, these activities also require a water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. The CZM rules are used to review the permit application and certification request. For example, the CZM rules’ wetlands rule at N.J.A.C. 7:7-9.27(g) sets forth the standards for the reuse of dredged material management areas that require a waterfront development permit. The water quality rule at N.J.A.C. 7:7-16.3(a) requires compliance with the Surface Water Quality Standards at N.J.A.C. 7:9B. While the reconstruction of the CDF itself is not regulated under CAFRA when located within the same footprint, the reconstruction of the CDF will need to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

incorporate any water quality structures required under the water quality certificate and/or waterfront development permit. Further, the reconstruction of the existing CDF will be limited to the engineering constraints of the structure itself, as well as any local requirements. For example, in order for a CDF to be constructed within an existing footprint, the berms must step in towards the interior as they increase in height to ensure that the footprint of the structure is not increased. In many cases, this will result in a decrease in the capacity of the CDF.

456. COMMENT: The dredged material placed in CDFs is mud and mud smells. Department representations that this will not occur, including at the proposed Dock Road CDF, are not true. Further, when the silt dries it becomes dust. Therefore, a 1,000 foot buffer between a CDF and residential properties should be established. Without such a buffer, not only will the dust and silt from the reconstruction of the berms to rehabilitate an existing CDF blow into residential properties, but so will the diesel fuel smell from the tractors.

A CDF is a scar on the earth and can have impacts besides the actual CDF site. For example, there was a dredged spoil island approximately one mile from the West Creek CDF which was destroyed by Superstorm Sandy.

Costs to use a CDF and mine the material and transport it to another site are astronomical as compared to its use in living shorelines. Living shoreline are a win/win as it is efficient for everyone.

Finally, CDFs near residential properties also impact property values. (45)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

457. COMMENT: The Department should add a requirement that an upland CDF must be setback a minimum of 1,000 feet from residences and public recreation areas due to concerns about harmful health effects of airborne dried dredged material and potential property damage from the movement of dredged material during storm events. (117)

RESPONSE TO COMMENTS 456 AND 457: Sediment is in large part soil that has been deposited in water. Although sediments in New Jersey's tidal waters may be impacted to varying degrees by a number of pollutants, not all sediments are considered to be contaminated. In order to place dredged material in an upland confined disposal facility, it must be demonstrated that the placement of the dredged material would not result in significant adverse impacts to terrestrial or aquatic ecosystems or pose risks to public health. In many cases, the contaminant levels in the dredged material are less than those in soil that would be acceptable for unrestricted use, including in residential areas. The Department's regulatory programs are designed to identify and minimize potential adverse environmental impacts resulting from proposed activities. For dredged material upland CDFs, the magnitude of these impacts is dependent upon: (1) the location of the facility and site-specific conditions (including compatibility with adjacent and nearby land uses); (2) the characteristics of the dredged material proposed for placement at the facility; (3) the design and construction of the facility; (4) the operation of the facility; and (5) the final closure and use of the facility site. (See Appendix G, Chapter IV, Management of Dredging Activities and Dredged Material, C- Upland Confined Disposal Facilities)

These five factors are considered collectively, as regulatory decisions based on a comprehensive review of a proposed upland CDF. With proper design and operation of the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

upland CDF, the potential for adverse impacts can be reduced significantly. Upland CDFs will be designed, permitted, and operated on a case-by-case basis. Potential adverse impacts will be evaluated on a case-by-case basis, initially considering the bulk sediment chemistry analyses of the dredged material placed in the upland CDF and the proposed schedule for future disposal and management operations at the facility.

Appendix G, Chapter IV, Management of Dredging Activities and Dredged Material, C(5) and (6) discuss the potential impacts to the terrestrial ecosystem and public health resulting from the operation of an upland CDF, and the regulatory requirements to minimize any impacts. When dredged material is allowed to dry in an upland CDF, there is potential for odors and dust generation. With regard to dust, this potential is greater when the dredged material consists of fine particles and has not revegetated. Dust generation could facilitate the dispersal of contaminants into the terrestrial ecosystem. Management techniques are required, as necessary, to control the generation and dispersal of dust from an upland CDF. Potential management techniques include interim/final capping of contaminated and exposed dredged material and the use of erosion control mats. Noticeable odors may or may not emanate from drying dredged material, depending on its characteristics (for example, predominantly sandy dredged material will emit few, if any, noticeable odors). While the Department acknowledges that some minor odors can be anticipated during the operation of an upland CDF, any odors emitted by drying dredged material are expected to be short-lived and to dissipate soon after dredged material placement operations have ceased.

Further, as explained in the Response to Comments 460 and 461, the siting of a new CDF is evaluated using the CZM rules, including the buffers and compatibility of uses rule at N.J.A.C.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-16.11, and takes into account potential impacts to nearby land uses resulting from the operation of the CDF, including residential areas and public recreational areas. Accordingly, the Department does not believe establishment of a generic, 1,000-foot buffer between an upland CDF and residential and recreational areas is needed. In situations where pre-existing CDFs and residential areas are in close proximity, management techniques will be required to minimize the potential for nuisance conditions.

It is difficult to compare costs between renewing capacity in a CDF and use of dredged material in living shorelines due to the many variables that affect relative costs, such as transportation distance, project design, and the value of the renewed CDF capacity. In addition, due to its physical characteristics (that is, too fine-grained to resist the erosive forces that have resulted in a receding shoreline), dredged material may not be suitable for use in many living shoreline projects. The establishment of a living shoreline to protect, restore or enhance a habitat area is conditionally acceptable under the CZM rules at N.J.A.C. 7:7E-4.23.

Potential impacts to property values are not specifically considered by the Department when it evaluates compliance of a project with the CZM Rules. The use of existing upland CDFs is not anticipated to adversely affect property values, since the proximate relationship between these uses has already been established.

458. COMMENT: Although the codification of the Technical Manual into Appendix G brings the rest of the dredging requirements directly into the CZM rules, the source document is over 15 years old. It is understood that a revised Appendix G will be made available for public comment in the fall 2014; as such, it seems premature to codify the dredging technical into the CZM rules

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

at this time. These standards should be updated to reflect the latest technologies and promote regional planning. Dredged material management is best handled by the development of regional dredged material management plans with public and stakeholder input in order to best coordinate timing, storage options, and beneficial use possibilities within a watershed area. (162)

RESPONSE: Appendix G establishes clear and comprehensive standards and procedures for reviewing proposed dredging activities, and the management of dredged material. Prior to these amendments, the Department's dredging technical manual was a source for guidance on dredged material sampling, testing, transporting, processing, management, and placement. The incorporation of portions of the dredging technical manual into the CZM rules as a regulatory appendix makes these standards and procedures regulatory requirements. Through this rulemaking, the Department updated some of the standards contained within the dredging technical manual, such as the references to the current water quality standards. As explained previously, on September 8, 2014, the Department initiated a stakeholder process which resulted in the formation of a stakeholder subcommittee to review and revise the standards contained within the dredging technical manual (adopted herein as Appendix G). The Department will analyze the ultimate recommendations of the stakeholder subcommittee to determine if changes should be proposed to any standards contained in Appendix G.

459. COMMENT: As a threshold matter, the Department should address whether Appendix G is intended to be a formal part of the rulemaking proceeding, and therefore subject to the full panoply of rights and responsibilities set forth in the Administrative Procedure Act (APA),

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.S.A. 52:14B-1 et seq. If Appendix G is intended to be part of the formal rulemaking, then the DEP cannot treat it as a “technical manual” subject to periodic revision without going through the formal APA procedures. While such designation provides more flexibility, it also means less public participation and could lead to invalidation of the Appendix G, as the Appellate Division recently held in *In the Matter of Authorization for Freshwater Wetlands Statewide General Permit 6, Special Activity Transition Area Waiver for Stormwater Management, Water Quality Certification, and Access Waiver for General Permits, etc.*, 433 N.J. Super. 385 (App. Div. 2013) (published as *In re Auth. for Freshwater*). (119)

RESPONSE: Under this rulemaking, the Department has adopted portions of the dredging technical manual into the CZM rules as a regulatory appendix at Appendix G. Appendix G establishes clear and comprehensive standards and procedures for reviewing proposed dredging activities, and the management of dredged material. Because the manual is familiar to the regulated public in its existing format, the Department has incorporated the manual into the proposed CZM rules in its current format as regulatory Appendix G. The Department has updated references, deleted text that is duplicative of text in the CZM rules, and deleted certain attachments. As a regulatory appendix, changes to Appendix G are subject to the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

460. COMMENT: The rules should prohibit the siting, construction, reconstruction, and/or operation of any new or reused CDF within close proximity of residential or recreation areas. The rules do not recognize that a large regional dredged spoil facility or CDF is an inherently

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

incompatible land use with existing residential or recreational areas. A large CDF should have no place wherever the public resides or where large numbers of the public congregate. While the new regulations provide generalized assurances of protection, such generalized assurances are inadequate protection and are not adequate guidance for siting decisions. This issue is further exacerbated when the applicant is a State agency causing an inevitable conflict of interest. Regardless, any CDF, no matter how well designed, built, or managed, causes or threatens to cause the following negative impacts: excessive and contaminated dust from the dewatered dredged spoils, injuring public health; harmful and noxious odors permeating the air released from the dredged spoils; serious health hazards from vermin infestation; aesthetic injury as homeowners find their views of the ocean, bay, or nearby natural areas blocked by high berms needed for walling in the deposited dredged spoils; extensive truck traffic as a direct result of the eventual “mining” of dewatered dredged spoils for planned “reuse” which are trucked out of the CDF, causing damage to roadways, noise, fumes, and vibration to nearby houses; and a general loss of quality of life and reduction in property values. New or reactivated CDFs must be sited where they do not harm current or future residents and users of the coastal area and exclude residential and most commercial and recreational areas, such as public beaches and fishing areas.

(119)

461. COMMENT: The Department should endorse a regulation which explicitly prohibits the location of any CDF in populated, recreational, or residential areas as these are fundamentally incompatible uses.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Further, the Department should promote positive uses of dredged material which do not require first dumping the material into a landfill or CDF and then mining it for use somewhere else. This practice causes enormous environmental harm and reduces property values. Dredged materials can be used to help stabilize shorelines and to fill heavily eroded areas without first going to a dredged material management area or CDF where it must be dewatered prior to use.

(46)

RESPONSE TO COMMENTS 460 AND 461: The siting of a new CDF is evaluated using the CZM rules, including the buffers and compatibility of uses rule at N.J.A.C. 7:7-16.11. This evaluation considers potential impacts to nearby land uses resulting from the operation of the CDF, including residential areas. Existing CDF locations may be proximate to residential or recreational areas depending upon when they were originally established, as well as local land use development patterns. The CZM rules require impacts associated with the placement of dredged material be minimized to the maximum extent practicable (see Appendix G, Chapter IV, Management of dredging activities and dredged material, addresses management, of among other things, confined disposal facilities and discusses the design, construction, operation, closure, and permitting of upland CDFs). As required under Chapter IV, in order to place dredged material in an upland CDF, the applicant must demonstrate that the placement of the dredged material would not result in significant adverse impacts to terrestrial or aquatic ecosystems, or pose risks to public health.

A CDF can be designed, constructed, and operated in a manner so as not to have the negative impacts suggested by the commenter. There is a difference between impacts that can be

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

minimized or managed to acceptable levels and those that cannot. If a CDF were to have all of the impacts suggested by the commenter, and these impacts could not be mitigated by the use of best management practices, it would not comply with the CZM rules and accordingly could not be approved. However, where potential impacts associated with the CDF can be minimized or managed to acceptable levels through the use of best management practices as specified in Appendix G and compliance with the CZM rules, it can be permitted. Where a CDF is permitted, conditions would be included in the permit to ensure the impacts suggested by the commenter would not occur.

The Department considers dredged material to be a resource and, as such, encourages its beneficial use (see Appendix G, Chapter V, Use Alternatives, discusses potential use alternatives, or beneficial uses, for dredged material). Beneficial uses of dredged material include, but are not limited to, fill, capping material, topsoil, bricks, and lightweight aggregate. Currently, dredged material is being used in the establishment of living shorelines (a natural shore protection measure), for marsh restoration, and is being used as backfill for bulkhead construction projects. Depending on the composition of the dredged material, it may also be used for beach nourishment and the establishment of dunes. However, in order for dredged material to be beneficially used in many instances, it must first be dewatered in an upland CDF, or processed at an approved facility prior to transport to the beneficial use site.

462. COMMENT: The policy statement regarding upland CDFs, which recognizes that a CDF will “pose risks to public health,” is supported. However, the Department goes on to confidently assert that “with proper design and operation of the upland CDF, the potential for adverse

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

impacts can be reduced significantly. Upland CDFs will be designed, permitted, and operated on a case-by-case basis.” The foregoing statement provides scant, if any, assurance to residents and nearby property users that their interest will be fully taken into account. The mere prospect of “adverse impacts” being “reduced significantly” gives no comfort whatever to those living near such an intrusive facility. Thus, at a minimum, the locational criteria in subpart (a), which requires consideration of “site specific conditions, including compatibility with adjacent and nearby land uses” needs to be made stronger and more explicit by categorically rejecting the siting of a new or reactivated CDF within close proximity (for example, 2000 feet) of existing residential and recreational areas, including schools and other public facilities where the public can be expected to congregate. In this regard, the courts of New Jersey have sustained “proximity ordinances” preventing the location of new gasoline service stations within 2000 feet of an existing station or residential property. See, for example, *Harvard Ent., Inc. v. Bd. of Adj. of Tp. of Madison*, 56 N.J. 362, 369 (1970). If a 2000 feet buffer is justified for separation of gasoline stations, it follows that at least that distance is necessary for an upland CDF. (119)

RESPONSE: The size and operating conditions of a CDF are variable depending upon the frequency of use and the sizes of the dredging project which they are designed to accommodate. Therefore, each CDF is evaluated on a case-by-case basis. Regardless of the size or capacity of the CDF, its siting, design, and operation must comply with the applicable CZM rules.

Potential impacts from CDFs are not comparable to gasoline service stations. By necessity, CDFs must be somewhat proximate to the associated dredging project, for example the marina or navigation channel. As explained in the Response to Comments 460 and 461, the

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

siting of a new CDF will be evaluated using the CZM Rules, and will consider potential impacts to nearby land uses resulting from the operation of the CDF, including residential areas, public recreational areas, schools, and other public facilities. Therefore, the Department does not believe establishment of a generic, 2,000-foot wide buffer between a CDF and residential areas, public recreational areas, schools, and other public facilities, as suggested by the commenter, is necessary.

463. COMMENT: The proposed policies include a substantial discussion of the closure and post-closure requirements for a CDF that is being retired, but insufficient attention is given to a CDF which is intended to be used on a continuous basis. Such a CDF is proposed for the land at the Dock Road site in Eagleswood, Ocean County. In a continually used CDF, the facility will be filled with wet dredge spoils from a number of sources; the spoils will be allowed to dry or “dewater” before they are trucked out of the facility for what has been referred to as “beneficial reuse” in what amounts to a de facto mining/manufacturing operation with substantial environmental impacts to any person or community nearby. Therefore, the review of the continued use of a CDF must include an EIS that is reviewed scrupulously with the assumption that this activity will have an indefinite, essentially immortal, operational life that is not limited to the receipt of the spoils from the immediate dredging operation located presumably nearby.

(119)

RESPONSE: Under regulatory Appendix G, a CDF is considered to be operated on a continual basis until such time that it is subject to closure and a change in use. However, the frequency of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

activity at a CDF corresponds to the frequency of associated maintenance dredging events or removal of dredged material for beneficial use. In most cases, long periods of time can occur between maintenance dredging events during which the CDF remains idle. Removal of material would only occur when a viable and approved use for dredged material is identified.

Where a CDF requires an individual CAFRA or waterfront development permit, an applicant, in accordance with N.J.A.C. 7:7-23.6(b), is required to submit an environmental impact statement (EIS) as part of the application. The purpose of the EIS is to assist the applicant and the Department in assessing the effects of a proposed activity on the natural resources at the project site and surrounding region and in determining the proposed activity's compliance with the CZM rules. The scope of the EIS for each individual permit application will be determined based on site-specific and project-specific circumstances; that is, the scope of the project and its environmental impacts.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## **Chapter 7E. Coastal Zone Management Rules**

### **N.J.A.C. 7:7E-7.3A, Marina development**

464. COMMENT: The deletion of N.J.A.C. 7:7E-7.3A, Marina development, is supported. The commenter stated that they have been urging the Department for years to remove these prescriptive requirements that prevented many marinas from being able to obtain permits for needed improvements. The commenter also stated that they appreciate the Department efforts in recognizing the importance of marinas as essential components of New Jersey's waterfront communities and for making this significant change. (28)

RESPONSE: The Department acknowledges this comment in support of the deletion.

### **Summary of Agency-Initiated Changes:**

In addition to the modification on adoption discussed above in response to comments, the Department is modifying the rules on adoption to make the below changes.

1. N.J.A.C. 7:7-1.6(a) and (b)3 are modified on adoption to replace [www.state.nj.us/dep](http://www.state.nj.us/dep) with [www.nj.gov/dep](http://www.nj.gov/dep) reflecting the updating of the Department's web address.

2. On February 2, 2015, the Department promulgated amendments, repeals, and new rules concerning coastal application fees as part of a rulemaking that also modified the application fees for the Flood Hazard Area Control Act (FHACA) and the Freshwater Wetlands Protection Act (FWPA) permitting programs (see 46 N.J.R. 1839(a); 47 N.J.R. 422(a)). The land use fees rulemaking established a simplified, cohesive fee structure for the three regulatory programs, and replaced the prior coastal application fee rules at N.J.A.C. 7:7-10 with new fee

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

rules. Changes are made on adoption to reconcile and integrate amendments proposed and adopted through this rulemaking with the new fees subchapter promulgated in February 2015, which, through this rulemaking is codified at N.J.A.C. 7:7-25. Accordingly, N.J.A.C. 7:7-2.2(f) and 2.4(f) are modified to revise cross-references to the application fees subchapter. In the fees subchapter at N.J.A.C. 7:7-25, cross-references are revised throughout. In the table of application fees, the fee for an authorization under a general permit by certification (\$600.00) and the fees for permit extensions (\$240.00 for the extension of a general permit authorization, and 25 percent of the original permit application fee up to a maximum of \$3,000 for an extension of a waterfront development individual permit for activities waterward of the mean high water line) adopted through this rulemaking are reflected. The term “jurisdictional determination” is replaced with “applicability determination.” Last, the table of fees is modified to reflect the categories of modifications established through this rulemaking (administrative, minor technical, and major technical), to delete the category of “modification of an authorization under a general permit” which is not being carried forward from the existing rules, and to state that there is no fee for an administrative modification, as explained in the proposal summary at 46 N.J.R. 1109. Administrative modification is also added at N.J.A.C. 7:7-25.1(b)5 in the list of approvals for which no fee is charged.

3. N.J.A.C. 7:7-3.7(e)1 and 2, which address the situation where the authorization under the general permit has expired and the person conducting the regulated activities intends to commence or continue the regulated activities that had been authorized, are modified on adoption for consistency with the application review provisions in Subchapter 26, specifically, N.J.A.C. 7:7-26.1(e), which provides that the rules in effect at the time an application is declared

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

complete for review will govern the review of the permit application. “Locking in” the rules against which a given application will be reviewed at the point at which the application is technically complete ensures that an application for which substantial time and effort has been invested by the applicant and the Department will continue through the review process to decision and not be subject to changes should the rules be amended after that point. In addition, the Department has deleted reference to the “original” authorization in these two provisions since the authorization could have been extended under N.J.A.C. 7:7-27.3.

4. N.J.A.C. 7:7-3.8(b) is modified on adoption to correct a grammatical error.

5. The capitalization in the title of the permit-by-rule 7 at N.J.A.C. 7:7-4.7 is modified on adoption for consistency with the titles of other permits-by-rule.

6. N.J.A.C. 7:7-4.20(a) is modified on adoption to correct a codification error.

7. N.J.A.C. 7:7-4.21(a)3 and 6.32(a)3 are modified on adoption to update the name of the program in the Department responsible for issuing aquatic pesticide permits.

8. N.J.A.C. 7:7-8.2(f) is modified on adoption to make it clear that all regulated activities authorized under an individual permit, including an individual permit which was extended under N.J.A.C. 7:7-27.3, must immediately cease upon expiration of the permit or extension.

9. N.J.A.C. 7:7-8.2(f)1 and 2, which address the situation where an individual permit has expired and the person conducting the regulated activities intends to commence or continue the regulated activities that had been authorized, are modified on adoption for the same reasons as discussed above with respect to the changes on adoption at N.J.A.C. 7:7-3.7(e)1 and 2.

10. N.J.A.C. 7:7-8.3(b) is modified on adoption to make it clear that in addition to the conditions that apply to every individual permit under N.J.A.C. 7:7-27.7, the Department can

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

establish conditions in a specific individual permit, as required on a case-by-case basis, to ensure the authorized activity meets all applicable requirements of this chapter and its enabling statutes.

11. N.J.A.C. 7:7-12.7(h) is modified on adoption to correct a typographical error.

12. N.J.A.C. 7:7-13.17(e)3 is modified on adoption to make “dock masters” possessive for grammatical sense.

13. N.J.A.C. 7:7-15.2(f)13 is modified on adoption to correct a typographical error.

14. N.J.A.C. 7:7-17.5(b) is modified on adoption to make clear that the provision at N.J.A.C. 7:7-17.5(c) regarding mitigation on public property is an exception to this requirement that the Department will approve mitigation through creation, restoration, or enhancement only on property owned in fee simple and under the legal control of the person responsible for performing the mitigation.

15. New N.J.A.C. 7:7-17.6(a) added on adoption to explain that the section sets forth the requirements for the conceptual review of potential mitigation areas other than those for mitigation bank sites, which are set forth at N.J.A.C. 7:7-17.23(a) and (b).

16. N.J.A.C. 7:7-17.7(h)11 is modified on adoption to delete an extraneous usage of the word “species.”

17. N.J.A.C. 7:7-17.7(h)15 is added on adoption to require the applicant submitting a mitigation proposal at a time other than with an application for an individual permit to submit documentation that public notice of the mitigation proposal submittal was provided in accordance with N.J.A.C. 7:7-24. This is consistent with the public notice requirements of N.J.A.C. 7:7-24, which apply to the submission of a mitigation proposal that was not submitted as part of an application for an individual permit. See N.J.A.C. 7:7-24.1(a)4.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

18. N.J.A.C. 7:7-17.17(h) is modified on adoption to add a cross-reference to N.J.A.C. 7:7-17.17(f) pursuant to which the amount of the financial assurance is determined.

19. N.J.A.C. 7:7-17.22(e)8, which establishes the schedule for releasing credits, is modified on adoption to make clear that any remaining credits will be released when the performance standards for the mitigation site have been met for five consecutive years, since this is the final mitigation bank performance milestone .

20. N.J.A.C. 7:7-17.22(h) is modified on adoption for consistency with N.J.A.C. 7:7-17.22(j), which establishes that one of the criteria by which a mitigation bank is determined successful is that the operator transfers the mitigation bank in fee simple to a government agency or a charitable conservancy.

21. N.J.A.C. 7:7-23.4(a)1 is modified on adoption to make grammatical corrections for clarity.

22. N.J.A.C. 7:7-23.4(a)4 is modified on adoption to correct a grammatical error.

23. N.J.A.C. 7:7-26.7(b)3 is modified on adoption to correct a cross-reference.

24. The heading of N.J.A.C. 7:7-27 is modified on adoption to make clear that the subchapter governs extensions of permits as well as permit conditions, modifications, transfers, suspensions, and terminations.

25. The permit condition at N.J.A.C. 7:7-27.2(c)4 is modified on adoption to reflect that the condition applies to an activity being conducted pursuant to the permit, not to a proposed activity. This paragraph is also modified to delete “designee” with respect to the Soil Conservation District approval for soil disturbance, drainage structures, or changes in natural

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

contours because the Soil Conservation Districts do not delegate authority or designate other agencies to operate in their place.

26. The permit-by-rule condition at N.J.A.C. 7:7-27.2(d)2 is modified on adoption to delete the modifier “proposed” with respect to development because the condition applies to the development as put in place and continuing in existence pursuant to the permit.

27. N.J.A.C. 7:7-27.3(b)3 and 4 are modified on adoption to make it clear that it is the permittee seeking the extension of its permit or authorization who must make the required demonstrations. In addition, N.J.A.C. 7:7-27.3(b)4 is amended to delete the last sentence, which was not intended to be included in this provision. The consequence of the demonstration not being made and thus the requested extension not being approved are covered by N.J.A.C. 7:7-27.3(f).

28. N.J.A.C. 7:7-29.1(a) is modified on adoption to clarify that it is the Department that is not precluded from seeking a remedy for a violation other than those specified in the subchapter.

29. Several changes are being made at N.J.A.C. 7:7-29.3 on adoption. N.J.A.C. 7:7-29.3(b)1 is modified to delete “and is deemed received” with reference to a notice of civil administrative penalty assessment being deemed received on the 36th day after its receipt by the violator in the situation where the violator does not request an adjudicatory hearing, as this reference is unnecessary and confusing. At that point, the notice is final. N.J.A.C. 7:7-29.3(b)2 is modified to add the modifier “calendar” with respect to day, for consistence with paragraph (b)1. N.J.A.C. 7:7-29.3(b)3 is modified to add the phrase “by the violator” to clarify that, if the Department denies a hearing request because it does not include all the required information, the notice of civil administrative penalty assessment becomes a final order when the notice denying

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the hearing request is received by the violator. N.J.A.C. 7:7-29.3(c) is modified on adoption to add the citation for the pertinent provision in the Rules Governing the Courts of the State of New Jersey.

30. The description of what constitutes a “substantial deviation” at N.J.A.C. 7:7-29.6(e)2 is modified on adoption to replace “severely impair” with “substantially impair” since “substantial” and “substantially” are the modifiers used elsewhere within this paragraph.

31. Table A at N.J.A.C. 7:7-29.10(f) is modified on adoption to correct the name of the “Wetlands Mitigation Council” and to correct a typographical error in the description of the non-minor violation of N.J.A.C. 7:7-27.6 relating to failure to submit an application for a permit where the permittee proposes to change the development.

32. Two typographical errors in the title of Appendix B are corrected on adoption. Also, in the illustration of intervening development labeled B in Appendix B, the line at the left is adjusted so that it extends landward from the outer corner of the development to which the deck is attached rather than from the outer corner of the deck itself. Under the CZM rules, a deck is not considered intervening development. This also makes this illustration consistent with the illustration labeled A.

33. In Appendix G, Chapter III, D- Sampling of Sediments, (2) Operational Spaects of Sampling and Composting. and e. are modified on adoption to delete duplicative uses of the word “six.”

34. Appendix G, Chapter IV – Management of Dredging Activities and Dredged Material, C- Upland Confined Disposal Facilities, (4) Ground Water Discharges (c) Permitting

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Process ii Ground Water Protection Plans is modified on adoption to correct a typographical error in the citation to an EPA document.

35. Appendix G, Chapter V – Use Alternatives, H-Capping Open Water Disposal Sites(2) Authority and (5) Testing Requirements are modified on adoption to correct typographical errors.

36. The title and the first paragraph of Appendix J are modified on adoption to include reference to the December 26, 2014, amendments to the Permit Extension Act of 2008.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Federal CZMA, 16 U.S.C. §§ 1451 et seq., (Federal CZMA) does not set specific regulatory standards or requirements for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. The general requirements for what a state coastal management program must include are found at 15 CFR Part 923. The requirements do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. The guidelines simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the adopted

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

new rules, amendments, and repeals do not exceed any Federal standards or requirements of the Federal CZMA.

In 2008, the USEPA and USACE adopted regulations, known as “Compensatory Mitigation for Losses of Aquatic Resources” (hereafter referred to as the Federal Mitigation Rule), after a national wetland mitigation study published conclusions similar to those of New Jersey’s study. The Federal Mitigation Rule contains the same standards for both freshwater and tidal wetlands located within New Jersey’s coastal zone. In 1993, the Department entered into an assumption agreement with the USEPA to administer the permit program established pursuant to Section 404 of the Federal Clean Water Act. The assumption agreement obligates the State to maintain program compatibility, which means the State’s freshwater wetland regulatory program must be as strict as the Section 404 Federal program. While the Federal CZMA does not contain such a requirement for coastal wetlands, the Department, through this adoption is amending the mitigation standards of the CZM rules to reflect the standards and concepts of the FWPA rules because they reflect current science. The adopted changes to the mitigation standards in the CZM rules do not exceed the standards in the Federal Mitigation Rule.

**Full text** of the adopted recodifications, amendments, and new rules follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### 7:7-1.2 Scope

- (a) - (b) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) In accordance with the decree of the United States Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008), the State of New Jersey may\*, **under its laws,\*** grant and thereafter exercise \*[exclusive]\* governing authority over ordinary and usual riparian rights for the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River within the 12-mile circle and extending outshore of the \*[mean low water line]\* **\*low-water mark\***. The 12-mile circle is the circle the radius of which is 12 miles, and the center of which is the building used prior to 1881 as the courthouse at New Castle, Delaware, the arcs of which are as set forth in the decree of the United States Supreme Court in *New Jersey v. Delaware*, 295 U.S. 694 (1935).

**\*1. The State of Delaware may, under its laws and subject to New Jersey's authority over riparian rights as stated at (c) above, exercise governing authority over the construction, maintenance, and use of those same wharves and other improvements appurtenant to the eastern shore of the Delaware River within the 12-mile circle and extending outshore of the low-water mark, to the extent that they exceed ordinary and usual riparian uses.\***

(d) - (h) (No change from proposal.)

#### 7:7-1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additional definitions specifically

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

applicable to N.J.A.C. 7:7-13, Requirements for \*[Non-Porous]\* **\*Impervious\*** Cover and Vegetative Cover for General Land Areas and Certain Special Areas, are set forth at N.J.A.C. 7:7-13.2. Additional definitions specifically applicable to N.J.A.C. 7:7-17, Mitigation, are set forth at N.J.A.C. 7:7-17.1.

...

“Charitable conservancy” means a corporation or trust that meets the definition of a charitable conservancy at N.J.S.A. 13:8B-2. (Note: As of \*[effective date of this amendment)]\* **July 6, 2015\***, the definition of charitable conservancy at N.J.S.A. 13:8B-2 is a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.)

...

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

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

...

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

...

**\*[“Non-porous cover” means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar structures, surfaces, or improvements are considered non-porous cover. Grass lawns or any other vegetation are not considered non-porous cover.]\***

...

7:7-1.6 Forms, checklists, information; Department address and website

(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (b) below, by telephone at (609) 984-0162, or through the Division’s website at **\*[[www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse)]\* [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse)\***.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Further information about the Department can be accessed at [\\*\[www.state.nj.us/dep\]\\*](http://www.state.nj.us/dep)

**[\\*www.nj.gov/dep\\*](http://www.nj.gov/dep)**.

(b) Applications, fees, and other correspondence shall be submitted to the following addresses:

1. For [\\*\[U.S. Postal Service delivery\]\\*](#) **\*regular mail\***:

New Jersey Department of Environmental Protection

Division of Land Use Regulation

Mail code 501-02A, P.O. Box 420

Trenton, NJ 08625;

2. For hand delivery\*,\* [\\*\[and\]\\*](#) courier service\*, **and overnight mail\***:

New Jersey Department of Environmental Protection

Division of Land Use Regulation

501 East State Street

5 Station Plaza, Second Floor

Trenton, NJ 08609; and

3. For submittal of an application for authorization under a general permit-by-certification, the Department's website at [\\*\[www.state.nj.us/dep/online\]\\*](http://www.state.nj.us/dep/online) **[\\*www.nj.gov/dep/online\\*](http://www.nj.gov/dep/online)**.

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

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT IS  
REQUIRED

7:7-2.2 CAFRA

(a) – (e) (No change from proposal.)

(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this chapter.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. – ii. (No change.)

iii. The fee specified N.J.A.C. 7:7-[25.4(f)]\* **\*25.1\***; and

iv. (No change from proposal.)

2. For an exemption pursuant to (c)3, 4, and 5 above, the following shall be submitted:

i. – ii. (No change.)

iii. The fee specified at N.J.A.C. 7:7-[25.4(f)]\* **\*25.1\***; and

iv. (No change from proposal.)

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. – iv. (No change from proposal.)

v. The fee specified at N.J.A.C. 7:7-[25.4(f)]\* **\*25.1\***; and

vi. (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

#### 7:7-2.4 Waterfront development

(a) The waterfront area regulated under this chapter varies in width in accordance with the following:

1. – 3. (No change from proposal.)

4. In the 12-mile circle as described at N.J.A.C. 7:7-1.2(c), the regulated waterfront area shall include the area \*[at or waterward of the mean low water line]\* **\*within the circle and extending outshore of the low-water mark\*** of the Delaware River consistent with the decree of the United States Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008). **\*The area landward of the boundary of the 12-mile circle is regulated waterfront area as set forth at (a)2 and 3 above.\***

(b) (No change from proposal.)

(c) The development activities at (c)1 through 4 below will require a permit in that portion of the waterfront area at or waterward of the mean high water line\*.\* \*[except that, in]\* **\*In\*** accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, these development activities require a permit \*[only]\* if the development activity \*[is an improvement]\***affects New Jersey's riparian rights. Development activities that affect New Jersey's riparian rights include, but are not limited to, the construction, maintenance, and use of wharves and other riparian improvements** appurtenant to the eastern shore of the Delaware River \*[and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

extending]\* **\*that extend\*** outshore of the mean low water line or will **\*help to\*** maintain access from the navigable water to such improvement.

1. – 4. (No change from proposal.)

(d) A permit shall be required for the construction, reconstruction, alteration, expansion, or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. - 4. (No change from proposal.)

5. In the waterfront area defined in (a)3 above, the installation of solar panels provided the solar panels are:

i. – ii. (No change.)

iii. On legally existing \*[non-porous]\* **\*impervious\*** cover provided the solar panels are not located within a floodway; or

iv. (No change.)

\*[6. In accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, any development activity that is not an improvement appurtenant to the eastern shore of the Delaware River and extending outshore of the mean low water line or will maintain access from the navigable water to such improvement;]\*

\*[7.]\* **\*6.\*** The repair, replacement, renovation, or reconstruction, in the same location and size, as determined in accordance with (d)\*[7i]\* **\*6i \*** and ii below of the preexisting structure, of any dock, wharf, pier, bulkhead, or building, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map or that appears on the applicable coastal wetlands map

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D or that received a waterfront development permit subsequent to the date of the Tidelands Map or coastal wetlands map, as applicable, provided that the repair, replacement, renovation, or reconstruction is in the same location as the preexisting structure, and does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of or servicing of pleasure vessels.

i. (No change.)

ii. The size of any dock, wharf, pier, or bulkhead, or building not identified at (d)\*[7i]\* **\*6i \*** above shall be measured in two dimensions, that is, length and width;

Recodify proposed 8. and 9. as **\*7. and 8.\*** (No change in text from proposal.)

(e) (No change from proposal.)

(f) Development that is exempt from the Waterfront Development Law requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this chapter.

1. For a written determination of exemption pursuant to (d)1 and 2 above, the following shall be submitted:

i. - iii. (No change from proposal.)

iv. The fee specified at N.J.A.C. 7:7-~~[25.2]~~ **\*25.1\***; and

v. (No change from proposal.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. For a written determination of exemption pursuant to (d)3 above, the following shall be submitted:

- i. – iii. (No change from proposal.)
- iv. The fee specified at N.J.A.C. 7:7-~~[25.2]~~ \***25.1**\*; and
- v. (No change from proposal.)

3. For a written determination of exemption pursuant to (d)4 above, the following shall be submitted:

- i. – ii. (No change from proposal.)
- iii. The fee specified at N.J.A.C. 7:7-~~[25.2]~~ \*\***25.1**\*;
- iv. –v. (No change from proposal.)

4. For a written determination of exemption pursuant to (d)5 above, the following shall be submitted:

- i. – ii. (No change from proposal.)
- iii. The fee specified at N.J.A.C. ~~[7:7-25.2]~~ \***7:7-25.1**\*;
- iv. – v. (No change from proposal.)

\*[5. For a written determination of exemption pursuant to (d)6 above, the following shall be submitted:

- i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;
- ii. A written description of the proposed development;
- iii. The fee specified at N.J.A.C. 7:7-25.2; and
- iv. A site plan depicting the following:

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(1) The location of the proposed activity; and

(2) The mean high water line.]\*

\*[6.]\***5.\*** For a written determination of exemption pursuant to (d)\*[7]\* **\*6\*** and \*[8]\*

**\*7\***above, the following shall be submitted:

i. – ii. (No change from proposal.)

iii. The fee specified at N.J.A.C. 7:7-\*[25.2]\* **\*25.1\***;

iv. - ix. (No change from proposal.)

\*[7.]\* **\*6.\*** For a written determination of exemption pursuant to (d)\*[9]\* **\*8\*** above, the

following shall be submitted:

i. - ii. (No change from proposal.)

iii. The fee specified at N.J.A.C. 7:7-\*[25.2]\* **\*25.1\***; and

iv. (No change from proposal.)

(g) – (h) (No change from proposal.)

### SUBCHAPTER 3. GENERAL PROVISIONS FOR PERMITS-BY-RULE, GENERAL PERMITS-BY-CERTIFICATION, AND GENERAL PERMITS

7:7-3.6 Duration of an authorization under a general permit for which an application was declared complete for review prior to \*[(the effective date of these amendments)]\* **\*July 6, 2015\***

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) This section sets forth the duration of an authorization under a general permit for which the application was declared complete for review prior to \*[(the effective date of these amendments)]\* **\*July 6, 2015\***. The duration of an authorization under a general permit for which an application is declared complete for review on or after \*[(the effective date of these amendments)]\* **\*July 6, 2015\*** is set forth in N.J.A.C. 7:7-3.7.

(b)-(f) (No change from proposal.)

7:7-3.7 Duration of an authorization under a general permit for which an application is deemed complete for review on or after \*[(the effective date of these amendments)]\* **\*July 6, 2015\***

(a) This section sets forth the duration of an authorization under a general permit for which the application is declared complete for review on or after \*[(the effective date of these amendments)]\* **\*July 6, 2015\***. The duration of an authorization under a general permit for which an application was declared complete for review prior to \*[(the effective date of these amendments)]\* **\*July 6, 2015\*** is set forth in N.J.A.C. 7:7-3.6.

(b) – (d) (No change from proposal.)

(e) If an authorization governed by this section expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. If no regulated activities have occurred prior to the expiration of the \*[original]\* authorization, the Department shall issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new authorization is \*[submitted]\* **\*declared complete for review\***;

2. If any regulated activities have occurred prior to the expiration of the \*[original]\* authorization, the Department shall issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new authorization is \*[submitted]\* **\*declared complete for review\***. In determining the feasibility of compliance with the requirements in effect at the time the application is \*[submitted]\* **\*declared complete for review\***, the Department shall consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on the environment.

7:7-3.8 Conditions applicable to a permit-by-rule, or to an authorization pursuant to a general permit-by-certification or a general permit

(a) (No change from proposal.)

(b) In addition to the conditions that apply to every authorization pursuant to a general permit under (a) above, the Department shall establish \*[additional]\* conditions in a specific

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

authorization pursuant to a general permit, on a case-by-case basis, as required to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

#### SUBCHAPTER 4. PERMITS-BY-RULE

7:7-4.7 Permit-by-rule 7 – \*[Expansion]\* **expansion\*** or relocation (with or without expansion)

landward or parallel to the mean

(No change from proposal.)

7:7-4.12 Permit-by-rule 12 - construction of one to three wind turbines less than 200 feet in height having a cumulative rotor swept area no greater than 2,000 square feet

(a) This permit-by rule authorizes the construction of one to three wind turbines less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position, and having a cumulative rotor swept area no greater than 2,000 square feet, provided:

1. – 3. (No change from proposal.)

4. No portion of the wind turbine, including blades, tower, and site disturbance, shall be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)4i and ii below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

i. (No change from proposal.)

ii. The wind turbine(s) is located on legally existing \*[non-porous]\* **impervious\*** cover;

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

5. – 6. (No change from proposal.)

(b) (No change from proposal.)

7:7-4.13 Permit-by-rule 13 - installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot

(a) This permit-by-rule authorizes the installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot, provided:

1. – 3. (No change from proposal.)

4. The solar panel development shall not be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps), except as provided at (a)4i and ii below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

i. (No change in text.)

ii. The solar panel(s) is located on legally existing \*[non-porous]\* **\*impervious\***cover.

7:7-4.20 Permit-by-rule 20 – implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site

(a) This permit-by-rule authorizes the implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

of a remedial investigation of a contaminated site. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, \*U.S.C.\* 33 §§ 1251 et seq. This permit-by-rule authorizes the implementation of a sediment sampling plan for sampling to be conducted within a water area described at N.J.A.C. 7:7-12.1, as part of a dredging or dredged material management activity or as part of a remedial investigation, provided:

\*[i.]\* \*1.\* (No change from proposal.)

2. (No change from proposal.)

7:7-4.21 Permit-by-rule 21 – application of pesticide within coastal wetlands to control invasive plant species

(a) This permit-by-rule authorizes the application of pesticide within coastal wetlands to control invasive plant species, provided:

1. The area to which the pesticides are applied shall not exceed a total area of one-quarter acre \*[or less]\* on a site;

2. (No change from proposal.)

3. When conducted within waters of the State or waters of the United States, the activities are conducted pursuant to an aquatic pesticide permit issued by the Department's \*[Pesticide Control Program]\* **\*Bureau of Licensing and Pesticide Operations\***.

7:7-4.22 Permit-by-rule 22 - construction of a swimming pool, spa, or hot tub and associated decking on a bulkheaded lot without wetlands

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) This permit-by-rule authorizes the construction of a swimming pool, spa, or hot tub and associated decking **\*(for example, wood or recycled plastic planking, concrete, or paver blocks)\*** on a lot with a legally existing, functioning bulkhead along the entire waterfront portion of the site and no wetlands landward of the bulkhead, provided:

1. – 2. (No change from proposal.)

3. The footprint of the area covered by the current construction in combination with any existing swimming pool, spa, and/or hot tub, **\*[including associated decking,]\*** constructed under this permit-by-rule after **\*[(the effective date of these amendments)]\* \*July 6, 2015 at a residential development\*** does not exceed a cumulative total of 750 square feet on the lot. For example, a 600-square-foot in-ground swimming pool could be constructed on a lot under this permit-by-rule and at a later time an additional 150-square-foot spa or hot tub could be constructed on the lot under this permit-by-rule, because the cumulative footprint of the development for both structures would not exceed 750 square feet. However, the construction of a 200-square-foot spa or hot tub would not be authorized on a lot under this permit-by-rule where a 600-square-foot in-ground swimming pool had already been constructed pursuant to this permit-by-rule, because the cumulative total footprint of development for both structures would exceed 750 square feet;

**\*4. The footprint of the area covered by the current construction in combination with any existing swimming pool, spa, and/or hot tub, including associated decking, constructed under this permit-by-rule after July 6, 2015 at a development other than a residential development does not exceed a cumulative total of 750 square feet on the lot. For example, a 600-square-foot in-ground swimming pool and associated decking could be constructed**

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**on a lot under this permit-by-rule and at a later time an additional 150-square-foot spa or hot tub could be constructed on the lot under this permit-by-rule, because the cumulative footprint of the development for both structures would not exceed 750 square feet.**

**However, the construction of a 200-square-foot spa or hot tub would not be authorized on a lot under this permit-by-rule where a 600-square-foot in-ground swimming pool and associated decking had already been constructed pursuant to this permit-by-rule, because the cumulative total footprint of development for both structures would exceed 750 square feet;\***

Recodify proposed 4. – 6. as \*5. – 7.\* (No change in text from proposal.)

## SUBCHAPTER 6. GENERAL PERMITS

7:7-6.15 General permit 15 – construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons

(a) This general permit authorizes the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons, provided that:

1. – 8. (No change from proposal.)

9. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively. An alternative dock design which allows for sunlight penetration equal to or greater than that allowed by the spacing of planking described in this paragraph is also acceptable\*. **Alternative designs include, for example, grate decking**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**that is constructed of metal, wood, aluminum, or other similar materials that allow sunlight penetration through the grates within the dock or pier\*;**

10. – 11. (No change.)

7:7-6.32 General permit 32 – application of pesticide within coastal wetlands to control invasive plant species

(a) This general permit authorizes the application of pesticide within an area of coastal wetlands greater than 0.25 acres in size to control invasive plant species, provided the activities:

1. – 2. (No change from proposal.)

3. When conducted within waters of the State or waters of the United States, are conducted pursuant to an aquatic use permit issued by the Department's \*[Pesticide Control Program]\*  
**\*Bureau of Licensing and Pesticide Operations\*.**

## SUBCHAPTER 8. INDIVIDUAL PERMITS

7:7-8.2 Duration of an individual permit

(a) – (e) (No change from proposal.)

(f) All regulated activities authorized by an individual permit shall immediately cease if the permit expires\*, **including any extension thereof under N.J.A.C. 7:7-27.3\***. If a person intends to commence or continue regulated activities that had been authorized under an individual permit that has expired, the person shall obtain a new individual permit under this chapter authorizing the regulated activities.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. If no regulated activities have occurred prior to the expiration of the \*[original]\* individual permit, the Department shall issue a new individual permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new individual permit is \*[submitted]\* **\*declared complete for review\***.

2. If any regulated activities have occurred prior to the expiration of the \*[original]\* individual permit, the Department shall issue a new individual permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new individual permit is \*[submitted]\* **\*declared complete for review\***. In determining the feasibility of compliance with the requirements in effect at the time the application is \*[submitted]\* **\*declared complete for review\***, the Department shall consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original individual permit, and whether continuing construction as approved under the original individual permit would have an adverse impact on the environment.

#### 7:7-8.3 Conditions applicable to an individual permit

(a) (No change from proposal.)

(b) In addition to the conditions that apply to \*[all]\* **\*every\*** individual permit \*[s]\* at N.J.A.C. 7:7-27.2, the Department shall establish conditions in \*[an]\* **\*a specific\*** individual

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

permit, as required on a case-by-case basis, to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

## SUBCHAPTER 9. SPECIAL AREAS

### 7:7-9.5 Finfish migratory pathways

(a) – (d) (No change.)

(e) Rationale: Striped bass are one of New Jersey's most prized sport fish and are actively sought wherever they occur in New Jersey. This species spawn in Delaware, Hudson and Maurice Rivers. American Shad, once much more numerous and an important commercial species, continue to make an annual spawning run in the Delaware and Hudson Rivers, where there is an active sport fishery. A much reduced commercial fishery exists in the Delaware Bay and River. Herrings are important forage species and spawn annually in many of New Jersey's tidal tributaries including those listed by H.E. Zich (1977) "New Jersey Anadromous Fish Inventory", NJDEP Miscellaneous Report No. 41. Herrings are fished during spring runs, for direct human consumption, garden fertilizer and for use as bait.

### 7:7-9.6 Submerged vegetation habitat

(a) – (d) (No change.)

(e) Rationale: New Jersey's estuarine waters are relatively shallow, rich in nutrients, and highly productive. The submerged vegetation of these shallow habitats serve important functions as suspended sediment traps, important winter forage for migratory waterfowl, nursery areas for

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

juvenile fin fish, bay scallops and blue crabs, and by nourishing fishery resources through primary biological productivity (synthesis of basic organic material) through detrital food webs in a similar manner to salt marsh emergent *Spartina cord grasses*. In addition, seagrasses absorb wave energy and root networks help stabilize silty bay bottoms. The value of seagrasses was dramatically illustrated during the 1930's when a disease epidemic virtually eliminated eelgrass from the eastern U.S. Atlantic ocean coastline. The number of finfish, shellfish, and waterfowl drastically decreased, threatening their survival. The oyster industry of the Atlantic coast was ruined. Bays became choked with silt and new mudflats were formed.

Most of the submerged vegetation species, in particular the eelgrass and widgeon grass, grow in patches which often cluster together forming a vegetative community and migrate from year to year about shoal areas. Disturbances to the substrate such as dredging usually result in permanent habitat destruction and loss. In shallow areas, propeller action may severely damage the roots and churn up the substrate and increase turbidity, damaging or destroying the plants and reducing their productivity. Other activities that can also have a negative impact on the plants and/or habitat include wake actions, upland runoff, and shading from structures.

This rule aims to protect the submerged vegetation as a resource. Areas where submerged aquatic vegetation grows or has been known to grow are identified as habitat areas which currently or potentially could support the submerged vegetation plant communities. Dredging of the habitat area is permitted for maintaining the depth of existing State and Federal channels since the navigability of these channels is essential to commerce and navigation. New and maintenance dredging to existing large marinas and public launching facilities provides the greatest number of boaters access to the water areas with the least amount of disturbance to the

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

habitat area. Limited boating related uses are also permitted in habitat areas with greater than four feet of water depth, where impacts from boating are not likely to be destructive to the plants or their habitat environment.

New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses erosion by providing protection, restoration, or enhancement of vegetated shoreline habitats. The establishment of living shorelines is conditionally acceptable provided the living shoreline activities disturb the minimum amount of special areas necessary to successfully implement the restoration, creation, enhancement, or protection of habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas. This may include a decrease in the existing special area or the conversion of one special area to another where it is determined that such changes are environmentally beneficial.

#### 7:7-9.7 Navigation channels

(a) – (b) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Rationale: Navigation channels are essential for commercial and recreational surface water transportation, especially in New Jersey back bays where water depths are very shallow. Channels play an important ecological role in providing estuarine circulation and flushing routes, and migration pathways and wintering and feeding habitat for a wide diversity of fish, shellfish and waterfowl. Navigation channels, access channels and anchorages form a network of areas that have a depth sufficient to enable marine trade to operate at the limiting depth of the channel. If one part of the system is not maintained, the entire system might be unable to function.

#### 7:7-9.8 Canals

(a) – (c) (No change.)

(d) Rationale: Canals represent a large capital investment to create boat traffic routes. Of the coastal canals, the Cape May and Manasquan-Bay Head canals are still used extensively for their original purposes. Maintenance of this original function is encouraged.

Abandoned canals offer recreational opportunities. The Delaware and Raritan Canal is being redeveloped as a State park with recreational boating and continued use as a water supply facility. This re-use is encouraged.

#### 7:7-9.9 Inlets

(a) - (b) (No change.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Rationale: Inlets play a vital role in the estuarine ecosystem. They control patterns of backbay currents, salinity and nutrient distribution and provide migratory pathways between the ocean and the back bays for marine and estuarine species.

Submerged infrastructure is a hazard in inlets since the strong currents may expose and break the pipes or cables. There is also a possibility of anchors snagging and breaking the infrastructure.

#### 7:7-9.11 Ports

(a) – (e) (No change.)

(f) Rationale: The ports of New Jersey are components of two of the nation's three largest port districts--the New York-New Jersey Port District and the Delaware River Port District. The Port of Newark-Elizabeth is the nation's largest container port. Shipping is a major industry in the state as well as an important contributor to the well-being of other state industries. A set of rules aimed at encouraging the use and expansion of existing ports, while discouraging the sprawl of port uses into undeveloped areas, is therefore, an element of coastal rules.

#### 7:7-9.15 Intertidal and subtidal shallows

(a) – (i) (No change.)

(j) Rationale: Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl. The sediments laid down in intertidal and subtidal flats contain much organic detritus from decaying land and water's edge vegetation, and the food webs in these areas are an important link in the maintenance of estuarine productivity. Preservation is, therefore, the intent of these rules, with limited exceptions to allow for needed water-dependent uses and submerged infrastructure. In most cases, mitigation is required to offset habitat losses where new disturbance of intertidal and subtidal shallows is permitted.

New Jersey's coastal environment is dynamic and shaped by natural forces such as wind, waves, and storms. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands, intertidal and subtidal shallows, and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses erosion by providing protection, restoration, or enhancement of vegetated shoreline habitats.

#### 7:7-9.16 Dunes

(a) – (d) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(e) Rationale: Ocean and bayfront dunes are an irreplaceable physical feature of the natural environment possessing outstanding geological, recreational, scenic, and protective value. Protection and preservation in a natural state is vital to this and succeeding generations of citizens of the State and the Nation. The dunes are a dynamic migrating natural phenomenon that helps protect lives and property in adjacent landward areas, and buffers barrier islands and barrier beach spits from the effects of major natural coastal hazards such as hurricanes, storms, flooding, and erosion. Natural dune systems also help promote wide sandy beaches and provide important habitats for wildlife species.

Extensive destruction of dunes has taken place in this century along much of the coast. This disruption of the natural processes of the beach and dune system has led to severe erosion of some beach areas; jeopardized the safety of existing structures on and behind the remaining dunes and upland of the beaches; increased the need to manage development in shorefront areas no longer protected by dunes; interfered with the sand balance that is so essential for recreational beaches and the coastal resort economy; necessitated increased public expenditures by citizens of the entire State for shore protection structures and programs; and increased the likelihood of major losses of life and property from flooding and storm surges.

The rule encourages the natural functioning of the dune system and encourages restoration of destroyed dunes, to protect and enhance the coastal beach dune areas, and to devote these precious areas to only those limited land uses which preserve, protect, and enhance the natural environment of the dynamic dune system.

The Department strongly supports the creation, enhancement, and maintenance of coastal sand dunes as cost-effective shore protection. The value of dunes in protecting the densely

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

developed oceanfront from coastal storm hazards has been well documented by the Department, the Federal Emergency Management Agency, the Army Corps of Engineers, and others. In fact, the New Jersey Hazard Mitigation Plan (Section 406) specifically identifies dune creation and enhancement as a primary storm hazard mitigation strategy.

In addition to the benefits that dunes provide as a natural form of shore protection, dunes often provide important habitat for numerous species of plants and wildlife. Moreover, dunes are important aesthetic resources that complement and promote tourism along the New Jersey shore. With large quantities of sand being placed on New Jersey beaches as part of the State-Federal shore protection program, opportunities to restore beach and dune habitats and associated biodiversity have increased tremendously. Beach nourishment provides the basis for restoration of coastal landforms (beaches and dunes) and biota, and rediscovery of lost environmental heritage. A large variety of species inhabit coastal dune environments, including plants (beachgrass, beach plum, beach pea, goldenrod, bayberry, juniper, cedar, virginia creeper) and animals (sparrows, warblers, waxwings, kinglets, tanagers, tiger beetles, burrowing spiders, grasshoppers, butterflies).

The natural and aesthetic values of habitat restoration are an important byproduct of the State's beach and dune restoration efforts. Dunes can evolve as natural dynamic landforms that restore an important component of New Jersey's coastal heritage, while providing significant areas of vegetated habitat for coastal biota. The restoration of the natural and beneficial functions of beaches and dunes has become the cornerstone of New Jersey's shore protection program. These benefits are described in Nordstrom and Mauriello (2001), *Restoring and Maintaining Naturally Functioning Landforms and Biota on Intensively Developed Barrier Islands under a*

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

No-Retreat Scenario. In addition, dune restoration for the purpose of providing wildlife habitat and scenic amenities is consistent with the goals of CAFRA to preserve and enhance the unique environmental and aesthetic resources of the coastal area.

Typically, beach nourishment projects include the construction of dunes for shore protection and/or storm damage reduction purposes. These engineered dunes are designed to a specific height, width, slope, and length, in accordance with a dune design template. In some instances, the engineered dunes may capture sand and grow beyond their design template. In these cases, maintenance of the dune to its design template may be necessary to minimize the effects that an influx of sand can have on infrastructure, access, and public safety. This excess sand can then be utilized along sections of dune or upper beach berm that are below the design template.

Engineered dunes are designed to provide storm damage reduction in addition to the beach berm, and are subject to the influx of windblown sand from the beach berm as well as erosion from wave and tidal current activity. Engineered dunes may be supplemented during periodic renourishment cycles to replenish lost material to maintain the overall design template.

Maintenance activities between renourishment cycles can potentially reduce the volume of material needed when accreted sand is transferred from areas that have expanded above the design template to areas that have experienced increased erosion. However, maintenance of the engineered dune must not reduce any part of the dune to less than the dune design template.

#### 7:7-9.17 Overwash areas

- (a) – (d) (No change from proposal.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(f) Rationale: Overwash areas indicate weakness in natural and man-made shore protection. Hazard has been demonstrated, often with extensive property damage. Overwash areas are, therefore, unsuitable locations for further development, and public funds should not be used to rebuild damaged shore protection structures. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) is already densely developed and is the dominant tourism attraction of the community, low intensity, infill development may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited additional and loss in property damages. Elsewhere the return of these areas to a natural state and the formation of dunes is desirable.

Overwash is a natural shoreline movement process associated with storm and rising sea level and is one of the processes by which barrier islands migrate inland under natural conditions. In New Jersey, migration caused by overwash is usually prevented due to shore protection structures, the highly developed nature of barrier islands and post-storm clean-up practices.

A development proposed in an overwash area may, by incorporating a "design dune" and buffer area, whose dimensions would be determined on a case-by-case basis, mitigate the hazard and change the classification of the site so that it is no longer an overwash area.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-9.18 Coastal high hazard areas

(a) – (d) (No change from proposal.)

(e) Any development determined to be acceptable at (c) and (d) above shall comply with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(f) (No change.)

(h) Rationale: V zones are areas subject to high velocity waters and are further defined as areas capable of supporting a three foot high breaking wave. These areas are designated on FIRMs as zone VI-30. On many FIRMs, oceanfront bulkheads, revetments or seawalls have been used to delineate the landward limit of the coastal high hazard area. However, wave run-up, which is the rush of water up a structure or beach that occurs on the breaking of a wave, and overtopping may also cause considerable damage behind bulkheads, revetments and seawalls inshore of the V zone limit. Both V zone and wave run-up zone are high hazard areas where structures are vulnerable to severe storm damage. The only developments allowed by this rule are ones which are related to beach use and/or tourism and limited residential infill development. These beach use and tourism oriented developments are subject to storm damage but they enhance the public use and enjoyment of the beach and ocean.

7:7-9.19 Erosion hazard areas

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) (No change from proposal.)

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

1. – 2. (No change from proposal.)

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. – iv. (No change from proposal.)

v. The development complies with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13;

4. – 7. (No change from proposal.)

(c) Rationale: As a result of continuing rising sea levels, active storm induced sand movements, and offshore currents (littoral drift), most of the Atlantic coastline of New Jersey is retreating. Coastal erosion also affects the bayshores of New Jersey. The rate of retreat, or erosion, is not uniform, and varies locally depending upon the nature and magnitude of coastal processes operating within individual parts of the shoreline. Certain parts of the shoreline have a higher risk for future erosion.

Development other than shore protection measures and linear development is prohibited in these areas in order to protect public safety and prevent loss of life and property. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) has long been featured as the main attraction of that

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

resort community and is already densely aligned with buildings, low intensity, infill may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited, potential additional loss in property damages.

The annual rate of erosion shall be calculated on a case-by-case basis by using the best available data and scientific methodology. Historical erosion rates of areas need to be analyzed to determine the particular past trend that best reflects the current shoreline processes affecting that area. The appropriate long or short term historical erosion rate of an area is then combined with other information, which may help to explain the erosion rate of at an area, to determine a projected erosion rate for the next thirty to sixty years. These factors include but are not limited to: past or on-going shore protection activities, e.g. beachfills, or groin, revetment or bulkhead constructions, past or on-going navigation channel dredging projects and past storm events.

The Program will use a computer program, entitled, "Metric Mapping Analysis of New Jersey's Historical Shoreline Data" developed in 1988 for the Program by Stephen P. Leatherman et al of the University of Maryland Coastal Mapping Group, to produce historical shoreline change maps for specific sites along the oceanfront. These maps will be used to establish the appropriate long or short term trend in shoreline changes that will most likely continue in the future for a specific site.

The projected annual erosion rate or historical shoreline change data for a specific site, excluding the Raritan Bay area, may be obtained from the Program by written request accompanied by a site plan which identifies the site by either the "state plane" coordinate system or latitude -longitude coordinates. For sites located along the Raritan Bay, the annual erosion rate can be found in Paul A. Gares, Karl F. Nordstorm and Norbert P Psuty, Coastal Dunes:

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Their function, Delineation and Management, Center for Coastal and Environmental Studies, Rutgers University for NJDEP, 1979. Other appropriate sources including verifiable aerial photography, may also be consulted.

7:7-9.20 Barrier island corridor

(a) (No change from proposal.)

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C.

7:7-13.

(c) Rationale: All of New Jersey's barrier islands and spits, except for Pullen Island in the Brigantine National Wildlife Refuge, are developed to varying degree, largely as a result of incremental decisions made beginning more than 100 years ago. Because the public facilities (roads and utilities) necessary to support urban and resort development already exist, and should be protected on New Jersey's barrier islands, and because development pressure is intense on barrier islands, infill projects and are conditionally acceptable extensions of development on barrier islands and spits are discouraged.

The policy recognizes the diversity of New Jersey's barrier islands, from Abescon Island with the resort city and urban center of Atlantic City to Long Beach island with largely single-family seasonal homes. Implementation of the policy is expected to reinforce the existing character of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

New Jersey's developed barrier islands add appreciably to the public service costs and emergency evacuation (in times of hurricanes) problems of these islands.

#### 7:7-9.21 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. Existing lagoon edges (N.J.A.C. 7:7-9.24) are not bay islands.

1. (No change from proposal.)

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The \*[non-porous]\* **\*impervious\*** cover limits for these areas are determined under the special area rules at N.J.A.C. 7:7-9 where applicable, and/or under N.J.A.C. 7:7-13.

#### 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

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Bader Field, Atlantic City

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor City

#### CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

Shawcrest/Hildreth Island, Lower and Middle Townships. The areas mapped as Shawcrest/Hildreth Island are identified in the Department's Geographic Information System(GIS) coverage, titled "Shawcrest/Hildreth Island." This coverage is available as a download at the CAFRA layers webpage: [www.nj.gov/dep/gis/CAFRAlayers.htm](http://www.nj.gov/dep/gis/CAFRAlayers.htm)

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. \*[Non-porous]\* **\*Impervious\*** cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. -3. (No change from proposal.)

(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. \*[Non-porous]\* **\*Impervious\*** cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);

ii. – iii. (No change from proposal.)

2. Non-water dependent development is conditionally acceptable provided that:

i. \*[Non-porous]\* **\*Impervious\*** cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

ii. - iii. (No change from proposal.)

3. \*[Non-porous]\* **\*Impervious\*** cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets (c)1 above, in which case the \*[non-porous]\* **\*impervious\*** cover limit shall not exceed 30 percent.

(d) – (e) (No change from proposal.)

7:7-9.22 Beaches

(a) - (d) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(d) Rationale: Undeveloped beaches are vital to the New Jersey resort economy.

Unrestricted access for recreational purposes is desirable so that the beaches can be enjoyed by all residents and visitors of the State. Public access will be required for any beaches obtaining State funds for shore protection purposes. Beaches are subject to coastal storms and erosion from wave action and offshore currents. Public health and safety considerations require that structures be excluded from beaches to prevent or minimize loss of life or property from storms and floods, except for some shore protection structures and linear facilities, such as pipelines, when non-beach locations are not prudent or feasible.

Many of New Jersey's beaches, especially those along the Atlantic Ocean, have been nourished through the State's Shore Protection Program. These engineered beaches are designed to a specific height, width, slope, and length, in accordance with a beach berm design template. Engineered beaches are subject to erosive forces of waves, winds, and tidal currents; in many instances, eroded material is moved and deposited in areas within the project area in such a way that the beach grows beyond the design template and thus the beach no longer conforms to the shore protection project design. For engineered beaches to provide the storm damage reduction and shore protection for which they were designed, the beach berm design template must be maintained throughout the entire project area. Municipalities are encouraged to maintain the project design to the maximum extent feasible between project renourishment cycles. However, maintenance of the engineered beach must not reduce any portion of the beach to less than the beach berm design template.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-9.23 Filled water's edge

(a) – (h) (No change from proposal.)

(i) The development shall comply with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(j) - (m) (No change from proposal.)

7:7-9.24 Existing lagoon edges

(a) (No change.)

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

1. - 3. (No change from proposal.)

4. The development complies with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(c) Rationale: Filled lands adjacent to water areas, especially existing, undeveloped lagoons, represent potential problems for water quality if not stabilized. The slope must be stabilized in order to prevent erosion and turbidity. These problems have been well documented in Rutgers University Center for Coastal and Environmental Studies and NJDEP, Division of Fish, Game and Wildlife, "Comparison of Natural and Altered Estuarine Systems", 1979. Thousands of undeveloped building lots exist along stabilized and unstabilized lagoons created by destroying

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

wetlands in the 1950's and 1960's. State coastal policy now precludes the development of new lagoons in wetlands for residential development.

#### 7:7-9.25 Flood hazard areas

(a) – (c) (No change from proposal.)

(d) 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 one or two single-family homes or duplexes in accordance with N.J.A.C. 7:7-15.2(e) or is for a water dependent use. “Navigable” and “water dependent” are defined at N.J.A.C. 7:7-1.5. For the purposes of this subsection and (e) below, an "undeveloped" area is an area that has no \*[non-porous]\* **\*impervious\*** cover.

(e) - (f) (No change.)

(g) Development in a flood hazard area shall comply with the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover under N.J.A.C. 7:7-13.

(h) – (j) (No change from proposal.)

#### 7:7-9.26 Riparian zones

(a) – (h) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(i) Rationale: Healthy riparian systems are essential to the natural environment. Loss of soil and plant life that occurs adjacent to regulated waters not only threatens public and private property, but directly impacts water quality and the health of fish and wildlife. The extreme importance of preserving and restoring adequate stream corridor buffers has been well documented in recent decades. Riparian zone functions include stream bank stabilization, removal of sediment, nutrients and contaminants, flood storage, wildlife habitat, aesthetics, and recreation and education.

#### 7:7-9.27 Wetlands

(a) – (i) (No change from proposal.)

(j) 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.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

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 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.

New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. To protect development from these forces, shorelines are typically armored with hard structures such as bulkheads, gabions, or revetments. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands, intertidal and subtidal shallows, and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses erosion by providing protection, restoration, or enhancement of vegetated shoreline habitats.

#### 7:7-9.28 Wetlands buffers

(a) – (d) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(e) Rationale: Development adjacent to wetlands can adversely affect the wetlands through increased runoff, sedimentation, and introduction of pollutants.

The coastal zone includes a diversity of types of wetlands, of varying widths, quality and importance to the ecosystem, from large forested freshwater wetlands, to narrow strips of coastal wetlands. For this reason, the appropriate buffer necessary to protect the wetlands adjacent to proposed land disturbance must be determined on a case-by-case basis, but using a standard that requires no significant impact on, and minimum feasible disturbance to, the wetlands.

The preservation of a transitional area of native vegetation in the portion of the wetlands buffer adjacent to a wetlands and the construction of detention basins or berms if necessary to control runoff, could mitigate impacts and make development permissible in the remainder of the wetlands buffer.

Buffers that support strands of native vegetation perform the following ecological and physical functions:

1. Stabilization of soil and prevention of erosion;
2. Filtration of suspended solids (silt) to prevent their deposition on wetlands. Siltation onto wetlands can lead to undesirable changes in vegetation, e.g. from cord grass (*Spartina*) to reeds (*Phragmites*), which contribute less to the estuarine and marine food chain;
3. Water turbidity control;
4. Inhibition of pollutant introduction into wetlands soil, water and food chains. Without wetlands buffers, "urban" runoff from adjacent housing will almost always cause an increase in contaminants, such as coliform, following rain;

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

5. Storm water storage;
6. Formation of a barrier to floating debris, and;
7. Contribution to estuarine productivity, especially if the buffer is a forested floodplain.

As transition areas between differing vegetation communities (habitat areas), appropriately vegetated wetlands buffers function as ecotones, supporting a diversity of species and uses, and serving as wildlife movement corridors.

Wetlands buffers are used as lookout perches for raptors; nesting sites for Marsh Hawks, Black Crowned Night Heron, and Osprey; fall migration foraging stopovers for birds, including woodcock; nesting sites for Wood Ducks, Black Ducks, and Mallards; and forage routes into and out of wetlands for Raccoons, Mink Muskrat, Fox, Deer, and others. Grassy wetlands edges serve as feeding sites for Wilson's Snipe, Ruffled Grouse, Quail and song birds.

Wetland buffer requirements may be less restrictive in areas where proposed development is considered infill, and where a majority of the area adjacent to the wetlands is developed. In these areas, the potential adverse impacts to the wetlands from additional development are generally minor. The Department will establish the required wetland buffers for these areas on a case-by-case basis, based on the existing site conditions, including but not limited to elevation, topography and vegetation.

#### 7:7-9.30 Intermittent stream corridors

- (a) – (d) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(e) Rationale: Intermittent Stream Corridors are the spring areas for coastal streams. They are very susceptible to surface and subsurface disturbance. The water quality of coastal streams and estuaries depends in part on undisturbed spring areas. They are productive areas since water is at or near the surface, and are important wildlife habitats. For these reasons the intention of the rules is preservation.

#### 7:7-9.31 Farmland conservation

(a) – (c) (No change from proposal.)

(d) Rationale: Farmland conservation areas are an irreplaceable natural resource essential to the production of food and fiber, particularly in the "Garden State". Conservation of large, contiguous areas of these lands for farming serves both private and public interests, particularly in terms of ready access to locally-grown food, jobs and open space preservation.

In the coastal zone, some of the irreplaceable soil resources have already been converted to urban uses. Other areas which are of a sufficiently large scale to make farming feasible should be reserved for farming purposes, provided that farming is economically feasible.

#### 7:7-9.35 Specimen trees

(a) – (b) (No change.)

(c) Rationale: Many interested citizens have assisted DEP, over decades, in locating specimen trees. This process includes reporting large trees that can be considered specimens

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

even though they may not be the largest in New Jersey of a species. Specimen trees are an irreplaceable scientific and scenic resource. Often these trees have also been associated with historical events.

#### 7:7-9.36 Endangered or threatened wildlife or plant species habitats

(a) – (h) (No change from proposal.)

(i) Rationale: Endangered and threatened species are organisms which are facing possible extinction in the State in the immediate future due to loss of suitable habitat, and past overexploitation through human activities or natural causes. Extinction represents a loss of biodiversity, which would adversely affect education, research and the interrelationship of all living creatures within the coastal ecosystem.

#### 7:7-9.37 Critical wildlife habitats

(a) – (c) (No change.)

(d) Rationale: The State of New Jersey, as custodian of a particular portion of the national wildlife heritage, has the obligation of stewardship on behalf of the people of the state and nation to perpetuate wildlife species within its borders for the use, education, research, and enjoyment by future generations.

#### 7:7-9.39 Special hazard areas

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) – (c) (No change.)

(d) Rationale: Management of the coastal zone requires a concern for development that would directly or indirectly increase potential danger to life and property. Mitigating measures such as height limits near airports, evacuation plans for industrial and energy facilities and monitoring and/or clean-up programs for materials in soil and water near hazardous waste facilities may adequately address the concern in this area.

#### 7:7-9.40 Excluded Federal lands

(a) – (b) (No change.)

(c) Rationale: Although the Federal Coastal Zone Management Act excludes from the coastal zone those lands, the use of which is solely subject to the discretion of or held in trust by the Federal Government, the Federal Coastal Zone Management Act requires that actions of Federal Agency's within or outside of the coastal zone that affect any land or water use or natural resource of the coastal zone be carried out in a manner that is consistent to the maximum extent with the state's approved coastal management program. Federal consistency is a method of ensuring protection of coastal resources through the coastal management policies of states and by assisting states in managing coastal uses and resources. Federal consistency can help protect entire ecosystems as well as individual resources and uses.

#### 7:7-9.42 Pinelands National Preserve and Pinelands Protection Area

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) – (c) (No change from proposal.)

(d) Rationale: The New Jersey Pinelands contain approximately 1,000,000 acres of high quality surface and groundwater resources. In response to the need to protect, preserve and enhance the unique features of the Pinelands and the significant ecological, natural, cultural, recreational, educational, agricultural and public health resources of the pinelands area, the federal government passed the National Parks and Recreation Act of 1978 (P.L. 95-625), the Governor issued Executive Order No. 71 in February 1979, and the Legislature passed the Pinelands Protection Act in June of 1979.

Prior to these actions, under Executive Order No. 56, issued on May 28, 1977, the Governor created the Pinelands Review Committee to delineate a pinelands region and develop a plan to guide State actions affecting that Region. The report of the Pinelands Review Committee, completed in February 1979, stressed the need to take strong action to manage development in the pinelands.

Because the living marine resources in the bays and estuaries of the coastal zone depend on the flow of freshwater from the pinelands, changes to the quality and quantity of the pinelands water resource caused by pollution and contamination would have a significant impact on coastal resources.

The Pinelands Protection Act (Section 22) recognized the overlap between pinelands and coastal management interests and mandated the DEP, in consultation with the Pinelands Commission, review the environmental design for the coastal area prepared as required by CAFRA (see N.J.S.A. 13:19-10) which is also within the boundaries of the Pinelands National

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Reserve. This overlap extends from Pleasant Mills to the Garden State Parkway on both sides of the Mullica River.

#### 7:7-9.43 Hackensack Meadowlands District

(a) – (g) (No change from proposal.)

(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.

#### 7:7-9.45 Geodetic reference control marks

(a) – (b) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Rationale: Geodetic control reference marks provide the horizontal and vertical references used by land surveyors and engineers to determine most accurately location and elevations on the earth's surface. The rapid disappearance of survey marks and monuments necessitates the implementation of notification procedures prior to the removal alteration or destruction of such marks or monuments. This policy was instituted because of the monuments' relative geographic scarcity, their importance to the surveying and engineering community, and the high cost of relocation or referencing a removed, altered, or destroyed mark or monument.

#### 7:7-9.48 Land and waters subject to public trust rights

(a) – (b) (No change from proposal.)

(e) Rationale: The public's rights of access to and use of tidal waterways and their shores, including the ocean, bays, and tidal rivers, in the United States predate the founding of this country. These rights are based in the common law rule of the Public Trust Doctrine. First codified by the Roman Emperor Justinian around 500 AD as part of Roman civil law, the Public Trust Doctrine establishes the public's right to full use of the seashore as declared in the following quotation from Book II of the Institutes of Justinian:

"By the law of nature these things are common to all mankind-the air, running water, the sea, and consequently the shores of the sea. No one, therefore, is forbidden to approach the seashore, provided that he respects habitations, monuments, and the buildings, which are not, like the sea, subject only to the law of nations."

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Influenced by Roman civil law, the tenets of public trust were maintained through English Common Law and adopted by the original 13 colonies, each in their own form. The grants that form the basis of the titles to private property in New Jersey never conveyed those public trust rights, which were reserved to the Crown. Following the American Revolution, the royal rights to tidal waterways and their shores were vested in the 13 new states, then each subsequent state, and have remained a part of law and public policy into the present time. Tidal waterways and their shores always were, and remain, subject to and impressed with these public trust rights. See *Arnold v. Mundy*, 6 N.J.L. 1 (1821); *Borough of Neptune v. Borough of Avon-by-the-Sea*, 61 N.J. 296 (1972); *Hyland v. Borough of Allenhurst*, 78 N.J. 190 (1978); *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984); *Slocum v. Borough of Belmar*, 238 N.J. Super. 179 (Law Div. 1989); *National Ass'n of Homebuilders v. State, Dept. of Env't'l Protect.*, 64 F. Supp.2d 354 (D.N.J. 1999); *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 N.J. 40 (2005). See also *Illinois Central R.R. v. Illinois*, 146 U.S. 387 (1892); *Karam v. NJDEP*, 308 N.J. Super. 225, 240 (App. Div. 1998), *aff'd*, 157 N.J. 187 (1999), *cert. denied*, 528 U.S. 814 (1999).

The Public Trust Doctrine serves as an extremely important legal principle that helps to maintain public access to and use of tidal waterways and their shores in New Jersey for the benefit of all the people. Further, it establishes the right of the public to fully utilize these lands and waters for a variety of public uses. While the original purpose of the Public Trust Doctrine was to assure public access for navigation, commerce and fishing, in the past two centuries, State and Federal courts recognized that modern uses of tidal waterways and their shores are also protected by the Public Trust Doctrine. See, for example, *Phillips Petroleum Co. v. Mississippi*, 484 U.S. 469 (1988). In New Jersey, the Public Trust Doctrine expressly recognizes and protects

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

natural resources as well as public recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating along the various tidal waterways and their shores.

The Public Trust Doctrine is an example of common law authority that is continually developing through individual court cases. The first published court case in New Jersey to discuss the Public Trust Doctrine was in 1821. See *Arnold v. Mundy*, 6 *N.J.L.* 1 (1821). Within the past three decades, several New Jersey court decisions have clarified the public rights of access to and use of areas above the mean high water line as needed for access to and use of tidal waterways and their shores, under the Public Trust Doctrine. See, for example, *Arnold v. Mundy*, 6 *N.J.L.* 1 (1821); *Borough of Neptune v. Borough of Avon-by-the-Sea*, 61 *N.J.* 296 (1972); *Hyland v. Borough of Allenhurst*, 78 *N.J.* 190 (1978); *Matthews v. Bay Head Improvement Association*, 95 *N.J.* 306 (1984); *Slocum v. Borough of Belmar*, 238 *N.J. Super.* 179 (Law Div. 1989); *National Ass'n of Homebuilders v. State, Dept. of Env't'l Protect.*, 64 *F.Supp.2d* 354 (D.N.J. 1999); *Raleigh Ave. Beach Ass'n v. Atlantis Beach Club, Inc.*, 185 *N.J.* 40 (2005).

As the trustee of the public rights to natural resources, including tidal waterways and their shores, it is the duty of the State not only to allow and protect the public's right to use them, but also to ensure that there is adequate access to these natural resources. As the State entity managing public access along the shore, the Department has an obligation to ensure that this occurs.

Development and other measures can adversely affect tidal waterways and their shores as well as access to and use of those lands. One example of adversely affecting tidal waterways and their shores would be the development of a building that "shadows" a public beach. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

proximity of the building serves to diminish the quality of the experience of the beachgoer, encouraging them to go elsewhere. Development that adversely affects or limits public access to tidal waterways and their shores includes building over traditional accessways, putting up threatening signs, eliminating public parking, and physically blocking access with fences or equipment.

In addition to cases involving physical barriers to access, there have been instances where municipalities and local property owner associations have attempted to limit use of recreational beaches to their residents and members through methods designed to exclude outsiders. In the majority of these cases, New Jersey courts have ruled that these actions violate the Public Trust Doctrine because lands that should be available for the general public's recreational use were being appropriated for the benefit of a select few. The decision in *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984) recognized that, under the Public Trust Doctrine, not only does the public have the right to use the land below the mean high water mark, but also they have a right to use a portion of the upland dry sand area on quasi-public beaches. *Id.* at 325. "( . . . where use of dry sand is essential or reasonably necessary for enjoyment of the ocean, the doctrine warrants the public's use of the upland dry sand area subject to an accommodation of the interests of the owner.") The New Jersey Supreme Court recognized that this principle also applies to exclusively private beaches, in *Raleigh Avenue Beach Association v. Atlantis Beach Club, Inc.* et al, 185 N.J. 40 (2005).

## SUBCHAPTER 12. GENERAL WATER AREAS

### 7:7-12.2 Shellfish aquaculture

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) – (c) (No change from proposal.)

(d) Rationale: Aquaculture is a means of food production which can be at least as efficient as land-based agriculture. It is, therefore, encouraged provided that it does not unreasonably affect the coastal recreational economy, the coastal ecosystem or navigation. Aquaculture is considered one the fastest growing food-producing sectors and in 2011, it accounted for nearly 50 percent of the worldwide production of aquatic food products. In 2011, there were 189 shellfish leaseholders who held 775 individual leases which occupied 2,154 acres and 30,137 linear feet of bottom in New Jersey’s Atlantic coastal bays and rivers. Additionally, there were 86 leaseholders who held 920 shellfish leases occupying 32,124 acres in Delaware Bay. The predominant species of shellfish produced are hard clams and oysters. Shellfish aquaculture is vital to the economy in the coastal communities of New Jersey as it was worth \$4.50 million dockside in 2007 (USDA 2008) for hard clams and oysters. In addition, New Jersey shellfish are shipped throughout the United States and sold at retail locally.

#### 7:7-12.3 Boat ramps

(a) – (c) (No change.)

(d) Rationale: Boat ramps serve owners of small boats, and are important to the coastal recreational economy. Therefore, they are permitted provided that they are constructed in an environmentally sensitive manner.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-12.5 Recreational docks and piers

(a) (No change.)

(b) Recreational docks and piers, including jet ski ramps, and mooring piles, are conditionally acceptable provided:

1. - 5. (No change from proposal.)

6. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively. The Department may consider an alternative dock design that allows sunlight penetration equal or greater than that allowed by the spacing of planking described in this paragraph\*. **Alternative designs include, for example, grate decking that is constructed of metal, wood, aluminum, or other similar materials that allow sunlight penetration through the grates within the dock or pier\*;**

7. - 9. (No change from proposal.)

(c) - (g) (No change from proposal.)

7:7-12.7 New dredging

(a) - (g) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(h) Rationale: New dredging is performed to create new or expand existing navigation or access channels, marinas, lagoons, canals, or boat moorings, or to make these areas accessible to ships of deeper draft. New dredging is also performed as part of the installation of some submerged pipelines and cables.

New dredging is sometimes necessary if water dependent elements of New Jersey's economy are to expand, but as with maintenance dredging, special areas and other environmentally sensitive areas must not be unnecessarily disturbed.

New and maintenance dredging are similar in their potential water quality and biological impacts. The additional impacts associated with new dredging are permanent physical changes in water depth, circulation, and sediment types. Dredged areas which are deeper than surrounding waters or deeper than connecting channels are known to have seasonally anoxic (devoid of oxygen) bottom waters. This results from poor vertical mixing and/or lateral circulation, formation of a thermocline (static cool bottoms waters unable to mix vertically) and biochemical exhaustion of dissolved oxygen. Benthic organisms and finfish ~~\*[can not]\*~~ **\*cannot\*** survive in anoxic waters.

Propwash dredging is indiscriminate, releasing sediment into the water column with no control to minimize impacts on water quality, or control the fate of the resuspended sediment. Sediment resuspended in this manner could smother shellfish beds, submerged vegetation habitats, and result in the loss of navigability in adjacent berths and channels. Therefore propwash dredging is prohibited under these rules.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The ecological values of intertidal and subtidal shallows are summarized in N.J.A.C. 7:7-9.15. These ecological values will be weighed against loss of this habitat in comparison to the public value to be served by the new dredging.

New dredging for the installation of submerged pipelines or cables is conditionally acceptable provided the dredging complies with the conditions of this section, the general water area rule specific to the project and the energy facility use rule, where applicable.

#### 7:7-12.9 Dredged material disposal

(a) – (c) (No change from proposal.)

(d) Rationale: Dredged material disposal can have significant adverse effects, such as introduction of heavy metals, burial of benthic flora and fauna and increased turbidity. Therefore, dredged material disposal is prohibited or discouraged in smaller water bodies which have lesser assimilative capacities and is conditionally acceptable in larger water bodies if in conformance with the USEPA Guidelines and applicable State Surface Water Quality Standards at N.J.A.C.

7:9B. Unconfined overboard (or open water) disposal, particularly of hydraulically dredged fine grain sediments, frequently forms a "fluid mud" layer along the water body bottom. Fluid muds have been documented to cause acute mortality of aquatic benthic organisms due to low oxygen levels and slow rate of consolidation. Movement of fluid muds away from an unconfined dredged material disposal site \*[can not]\* **\*cannot\*** be controlled with silt curtains. Due to these impacts, upland placement and beneficial uses of dredged material are preferred methods of dredged material management.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-12.10 Solid waste or sludge dumping

(a) – (b) (No change from proposal.)

(c) Rationale: Dumping of solid and semi-solid waste in coastal waters would have significant adverse environmental and aesthetic effects and would be harmful to the coastal recreational economy. The existence of land sites makes coastal dumping unnecessary.

7:7-12.11 Filling

(a) – (i) (No change from proposal.)

(j) Rationale: In general, filling is discouraged because it results in: loss of aquatic habitat including nursery areas for commercially or recreationally important species; loss of estuarine productivity since shallow estuarine water frequently has a higher biological value and is more important than deeper water; loss of habitat important for certain wading birds and waterfowl; and loss of dissolved oxygen in the water body since the shallows facilitate oxygen transfer from air to water.

Lagoons, as a result of limited freshwater inflow, multiple dead-end branches, and deeper bottoms than adjacent bay waters, have poor circulation which causes anoxic (devoid of oxygen) and stagnant bottoms. However, the shallow water edges of lagoons have been shown by the Department (1984) to support a wide variety of finfishes and shrimp. The above rules are

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

intended to conserve this aquatic productivity found along shallow lagoon edges, while allowing use by the property owners.

New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands, intertidal and subtidal shallows, and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses erosion by providing protection, restoration, or enhancement of vegetated shoreline habitats.

The use of dredged material of appropriate grain size and chemical composition in beach nourishment and living shoreline projects promotes the State's long-standing policy of treating dredged material as a resource.

#### 7:7-12.12 Mooring

(a) - (b) (No change.)

(c) Rationale: Moorings are conditionally acceptable in all General Water Areas provided impacts to Special Water Areas are minimized and they are not a hazard to navigation.

#### 7:7-12.13 Sand and gravel mining

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) – (c) (No change from proposal.)

(d) Rationale: The long-term demand for sand resources is not known, and may exceed the supply. Given the need for sand for beach nourishment projects, care must be taken to assure the mining is properly managed and will not adversely affect special areas or water quality.

#### 7:7-12.14 Bridges

(a) – (b) (No change.)

(c) Rationale: Bridge crossings over bays, rivers, streams and other water areas are often necessary to provide continuity in the transportation system and, in the case of barrier islands, to link otherwise isolated land areas. The need to replace or upgrade bridges to safely maintain a transportation system is well recognized. However, the need for new bridges to accommodate additional traffic must be clearly demonstrated to justify potential adverse environmental effects on shellfish habitat, fish spawning grounds and migratory pathways, destruction of wetlands as well as aesthetic and air quality impacts. Bridges to barrier islands, in particular, must be reviewed in accordance with the General Location rule on Secondary Impacts.

#### 7:7-12.15 Submerged pipelines

(a) – (b) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Rationale: The installation of submerged pipelines has the potential to disrupt the ecosystem in which it is placed and so is discouraged in environmentally sensitive areas. Due to the potential for disrupting the ecosystem, directional drilling is the preferred method for installing submerged pipelines.

Burial and backfilling must be sufficient to minimize damage to pipelines by currents, storm waves, sea clam dredges, anchors and other marine equipment. If a pipeline is not buried deep enough to avoid uncovering by erosion, it will be susceptible to breakage when left uncovered. Pipeline damage or breakage may result in the release of the transport substances into the ocean water with potentially adverse effects to the marine environment. Bottom contours must be reestablished following trenching and backfilling to maintain a stable bottom for the marine life found there.

#### 7:7-12.17 Dams and impoundments

(a) – (b) (No change from proposal.)

(c) Rationale: Dams can have an adverse environmental impact by reducing the amount of downstream flow and raising salinity levels. Impoundments can reduce the flow of water reaching wetlands or intertidal and subtidal shallows. Therefore, dams and impoundments are prohibited unless essential for water supply or wildlife habitat purposes.

#### 7:7-12.18 Outfalls and intakes

(a) – (b) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Rationale: Outfalls can introduce contaminated runoff into a water body unless adequate measures are taken to encourage filtration and minimize discharge of pollutants.

#### 7:7-12.19 realignment of water areas

(a) – (c) (No change.)

(d) Rationale: Realignment of water areas normally reduces shallow water habitat, decreases water's edge vegetation, and can increase water flow with consequent increases in flooding and erosion. However, a previously realigned water area can be further realigned to enhance its environmental productivity and flood carrying capacity.

#### 7:7-12.20 Vertical wake or wave attenuation structures

(a) – (d) (No change from proposal.)

(e) Rationale: Vertical wake or wave attenuation structures are designed to protect boat moorings, including those at marinas. These structures may be fixed or floating, attached or detached, depending on the water depth, tidal range, and wave climate. The design of a vertical wake or wave attenuation structure must consider location, height, and porosity, in order for the structure to function without adversely affecting the movement of sediment and marine organisms and water circulation patterns.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

#### 7:7-12.22 Artificial reefs

(a) – (e) (No change from proposal.)

(f) Rationale: The construction of artificial reefs allows for both an increase in the marine resource biomass and the congregation of marine fish. Reefs in marine waters are public resources that are beneficial to the State's fishing industries, the sport diving community and to the marine ecosystem as a whole.

Proper siting of reef structures and use of appropriate construction materials is important to the success of the reef, while ensuring stability, safety and preventing degradation of the marine environment. In addition, proper siting of artificial reefs may reduce conflicts among competing users of ocean resources. For example, artificial reefs that are sited away from traditional commercial fish and shellfish areas may reduce conflicts between recreational and commercial fishers. Likewise, artificial reefs located outside of navigation areas and submerged infrastructure routes have a high potential to reduce ocean resource user conflicts.

Reef management plans will allow for uniform evaluation of reef structures during the permitting process and ensure the reef performs as designed.

Coordination of the Artificial Reef Program is the responsibility of the Department's Division of Fish and Wildlife. Functions include review and approval of individual reef management plans, coordination and oversight of reef material preparation and placement, and coordination of Federal, State, regional, local and private activities associated with artificial reefs in New Jersey.

The Department may adopt management measures to address reef size limitations and cumulative impacts of reef structures, as needed.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-12.23 Living shorelines

(a) – (c) (No change from proposal.)

(d) Rationale: New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address the loss of vegetated shoreline habitat as an alternative that adds diversity to other shore protection measures. The establishment of living shorelines is conditionally acceptable provided the living shoreline activities disturb the minimum amount of special areas necessary to successfully implement the restoration, creation, enhancement, or protection of habitat, water quality functions, and values of waters of the State and waters of the United States. This may include a reduction in the size of a particular special area in order to allow an increase in a different special area where the Department determines that the activities causing the reduction are sufficiently environmentally beneficial to outweigh the negative environmental effects of the reduction.

The use of dredged material of appropriate grain size and chemical composition in the establishment of a living shoreline promotes the State's long-standing policy of treating dredged material as a resource.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

SUBCHAPTER 13. REQUIREMENTS FOR \*[NON-POROUS]\* **\*IMPERVIOUS\*** COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

7:7-13.1 Purpose and scope

(a) This subchapter sets forth requirements applicable in general land areas and certain special areas for \*[non-porous]\* **\*impervious\*** cover and vegetative cover on sites in the upland waterfront development area and in the CAFRA area. These requirements are set forth as follows:

1. For a site in the upland waterfront development area, the applicable \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7-13.6 through 13.14, based on the site's growth rating, development potential, and environmental sensitivity; and

2. For a site in the CAFRA area, the applicable \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages are determined under N.J.A.C. 7:7-13.15 through 13.19, based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

(b) - (e) (No change from proposal.)

(f) A site may include land both within the upland waterfront development area and within the CAFRA area. Where this occurs each portion of the site is treated separately and the \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages for the different portions

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

of the site are determined under N.J.A.C. 7:7-13.6 through 13.14 or 13.15 through 13.19 as appropriate.

(g) The rules in this subchapter do not preempt the application of any municipal ordinance that would result in more restrictive \*[non-porous]\* **\*impervious\*** cover requirements or more extensive vegetative cover requirements than would otherwise be applicable to a development site under this subchapter.

(h) – (i) (No change from proposal.)

(j) Compliance with the \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages of this subchapter shall not exempt any development from the special areas rules at N.J.A.C. 7:7-9, the resource rules at N.J.A.C. 7:7-16, or any other provision of this chapter.

#### 7:7-13.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7-1.5, the following terms are defined for purposes of this subchapter:

...

“Coastal center” means a center in the CAFRA area with a boundary delineated by the Department for the purpose of applying the requirements for \*[non-porous]\* **\*impervious\***

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**cover\*** and vegetative cover at N.J.A.C. 7:7-13.1 through 13.5 and 13.15 through 13.19 until such time as, in accordance with N.J.A.C. 7:7-13.19, the coastal center expires or in accordance with N.J.A.C. 7:7-13.16, the coastal center is superseded by the CAFRA center. There are two categories of coastal centers, mainland coastal centers and non-mainland coastal centers. Each of these centers may be further categorized as a coastal regional center, coastal town, coastal village or coastal hamlet.

...

7:7-13.3 \*[Non-porous]\* **\*Impervious\*** cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) This section sets forth \*[non-porous]\* **\*impervious\*** cover requirements that apply to sites in the upland waterfront development and CAFRA areas. \*[Non-porous]\* **\*Impervious\*** cover limits, specific to each of these areas, are found at N.J.A.C. 7:7-13.13 and 13.17.

(b) A stormwater management facility is not counted toward the \*[non-porous]\* **\*impervious\*** cover limit for a site.

(c) A solar panel is not counted toward the \*[non-porous]\* **\*impervious\*** cover limit for a site. However, the base or foundation of the solar panel, plate, canopy, or array shall be counted toward the \*[non-porous]\* **\*impervious\*** cover on the site.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(d) The \*[non-porous]\* **\*impervious\*** cover allowed on a site shall be placed on the net land area on the site, as determined at (e) below, and in addition, for an unforested site under N.J.A.C. 7:7-13.13(b)3 or 13.17(e)2, the \*[non-porous]\* **\*impervious\*** cover shall be placed on the area covered by buildings and/or asphalt or pavement legally existing on the site at the time the application is submitted to the Department. If the amount of \*[non-porous]\* **\*impervious\*** cover calculated is greater than the net land area of the site, the acreage of the \*[non-porous]\* **\*impervious\*** cover allowed on the site shall be the acreage of the net land area. The placement of \*[non-porous]\* **\*impervious\*** cover may be further restricted by other provisions in this chapter. For example, placement of \*[non-porous]\* **\*impervious\*** cover would be discouraged in critical wildlife habitat under N.J.A.C. 7:7-9.37.

(e) To determine the acreage of the net land area on a site:

1. - 4. (No change from proposal.)

5. The result is the net land area to be used in calculating the \*[non-porous]\* **\*impervious\*** cover limits under N.J.A.C. 7:7-13.13 and 13.17.

(f) If a site or a portion of a site is a contaminated site, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for Site Remediation, the \*[non-porous]\* **\*impervious\*** cover limit for the site may be increased if required under the Technical Requirements for Site Remediation at N.J.A.C. 7:26E in order to properly remediate the contaminated portion of the site.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-13.13 \*[Non-porous]\* **\*Impervious\*** cover limits for a site in the upland waterfront development area

(a) If a site or portion of a site is forested, as determined under N.J.A.C. 7:7-13.5, the \*[non-porous]\* **\*impervious\*** cover limit is the acreage of the net land area on the site or portion as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table D below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7-13.12.

(b) If a site or portion of a site is unforested, as determined under N.J.A.C. 7:7-13.5, the \*[non-porous]\* **\*impervious\*** cover limit is the limit at (b)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table E below for the development intensity that applies to the site or portion, as determined under N.J.A.C. 7:7-13.12;

2. For a site located in the northern waterfront region or urban area region, as determined under N.J.A.C. 7:7-13.6(d), the amount of existing \*[non-porous]\* **\*impervious\*** cover located on a site as determined under (c) below; or

3. (No change.)

(c) For the purposes of determining \*[non-porous]\* **\*impervious\*** cover limits under (b) above, the amount of existing \*[non-porous]\* **\*impervious\*** cover is the highest of the following, provided the \*[non-porous]\* **\*impervious\*** cover was legally placed on the site:

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. The amount of \*[non-porous]\* **\*impervious\*** cover located on the site at the time the application is submitted to the Department;
2. The amount of \*[non-porous]\* **\*impervious\*** cover that appears on the applicable Tidelands Map; or
3. The amount of \*[non-porous]\* **\*impervious\*** cover that was placed on the site under the authority of a coastal permit and after the date the photography was performed for the Tidelands Map identified under (c)2 above.

TABLE D

Percentages for Calculating \*[Non-Porous]\* **\*Impervious\*** Cover Limit

for a Forested Site under N.J.A.C. 7:7-13.13

	*[Non-Porous]* <b>*Impervious*</b> Cover
<u>Development Intensity</u>	<u>Percentage</u>
High development intensity	70 percent
Medium development intensity	40 percent
Low development intensity	5 percent

TABLE E

Percentages for Calculating the \*[Non-Porous]\* **\*Impervious\*** Cover Limit

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

For an Unforested Site under N.J.A.C. 7:7-13.13

<u>Development Intensity</u>	<u>Cover</u> *[Non-Porous]* <b>*Impervious*</b> <u>Percentage</u>
High development intensity in the urban area region	90 percent
High development intensity not in the urban area region	80 percent
Medium development intensity	40 percent
Low development intensity	5 percent

7:7-13.14 Vegetative cover percentages for a site in the upland waterfront development area

(a) The area (in acres) on a site in the upland waterfront development area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. (No change from proposal.)
2. To determine the area (in acres) of herb/shrub vegetation preservation and/or herb/shrub vegetation planting on the site:
  - i. For each portion of the site identified at (a)1ii above, subtract both the acreage of \*[non-porous]\* **\*impervious\*** cover allowed under N.J.A.C. 7:7-13.13 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site or portion, as determined under N.J.A.C. 7:7-13.3(e).

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing \*[non-porous]\* **\*impervious\*** cover on the site as determined under N.J.A.C. 7:7-13.13(b)2 or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7-13.13(b)3 exceeds the net land area on the site, as determined under N.J.A.C. 7:7-13.3(e), then trees shall be planted in the area (in acres) remaining after the acreage of \*[non-porous]\* **\*impervious\*** cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) (No change from proposal.)

7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; non-mainland coastal centers

(a) The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999, are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes and shall be operative for the purposes of applying the requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover under this subchapter, unless the Department, in accordance with (b) and (c) below, accepts a State Planning Commission formally approved new or changed boundary, or unless the Department, in accordance with (b) and (e) below, rejects a

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

State Planning Commission formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) (No change from proposal.)

(c) If the Department determines under (b) above to accept the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in Appendix H. CAFRA centers are listed for informational purposes in Appendix I of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix I by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable \*[non-porous]\* **\*impervious\*** cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C.7:7-13.17(b).

(d) - (h) (No change from proposal.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

(j) (No change.)

7:7-13.17 \*[Non-porous]\* **\*Impervious\*** cover limits for a site in the CAFRA area

(a) The \*[non-porous]\* **\*impervious\*** cover limit for a site in the CAFRA area shall be determined as follows:

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the \*[non-porous]\* **\*impervious\*** cover limit is determined under (c) below. Note that the \*[non-porous]\* **\*impervious\*** cover limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;

2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the \*[non-porous]\* **\*impervious\*** cover limit is determined under (d) below;

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the \*[non-porous]\* **\*impervious\*** cover limit is determined under (e) below; and

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

4. If a site is located on a military installation, the \*[non-porous]\* **\*impervious\*** cover limit is determined under (f) below.

(b) To determine the location of a site for the purposes of determining the applicable \*[non-porous]\* **\*impervious\*** cover limit:

1. - 4. (No change from proposal.)

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the \*[non-porous]\* **\*impervious\*** cover limit is the limit at (c)1, 2, or 3 below, whichever is higher:

1. The acreage of the total land area on the site as determined under N.J.A.C. 7:7-13.3(e)1, multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located;

2. For a site located in the Coastal Metropolitan Planning Area, the acreage of the net land area on the site as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table H below for the Coastal Metropolitan Planning Area;  
or

3. The amount of legal, existing \*[non-porous]\* **\*impervious\*** cover located on the site, as determined under (g) below.

(d) Subject to the limitations regarding mainland coastal centers at N.J.A.C. 7:7-13.19(e), if a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the \*[non-porous]\* **\*impervious\*** cover limit is the limit at (d)1 or 2 below, whichever is higher:

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table H below for the type of coastal center in which the site is located; or

2. The amount of legal, existing \*[non-porous]\* **\*impervious\*** cover located on the site, as determined under (g) below.

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the \*[non-porous]\* **\*impervious\*** cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table H below for the Coastal Planning Area in which the site is located; or

2. (No change.)

3. For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing \*[non-porous]\* **\*impervious\*** cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal \*[non-porous]\* **\*impervious\*** cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings, include, but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters\*\* office(s), and boat repair, maintenance, and manufacturing.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(f) If a site is located on a military installation, the \*[non-porous]\* **\*impervious\*** cover limit is the limit at (f)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. 7:7-13.3(e), multiplied by the \*[non-porous]\* **\*impervious\*** cover percentage in Table H below for a military installation; or

2. The amount of legal, existing \*[non-porous]\* **\*impervious\*** cover located on the site, as determined under (g) below.

(g) For the purposes of determining \*[non-porous]\* **\*impervious\*** cover limits under (c)3, (d)2, (e)3, and (f)2 above, the amount of existing \*[non-porous]\* **\*impervious\*** cover is the highest of the following, provided the \*[non-porous]\* **\*impervious\*** cover was legally placed on the site:

1. The amount of \*[non-porous]\* **\*impervious\*** cover located on the site at the time the application is submitted to the Department;

2. The amount of \*[non-porous]\* **\*impervious\*** cover that appears on the applicable 95-97 imagery; or

3. The amount of \*[non-porous]\* **\*impervious\*** cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

#### TABLE H

Percentages For Calculating \*[Non-Porous]\* **\*Impervious\*** Cover

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Limits Under N.J.A.C. 7:7-13.17

Site Location	*[Non-Porous]* <b>*Impervious*</b> Cover Percentage
CAFRA urban center	90 percent
CAFRA regional center Coastal regional center CAFRA core CAFRA node	80 percent
CAFRA town Coastal town Military installation	70 percent
CAFRA village Coastal village	60 percent
CAFRA hamlet Coastal hamlet	50 percent
Coastal Metropolitan Planning Area	80 percent
Coastal Suburban Planning Area, within a sewer service area	30 percent
Coastal Suburban Planning Area, outside a sewer service area	5 percent

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Coastal Fringe Planning Area	5 percent
Coastal Rural Planning Area	3 percent
Coastal Environmentally Sensitive Planning Area	3 percent

7:7-13.18 Vegetative cover percentages for a site in the CAFRA area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. (No change from proposal.)

2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the \*[non-porous]\* **\*impervious\*** cover allowed under N.J.A.C. 7:7-13.17 and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing \*[non-porous]\* **\*impervious\*** cover on the site as determined under N.J.A.C. 7:7-13.17(c), (d), (e)3, or (f) or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. 7:7-13.17(e)2, exceeds the net land area on the site, as determined under N.J.A.C. 7:7-13.3(e), then trees shall be planted in area (in acres) remaining after the acreage of \*[non-porous]\* **\*impervious\*** cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) (No change from proposal.)

#### 7:7-13.19 Mainland coastal centers

(a) On March 15, 2007, the boundaries delineated by the Department for mainland coastal centers not located on barrier islands, oceanfront spits, or peninsulas in the CAFRA area expired. The expired boundaries were re-established under the Permit Extension of Act of 2008 as amended January 18, 2010, \*[and]\* September 19, 2012 \*, **and December 26, 2014\***. The boundaries of mainland coastal centers are described in Appendix J of this chapter.

(b) The boundaries of the mainland coastal centers established in accordance with (a) above shall expire in accordance with P.L. 2012, c. 48 on December 31, \*[2014]\* **\*2015\***. On and after the expiration of the mainland coastal centers, the \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the non-mainland coastal centers in Appendix H of this chapter, shall be determined in accordance with N.J.A.C. 7:7-13.7(c), (e), or (f).

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

(e) For the purposes of any CAFRA permit issued for a development within a re-established mainland coastal center pursuant to (a) above:

1. The \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages for those portions of the site located within the mainland coastal center shall be determined in accordance

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

with N.J.A.C. 7:7-13.17(d) and 13.18, respectively, provided no portion of the proposed development, is located outside the boundaries of the mainland coastal center, or in one of the areas identified at (d)1 through 6 above.

2. If any portion of the proposed development is located outside of the mainland coastal center boundaries, or in one of the areas identified at (d)1 through 6 above, then the \*[non-porous]\* **\*impervious\*** cover limits and vegetative cover percentages for the entire development shall be determined in accordance with N.J.A.C. 7:7-13.17(e) and 13.18, respectively, for the appropriate Coastal Planning Area.

(f) (No change from proposal.)

#### SUBCHAPTER 14. GENERAL LOCATION RULES

##### 7:7-14.3 Secondary impacts

(a) (No change.)

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy this chapter. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas as defined at N.J.A.C. 7:7-9 and to protect and preserve coastal resources.

1. (No change.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable special area rules, N.J.A.C. 7:7-9; general water area rules, N.J.A.C. 7:7-12; requirements for \*[non-porous]\* **\*impervious\*** cover and vegetative cover for general land areas and certain special areas, N.J.A.C. 7:7-13; location rules, N.J.A.C. 7:7-14; and resource rules, N.J.A.C. 7:7-16.

3. (No change.)

(c) (No change from proposal.)

## SUBCHAPTER 15. USE RULES

### 7:7-15.2 Housing

(a) (No change.)

(b) Standards relevant to water's edge housing are as follows:

1. – 6. (No change from proposal.)

7. Rationale: Housing is not water dependent on water access, and does not generally qualify for exemption to the rule of restricting non-water dependent development along water's edge. In addition to this general restriction, most of the Special Area rules contain specific restrictions that have the practical effect of discouraging or prohibiting new development, including housing, from sensitive areas.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Standards relevant to floating homes are as follows:

1. (No change from proposal.)

2. Rationale: The primary focus of a floating home is as a residence. Floating homes, therefore, are not water-dependent, and should not be permitted to pre-empt limited land's edge locations from water dependent uses such as boating. Boats which are used for navigation and serve a secondary function as houses are not considered floating homes and are not prohibited. Floating homes have an adverse impact on water quality through grey water discharges. The proliferation of houseboats in New Jersey would have a cumulative adverse effect on water quality, navigation and aesthetics.

(d) (No change from proposal.)

(e) Standards relevant to the development of one or two single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than two single-family homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8, and provided the single-family home(s) or duplex(es) and accessory development are located landward of the mean high water line are as follows:

1. (No change from proposal.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. On filled water's edge sites that have included a water dependent use at any time since July of 1977, development **\*of two single-family homes or duplexes\*** shall comply with the filled water's edge rule, N.J.A.C. 7:7-9.23\*(e)\*.

3. – 14. (No change from proposal.)

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.2(b)8, and provided the single-family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. – 12. (No change from proposal.)

13. Rationale: Prior to the 1993 amendments, single-family homes and duplexes were not regulated under CAFRA. This rule allows for the limited expansion or reconstruction with or without expansion of a single-family home or duplex located on a dune that existed prior to July 19, 1993 (date of CAFRA amendments), in recognition of the impact of the CAFRA amendments on these developments. The limited expansion of an existing single-family home or duplex will not have a significant long-term, adverse impact on the natural functioning of the beach and dune system since they are limited in size and **\*[can not]\* \*cannot\*** be located on the waterward side of the dwelling. Further, the rule requires that the dune waterward of the existing

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

dwelling be enhanced through the placement of sand and the planting of native dune vegetation thus improving the functioning of the existing dune.

Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive developments have already occurred. Infill single-family homes or duplexes are found to be acceptable, because their development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developed to the degree currently existing in that area. With regards to coastal bluffs, since the disturbance associated with the development of a single-family home or duplex is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the rule allows the construction of single-family homes or duplexes within 10 feet of the crest of the coastal bluff, except along high-energy shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay and where excavation is proposed.

(g) The standards relevant to housing and transportation are as follows:

1. – 3. (No change.)

4. Rationale: Public health and welfare concerns about air quality, as well as the necessity to limit energy consumption, require that public policies and decisions encourage alternatives to reliance on private automobiles.

7:7-15.3 Resort /recreational

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) (No change.)

(b) Standards relevant to recreation priority are as follows:

1. – 2. (No change.)

3. Rationale: The national and state interests in recreation are clearly indicated in the coastal economy and are essential for the quality of life. The coastal environment provides numerous opportunities for recreation which should be expanded by public policy and action, including priority setting.

(c) (No change.)

(d) (No change from proposal.)

(e) Standards relevant to amusement piers, parks and boardwalks are as follows:

1. – 2. (No change from proposal.)

3. Rationale: Amusement piers, amusement parks, and boardwalks form an essential element of the resort and recreational character of some of the communities fronting on the Atlantic Ocean. The carnival atmosphere of these areas provides fun and excitement annually for hundreds of thousands of people. However, new piers for amusement purposes are an inappropriate use of scarce coastal resources, due to the natural hazard of the desired ocean location and the importance of maintaining the visual quality of the oceanfront. Also, amusement

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

parks are not a water dependent use; these facilities may be located inland on less sensitive land and water features.

#### 7:7-15.4 Energy facility

(a) – (c) (No change from proposal.)

(d) (No change.)

(e) Standards relevant to onshore support bases are as follows:

1. (No change.)

2. Rationale: Offshore exploratory activity began off New Jersey in the Baltimore Canyon on March 29, 1978, but did not result in well production. If exploratory drilling is successful in the future, the offshore oil and gas industry is likely to seek onshore support bases in New Jersey. Because of shallow inlets in the CAFRA area, few locations in this part of New Jersey meet industry's siting requirements or are suitable for such facilities. This policy recognizes that the New Jersey coast is favored by proximity to potential offshore tracts as a site for onshore staging bases, and carries out the basic policy to concentrate rather than disperse industrial development in the coastal zone.

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. Rationale: The development phase of OCS activity in the Mid-Atlantic may require additional platform construction yards. The need for such facilities is dependent on the long term DCS development in frontier areas of the Atlantic Coast and the \*[world wide]\* **\*worldwide\*** demand for such structures. However, platform construction yards require large tracts of land and are labor intensive. The operation of a platform construction yard could severely disrupt the economy and social fabric of less developed communities and areas. For these reasons, offshore platform construction yards are encouraged to seek locations in the already developed areas of the New Jersey coast. However, the height restrictions of bridges on certain other New Jersey waterways may sharply limit the suitability of sites in New Jersey. Existing under-utilized shipyards may be used, however, for platform module construction.

(g) Standards relevant to repair and maintenance facilities are as follows:

1. (No change from proposal.)

2. Rationale: Ship repair yards presently exist in the developed coastal areas and should be utilized by DCS vessels that will be based in the same portion of the coast. Small shipyards within the CAFRA area can serve valuable repair functions on an emergency basis because of their proximity to the offshore leased areas. Utilization of repair yards in this region on a continuing basis, however, is not encouraged because of the problems in meeting the DCS vessel draft requirements and because of possible conflicts with recreational vessels.

(h) Standards relevant to pipe coating yards are as follows:

1. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

2. Rationale: Pipe coating yards constitute an industrial activity that is generally incompatible with the suburban and rural character of the CAFRA area. Further, pipe coating yards typically require 100-150 acres, and wharf space with a preferred depth at the wharf of 20 to 30 feet. These siting requirements suggest that highly industrial port areas are preferred locations.

(i) Standards relevant to pipelines and associated facilities are as follows:

1. – 4. (No change.)

5. Rationale: New Jersey recognizes that pipelines, rather than other modes of surface transportation such as tankers and barges, are the preferred and more environmentally sound method of bringing crude oil and natural gas ashore from offshore wells. The impacts of pipelines are most evident during the construction phase. These effects and the visual, noise, and odor impacts which may be created by facilities associated with DCS pipelines, require that New Jersey proceed cautiously and prudently in selecting pipeline corridors, specific alignments, and locations for ancillary facilities.

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. – 3. (No change.)

4. Rationale: It is anticipated that natural gas extracted from the Mid-Atlantic DCS will contain natural gas (mostly methane) and water, along with relatively small amounts of liquid hydrocarbons. Most of the water can be removed from the natural gas stream on the production platform. The liquid hydrocarbons, or condensate, will be returned to the gas stream downstream of gas measurement equipment on the platform and transported to shore with the gas in a single

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

pipeline. The natural gas liquids and small amounts of water which reach landfill by the Pipeline must be separated from the gas stream before it reaches an existing interstate natural gas transmission line. This can, from a technological standpoint, occur at any point along the onshore corridor.

Separation/dehydration facilities essentially remove water, natural gas liquids, and other impurities from the gas stream. The natural gas liquids are temporarily stored in fixed-roof storage tanks with vapor recovery systems until transported offsite by rail, tank truck or pipeline to a gas processing plant. Water will be disposed of either by deep well injection or by trucking to an approved offsite disposal location.

Basic siting criteria requires up to 50 acres of fairly level land, with 20-30 acres intensively utilized and the remaining acreage serving as a buffer zone around the plant. Additionally, easy access to either highway and/or railroad facilities is desirable.

(k) Standards relevant to gas compressor stations are as follows:

1. – 2. (No change.)

3. Rationale: The pressure of the gas at the well is driving force for pushing the gas through a pipeline to shore, and once ashore, to a connection with an existing interstate transmission line.

In some cases, gas pressure at the well is sufficient to free flow the gas to shore.

Once ashore, the gas will continue through the pipeline to a separation and dehydration facility and then to the interstate transmission line. It is not expected that the pressure losses due to friction and presence of natural gas liquids and water in the gas stream will be sufficient to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

require compression of Mid-Atlantic natural gas. However, if they are required, it is feasible to place them anywhere along the pipeline corridor.

(l) Standards relevant to gas pigging facility are as follows:

1. – 2. (No change.)

3. Rationale: A pipeline must be periodically "pigged" in order to ensure its efficient operation and to safeguard against damage. Water and hydrocarbon vapor may condense as pressures drop along the length of a natural gas pipeline and may collect in low points in the pipeline. The condensate must be removed to maintain efficiency in the transmission of gas.

(m) Standards relevant to gas processing plants are as follows:

1. – 2. (No change.)

3. Rationale: Gas processing plants may be needed if commercially recoverable quantities of natural gas are found off New Jersey's shore.

These facilities, however, do not require locations on the shoreline. If the amount of liquids separated from the gas stream is minimal, the liquids can be trucked or transported by rail to existing facilities which could process these liquids. A gas processing plant may induce the location and/or expansion of chemical plants since gas and its byproducts often provide the feedstock for the petrochemical industry.

To promote the most efficient use of land, gas processing plants could be located close to existing interstate natural gas transmission pipelines. Alternatively, where natural gas is associated with oil and oil pipelines, gas processing plants should be located close to refineries to

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

which the oil pipeline will be routed. Thus, gas processing plants which are economically and technically feasible and which do not exceed new source and performance standards regarding air and water quality are conditionally acceptable in the Delaware River and Northern Waterfront areas.

(n) Standards relevant to other gas related facilities are as follows:

1. (No change.)

2. Rationale: Certain ancillary facilities, in addition to pipeline, may be necessary to assure the safe, efficient and economical transportation of natural gas to shore. The impacts of these facilities will be evaluated in the overall analysis of the gas transportation system.

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. – 4. (No change.)

5. Rationale: Refineries are large-scale industrial facilities that are neither coastal dependent nor compatible with the character of the Bay and Ocean Shore Region. However, new refineries or additions to existing refineries using advanced technology to control air and water pollution and other hazards could be compatible with existing development in the Delaware River Area or northern waterfront.

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. – 4. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

5. Rationale: Major storage facilities for potentially hazardous substances are not entirely coastal-dependent and will not be permitted where storage might limit or conflict with recreational or open space uses of the coast.

(q) Standards relevant to tanker terminals are as follows:

1. – 3. (No change.)

4. Rationale: Onshore tanker facilities pose potential adverse environmental impacts and could encourage secondary development activity that is not necessarily coastal dependent. Also, even medium sized tankers require minimum channel depths of 30 feet, which excludes locations within the CAPRA area. New or expanded tanker terminals are therefore directed toward New Jersey's established port areas. Deepwater ports appear attractive to industry due to increasingly larger tankers, limitations on dredging and the scarcity of waterfront land. However, a deepwater port may, depending on its location, cause severe adverse primary and secondary impacts on the built, natural, and social environment.

(r) Standards relevant to electric generating stations are as follows:

1. – 3. (No change from proposal.)

4. Rationale: The siting of an electric generating station is an extraordinary event with far-reaching impacts, when compared with the typical day-to-day decisions made under the State's coastal zone management program. Such siting decisions therefore, require special scrutiny using: (a) the State's authority in its management of state-owned tidelands and submerged lands

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

contemplated as sites for all or part of an electric generating station, (b) the State's regulatory authority, and (c) the State's influence in Federal proceedings on aspects of the siting process.

New Jersey's coastal zone, especially along Barnegat Bay and Delaware Bay, has experienced the consequences of several major siting decisions in the past decade and already has a diverse mix of existing, proposed, and potential fossil fuel and nuclear generating facilities, both onshore and offshore.

New Jersey recognizes the interstate nature of the electric power system. Some electricity is produced in New Jersey at facilities owned partially by utilities in other states and exported to those states. New Jersey also imports electricity produced in adjacent states. In short, New Jersey is an integral part of the Pennsylvania- New Jersey- Delaware- Maryland interconnecting grid system, importing and exporting electricity from the system at different times of the day, season and year in order to generate electricity efficiently and achieve the lowest achievable cost to electricity users throughout this multi-state region.

New Jersey also recognizes that most electric generating facilities may not be coastal-dependent but do require access to vast quantities of cooling waters, a siting factor that, from the perspective of utilities, increases the attractiveness of coastal locations. This siting rule strikes a balance among various competing national, regional, and state interests in coastal resources, and recognizes some of the differences in the siting requirements of fossil fuel and nuclear generating stations.

The rule directs fossil fuel stations toward built up areas in order to preserve and protect particularly scenic and natural areas important to recreation and open space purposes. New Jersey has articulated this policy with a conscious recognition of the state's progress in attaining

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

and maintaining high air quality. Given the use of appropriate control technology, coal-fired generating stations, for example, appear feasible at various coastal locations. The siting of coal-fired power plants in urban areas also promotes efficient energy use due to the proximity of power plants to load centers.

The nuclear siting rule recognizes public concern for the disposal of spent fuel, as mandated in CAFRA by the New Jersey Legislature in 1973 and left unchanged in the 1993 legislative amendments.

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. (No change.)

2. Rationale: The pipeline Safety Act of 1979, P.L. 96-129, amended the Natural Gas Pipeline Safety Act of 1968 and sets forth requirements for the safe operation of pipelines transporting natural gas and liquefied petroleum gases, and provides standards with respect to the siting, construction, and operation of liquefied natural gas facilities.

The State recognizes the responsibilities of various federal agencies, including the U.S. Coast Guard and Office of Pipeline Safety Operations in the U.S. Department of Transportation, the Economic Regulatory Administration in the U.S. Department of Energy (US DOE), and the independent Federal Energy Regulatory Commission within USDOE, for management of various aspects of the siting and operations of LNG facilities.

Importation facilities for LNG are discouraged in view of the present sources of LNG from politically unstable countries. The use of natural gas for base load electric generation purposes is consistent with the Power Plant and Industrial Fuel Use Act of 1978, P.L. 95-620. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

availability of domestic sources of LNG and a demonstrated need that such importation facilities are in the national interest dictate considering applications for such facilities on a case by case basis.

The tankering, transfer, and storage of LNG pose significant risks to Public health, safety and welfare and may cause serious adverse environmental impacts which may not be restricted to one state, given the likely potential locations of LNG terminals along interstate waterway. New Jersey therefore recommends that the siting of LNG facilities be treated as a regional issue on an interstate basis.

#### 7:7-15.5 Transportation

(a) Standards relevant to roads are as follows:

1. (No change from proposal.)
2. Rationale: This policy is based on two assignments: (i) that the coastal zone, is for the most part adequately served already by the existing road network, and (ii) that further capital investment in transportation facilities for the coastal region should emphasize those kinds of facilities which would minimize environmental damage and energy use. Consequently, new road construction should be undertaken only where the burden of proving need is met after less damaging and more fuel efficient alternatives have been considered. In addition, further investment in road construction should include coordinated investment in low-damage, highly fuel-efficient modes wherever possible.

(b) (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Standards relevant to bicycle and foot paths are as follows:

1. – 3. (No change from proposal.)

4. Rationale: Paths for pedestrians and bicycles provide active outdoor recreation and may lead to reduced dependency on cars, especially if settlement patterns are made more compact.

(d) (No change from proposal.)

#### 7:7-15.6 Public facility

(a) (No change.)

(b) Solid waste facility means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. (No change from proposal.)

2. Rationale: Solid Waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulation of the Department's Division of Solid and Hazardous Waste.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. – 3. (No change from proposal.)

4. Rationale: Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plants, major interceptors, and ocean outfalls. In the past decades considerable wastewater treatment facility construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements to water quality. New wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The Federal Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal Zone Management rules support and extend this federal policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.

(d) (No change from proposal.)

#### 7:7-15.7 Industry

(a) – (f) (No change from proposal.)

(g) Rationale: A strong industrial base is vital if an area is to be healthy and vibrant. Many of the developed parts of the coast are suffering from a declining industrial base. Land which had been productive is now vacant and in need of redevelopment. The Industrial rules encourage industry to locate in the vacant areas of the cities of the Northern and Delaware waterfronts.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

However, the rules recognize that a healthy waterfront will host a mix of uses. By asking waterfront industries to create public access to the water and make sites they would vacate available to the public, the rules also recognize the waterfront as a valuable public resource.

The Industrial rules address the conflicting demands and effects of industrial waterfront development. The rules recognize several factors which must be considered during the decision making process. First, water dependent industry must locate somewhere along the waterfront. Other industry which needs water for operating or processing, some or all of the time, might also require a location near the waterfront, but landward of the water's edge. Second, as a result of environmental degradation, urban areas are suffering from unmet recreation and open space needs. Third, urban areas typically suffer from high unemployment and deteriorating tax bases. Fourth, city dwellers must be supported in their efforts to rejuvenate and revitalize their cities, making them pleasant and economically viable places to live.

#### 7:7-15.8 Mining

(a) – (b) (No change from proposal.)

(c) Rationale: New Jersey's coastal zone includes important deposits and minerals. Mining these non-renewable resources is vital to certain sectors of the economy of selected regions of the coastal zone, the entire state and in some cases the nation, depending upon the specific type of mineral. For example, the high quality silica sands of Cumberland County supply an essential raw material for New Jersey's glass industry. Other industrial sands mined and processed in Cumberland County serve as basic ingredients in the iron and steel foundry industry. Ilmenite

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

deposits in Ocean County provide titanium dioxide which is used in paint pigment. Construction grade sands are used in virtually all construction activity.

The extraction and processing of minerals from mines on land also produces short and long term adverse environmental impacts on agriculture. For example, open-pit mining removes all vegetation and soil, destroys wildlife habitat, changes the visual quality of the landscape, and irretrievably consumes the depletable mineral resource. Many of these impacts can be ameliorated by incorporating proper, imaginative and aggressive reclamation and restoration planning into the mine development process. However, the location of mineral deposits is an unquestionably limiting factor on the location of mining operations. Reasonable balances must therefore be struck between competing and conflicting uses of lands with mineral deposits.

Depending upon the diversity and strength of a local economy, depletion of mineral deposits through extraction may lead to serious adverse long-term economic consequences, particularly if the planned reclamation does not replace the direct economic contribution of the mining industry. The nonrenewable nature of mineral resources must also be considered carefully in light of the uses of some mined minerals.

#### 7:7-15.9 Port

(a) – (f) (No change from proposal.)

(g) Rationale: New Jersey's port areas are a regional, national and international resource. The existing ports, located largely in the Delaware and Northern Waterfront Areas contain unused

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

and under used areas which can be refurbished to meet increase in demand. The state must nevertheless allow for possible unanticipated future needs for port area.

As in the past, port activities will continue to be a vital part of the economy of New Jersey. However, changes in shipping technology have caused once thriving ports such as Jersey City and Hoboken to become the scene of dilapidated docks and piers and acres of vacant land.

The port policies recognize the changing ship technology and will encourage new or expanded needed modern facilities in areas where port facilities would be compatible with existing uses. The policies recognize modern facilities require large expanses of land to accommodate specialized equipment and host a full array of services. However, the policies seek to avoid construction of a modern facility which meets the needs of today but could become obsolete tomorrow. For this reason, facilities are encouraged not to over-specialize. At the time, the policies recognize the need to have large bulk cargo facilities to avoid construction of numerous small port facilities.

Recognizing the value of the water as a public resource and the need for environmental controls, the policies require facilities to be designed with provision for minimum environmental degradation. The policies endorse the concept of multimodalism and encourage port facilities to make use of existing infrastructure. In addition, the policies encourage an integrated port system which uses container ships, where ship channels are deep enough to accommodate these vessels, but provides for use of smaller barges to move goods to inland waterways or along shallower channels.

Recognizing the value of the waterfront to the public, the policies require port facilities to provide for the maximum public visual and physical access to the waterfront consistent with

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

safety and security concerns. The policies accommodate port usage of the waterfront, where needed and appropriate, while encouraging redevelopment and other uses which would be in the best interest of the public.

#### 7:7-15.10 Commercial

(a) Standards relevant to hotels and motels are as follows:

1. – 5. (No change from proposal.)

6. Rationale: Hotels and motels enable New Jersey residents and tourists to visit the coast.

They support the tourist economy of the area. The buildings must be located, however, so they do not harm or threaten the resources which attract people to the coast.

(b) Standards relevant to retail trade and services are as follows:

1. – 4. (No change from proposal.)

5. Rationale: Commercial development in the urban waterfront area is consistent with the State's economic development policy to target loans and bond assistance for commercial and retail establishment to urban areas. Commercial development, however, must be situated so it does not harm or threaten the resources which attract people to the waterfront.

(c) Standards relevant to convention centers and arenas are as follows:

1. -3. (No change from proposal.)

4. Rationale: Convention centers and arenas would provide social and cultural benefit to residents and visitors to the waterfront areas. They would also support the economy of the area.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

However, they can also generate traffic and induce additional development. They must, therefore, be located so that such impacts can be easily absorbed. The buildings must be located, however, so they do not harm or threaten the resources which attract people to the coast.

#### 7:7-15.11 Coastal engineering

(a) – (g) (No change from proposal.)

(h) Rationale: New Jersey's coastal environment is dynamic, and shaped by natural forces such as wind, waves, and storms. To manage the effects of these forces on development, water areas, and the shoreline, non-structural and structural shoreline stabilization measures and shore protection and storm damage reduction measures are employed. These measures, collectively known as coastal engineering, include living shorelines, rip-rap and gabion hybrid structures, bulkheads, revetments, seawalls, and dune restoration and beach nourishment projects.

Vegetated or living shorelines are a shore protection and/or storm damage reduction measure that addresses the loss of vegetated shorelines and habitat in the littoral zone by providing for the protection, restoration, or enhancement of these habitats. This measure provides "living space" for organisms through the strategic placement of plants, sand or other structural and organic materials.

Structural solutions as shore protection and storm damage reduction measures are appropriate and essential at certain locations, given the existing pattern of urbanization of New Jersey's shoreline. However, the creation, repair, or removal of publicly-funded shore protection structures must serve clear and broad public purposes and must be undertaken only with a clear understanding, on a regional basis, of the consequences to natural shoreline sand systems.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

As documented by the Department, the Federal Emergency Management Agency and others, dunes have proven to be very effective in providing protection from coastal storm surges, wave action and flooding. Dunes have been shown to reduce the level of storm damage particularly to boardwalks, gazebos, and residential oceanfront structures. Creation, restoration, enhancement, and maintenance of dunes is therefore encouraged.

New Jersey's unique geography places the State in the potential path of hurricanes, tropical storms, and nor'easters. Healthy beaches provide mitigation from these natural disasters by acting as a buffer between the ocean or bay and the homes, businesses, and infrastructure along the coast. Beach nourishment projects consist of the initial placement of sand along a beach that has experienced erosion. Beach nourishment depends upon adequate quantity and suitable quality of beach nourishment material; otherwise the material may quickly return to the ocean or bay. Sources of sand for such projects can include a local source such as from a neighboring beach or sandbar, a dredged source such as a nearby inlet or waterway, an inland source such as a mining quarry, or, as used most commonly in large-scale projects, an offshore source such as a borrow site along the ocean bottom. This sand can be brought in with trucks or barges, hydraulically pumped, or any combination of the above, and is then spread evenly along the beach using a common bulldozer. This completes the initial beach nourishment phase. As nourished beaches undergo erosion, they must be maintained through beach re-nourishment.

The Public Trust Doctrine requires that access be provided to publicly funded shore protection structures and that such structures not impede public access.

The New Jersey Supreme Court in *Borough of Neptune v. Avon-by-The-Sea*, 61 N.J. 296 (1972) held that:

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

“...at least where the upland sand area is owned by a municipality - a political subdivision and creature of the state –and dedicated to public beach purposes, a modern court must take the view that the Public Trust Doctrine dictates that the beach and ocean waters must be open to all on equal terms and without preference and that any contrary state or municipal action is impermissible. (61 *N.J.* at 308-309).”

Shore protection structures, when located on wet sand beaches, tidally flowed, or formerly tidally flowed lands, are subject to the Public Trust Doctrine. Once built, most publicly funded shore protection structures become municipal property and are, therefore, subject to the Public Trust Doctrine in the same manner as municipally owned dry beaches.

#### 7:7-15. 12 Dredged material placement on land

(a) – (h) (No change from proposal.)

(i) Rationale: Dredged material disposal and/or beneficial use is an essential coastal land and water use that is linked inextricably to the coastal economy. Dredged material placement on land could have serious impacts in the coastal environment. In the past decade, evolving State and Federal policies for protection of the marine and estuarine coastal environment have sharply limited the designation of new open water dredged material disposal areas. Yet maintenance dredging must continue if inlets and navigation channels are to be maintained. This rule recognizes the importance of this use of coastal resources and the need for sites landward of the spring high water line where this material can be placed.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Dredged material may contain pollutants and thus dredging and dredged material placement must be managed to minimize impacts on water, air, and habitat. Further, every precaution should be taken to ensure that the placement of dredged material on land does not endanger the natural coastal resources, human health, or the environment. Therefore, due investigation is required prior to approval of dredged material placement on land.

## 7:7-16 RESOURCE RULES

### 7:7-16.2 Marine fish and fisheries

(a) – (c) (No change from proposal.)

(d) Rationale: Finfish (freshwater, estuarine, and marine) and shellfish resources, and the habitats that support these resources provide significant recreation experiences for residents of New Jersey and interstate visitors. These resources also help the State's economy, by leading to expenditures of approximately \$1.4 billion per year (U.S. Department of Commerce, National Marine Fisheries Service, 2008). The Department also estimates that 1.2 million people participated in marine/estuarine recreational fishing in 2010 in New Jersey. (U.S. Department of Commerce, National Marine Fisheries Service, 2011) The value of and participation in recreational saltwater fishing is underestimated here as these figures only include finfish data and do not include recreational crabbing and clamming, which are important activities in New Jersey. Commercial landings for all finfish and shellfish in New Jersey during 2010 were 161,831,909 pounds, valued at \$177 million dockside, according to U.S. Department of Commerce statistics (2011). The total ripple effect on the State economy is estimated at \$2.6 billion, with

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

recreational fishing yielding \$1.6 billion and commercial fishing yielding \$1.06 billion. (U.S. Department of Commerce, National Marine Fisheries Service, 2008 and 2011\*.\*)\*[.]\*

Activities which may interfere with marine fish and fisheries include blockage of diadromous finfish spawning runs, reduction in the critical capacity of estuaries to function as finfish nursery or spawning areas, reduction of summer dissolved oxygen level below 4 ppm stimulating anoxic phytoplankton blooms, introduction of heavy metals or other toxic agents into coastal water, rise in ambient water temperature regime especially during summer and fall periods, unacceptable increase in turbidity levels, siltation, or resuspension of toxic agents, excavation of marine substrate to obtain sand resources or to install submarine cables and pipelines, and introduction of effluents from domestic and industrial sources.

Water presently condemned for shellfishing may not be directly or immediately important to human economics although these areas have been used as resource recovery programs, relay and depuration, source areas. These areas however serve for restocking fishable areas through production of motile larvae. Shellfish in condemned waters also are not lost to estuarine ecological food-webs, but serve as a food source to other species of wildlife.

Sand mining for the purpose of beach nourishment has the potential to impact marine fish and fisheries by altering the contours of the water bottom (bathymetry) within borrow areas or by covering fishery resources and/or habitat through the placement of sand, thereby reducing the productivity of these areas. Measures to minimize and compensate for impacts to marine fish and fisheries may include, but are not limited to, modifying the location and dimensions of proposed borrow areas, creating and/or enhancing habitat at or near the borrow site, requiring timing

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

restrictions on sand mining activities, limiting frequency of borrow activities, and reducing allowable sand mining volumes.

Shorelines lost due to erosion eliminate intertidal habitat, reduce the amount of sandy beach, and decrease the amount of organic matter necessary to maintain tidal wetlands. This erosion results in the degradation of the coastal environment through impacts to natural habitats, such as tidal wetlands and spawning grounds. Coastal states are seeking natural solutions, such as the creation of living shorelines, to address erosion as an alternative that adds diversity to other shore protection measures. Living shorelines are a shoreline management practice that addresses the loss of vegetated habitats by providing for their protection, restoration or enhancement.

Fishery Management Plans are developed by the Regional Fisheries Management Councils, National Marine Fisheries Service and Atlantic States Marine Fisheries Commission in accordance with the Federal Fisheries Conservation and Management Act of 1976, P.L. 94-265, as amended or the Federal Atlantic Coastal Fisheries Cooperative Management Act, P.L. 103-206, as amended. Fishery Management Plans are also developed by the Department pursuant to the State's Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq. Fishery Management Plans are intended to prevent overfishing of marine fish and to achieve optimal yield from each fishery on a continuing basis. These Plans are adopted on a regional basis and provide for long-term viability of marine fish and fisheries. This rule provides the Department the ability to ensure that Fishery Management Plans, as well as developmental and other activities, will not adversely affect New Jersey's recreational and commercial marine fisheries.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-16.4 Surface water use

(a) – (b) (No change.)

(c) Rationale: The surface waters of New Jersey coastal zone are an invaluable natural resource. Fresh waters maintain the propagation of established and natural biota. They serve as commercial, recreational, industrial, agricultural, and aesthetic resources. Any development that affects surface water quantity and quality will have a negative impact on these uses.

7:7-16.5 Groundwater use

(a) – (b) (No change from proposal.)

(c) Rationale: Groundwater is a primary source of water for drinking and industrial use. In some areas of the coastal zone, especially areas in Essex, Middlesex, Monmouth, Salem, Camden, and Cape May Counties, excessive amounts of groundwater are being withdrawn. The problem stems from the overpumping of groundwater, industrial, agricultural and municipal landfill leakage into groundwater and reduction of aquifer recharge caused by increased development and population. This has led to a progressive lowering of the water table or piezometric surface, altered groundwater flow patterns, changed groundwater recharge/discharge relationships which may in turn result in increasing salt water intrusion into the groundwaters, damaging the base flow conditions of streams, and well closing due to contamination.

7:7-16.7 Vegetation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) – (b) (No change.)

(c) Rationale: The steady loss of vegetation is a nearly inevitable result of urbanization.

Terrestrial vegetation stabilizes soil, retards erosion and runoff, promotes infiltration of surface water, reduces the force of wind, provides food, shelter and breeding sites for wildlife, and adds to aesthetic values for recreation and domestic life. Trees release life-giving oxygen, filter particulate pollutants, provide foods and fuel, with no energy input necessary by man. Because each site is unique, the degree of vegetation preservation required will depend upon the environmental conditions within and adjacent to the development site. In general, the greater the intensity of development permitted, the less vegetation preservation required.

"Appropriate native coastal species" means that species selection must reflect the natural physiological limitations of species to survive in distinct habitats, which include all environmental processes (natural and artificial) that operate within a site. Non-suitable species plantings will do poorly or die, or, if preserved through an intensive maintenance program of 'ph' adjustment fertilization and irrigation, will cause unacceptable ground and surface water impacts. New vegetative plantings should reflect regional geophysical suitability. Illustrative appropriate species can be grouped into three categories:

(i) Barrier Beach Sites - Plants tolerant of salt spray and occasional saline flooding, such as American holly, red cedar, black cherry, beach plum, beach grass, bayberry, beach heather, etc.

(ii) Pine Barrens Sites - Plants tolerant of infertile sandy soils, frequent fires, and acidic water, such as pitch and short-leaf pines, Atlantic white-cedar, dogwood, American holly, oaks, blueberry, etc.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(iii) Inner Coastal Plain and Southern Outer Coastal Plain - Plants compatible with fertile, well drained soils; such as oaks, beech, hickory, dogwood, black cherry, white pine, gray birch, laurel, etc.

(iv) Piedmont Sites - Oak, hickory, beech, ash, elm, hemlock, dogwood and laurel cherry.

Within these regional groupings, the selection of individual species should take into consideration the depth to seasonal high groundwater table. Species which provide food for wildlife or other desirable traits are favored for new planting.

#### 7:7-16.9 Public access

(a) – (z) (No change from proposal.)

(aa) Rationale: The Public Trust Doctrine states that natural resources, including, but not limited to, tidal waterways and their shores, air and wildlife in this State are held by the State in trust for the benefit of all of the people. Further, the Public Trust Doctrine establishes the right of the public to fully utilize these natural resources for a variety of public uses. The original purpose of the doctrine was to assure public access to waters for navigation, commerce and fishing. In the past two centuries, State and Federal courts in New Jersey have recognized that public uses guaranteed by the Public Trust Doctrine also include public recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating along the various tidal shores.

As the trustee of the public rights to natural resources, including tidal waterways and their shores, it is the duty of the State not only to allow and protect the public's right to use them, but

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

also to ensure that there is adequate access to these natural resources. As the State entity managing public access along the shore, the Department has an obligation to ensure that this occurs. Access ensured by the Public Trust Doctrine can be classified into different types, including linear/lateral access, perpendicular access, and visual access.

Reasonable, convenient and safe conditions at or around public access areas and public accessways often affect whether the public will be able to reach and use tidal waterways and their shores. Such site conditions include informative signage marking public accessways, the absence of threatening or misleading signage, adequate facilities (such as restrooms and fish cleaning tables) within a reasonable distance of tidal waterways and their shores and sufficient parking located near public accessways. Additionally, special measures, such as ramps installed in accordance with the Americans with Disabilities Act, can be taken to ensure that coastal lands and waters are accessible by all members of the public.

Development can block tidal waters from public view and/or make physical access to tidal waterways and their shores difficult or impossible. Tidal shore areas located in residential areas or within private beach areas are sometimes fenced, blocked or otherwise obstructed, further complicating access to these sites. In addition, municipalities have at times sold portions of the public beaches and vacated public streets and street ends to private owners. The private ownership of land immediately inland from tidal waterways and their shores can limit public access to tidal waterways and their shores. This leads to limited access to and enjoyment of public resources by citizens who have rights of access and use recognized and protected by the Public Trust Doctrine. Furthermore, public funds have been used to support protection and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

maintenance of these resources. Barriers to access also negatively affect tourism, which is one of the top revenue producing industries in New Jersey.

The developed waterfront, due to its past industrial utilization and long history of development, has been largely closed to the public, limiting their ability to exercise their public trust rights. In an effort to encourage public access, the Department intends to promote a continuous linear network of open space along the shore of all tidal waters that may be used for fishing, walking, jogging, bicycling, kayaking, sitting, viewing and similar recreational activities. The path will be continuous but may detour around existing or proposed industry due to risk of injury from existing or proposed hazardous operations, or substantial existing and permanent obstructions. These linear walkways will connect future and existing waterfront parks and open space areas. The goal of the rule is to assemble a system, through acquisitions and easements, that will provide continuous linkages and access along the waterfront, enabling the State to adhere to its responsibilities to safeguard public rights of access to and use of all tidal waterways and tidal waterfront areas in New Jersey. Where easements are secured from landowners for public access purposes, the New Jersey Landowner Liability Act (N.J.S.A. 2A:42A-2 et seq.) offers limited protection from the liability they would normally face under the common law.

In addition to the historic legal rights retained by the public to tidal areas, public funds are invested in numerous ways to protect these public resources and their adjacent lands. The lands and waters subject to public trust rights receive many State and Federal dollars which have been invested in beach replenishment, shore protection, road projects, water quality and monitoring programs, and solid waste monitoring. In part as a result of this investment, the public has the right to use these resources. State funds are also used to acquire and develop lands for parks and

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

recreation through the Department's Green Acres Program. These programs are financed not just by the communities within which these lands and waters subject to public trust rights are located, but by residents Statewide. Additionally, residents Statewide contribute to fund various Federal programs that protect and enhance lands and waters subject to public trust rights. The rule ensures that all residents who contribute to the protection of these lands and waters are able to exercise their rights to access and use the lands and waters. Further, they are consistent with Federal programs which require projects utilizing Federal funds to provide public access upon receipt of funds and will ensure that increases in public access apply to lands and waters subject to public trust rights Statewide.

The Public Trust Doctrine is an example of common law authority that is continually developing through individual Court cases. In addition to cases involving physical barriers to access, there have been instances where municipalities and local property owner associations have attempted to limit use of recreational beaches to their citizens and members through methods designed to exclude outsiders. In the majority of these cases, New Jersey courts have ruled that these actions violate the Public Trust Doctrine because lands that should be available for the general public's recreational use were being appropriated for the benefit of a select few.

New Jersey Supreme Court cases including *Borough of Neptune City v. Borough of Avon-by-the-Sea*, 61 N.J. 296 (1972) and *Van Ness v. Borough of Deal*, 78 N.J. 174 (1978) held that municipalities could not discriminate between residents and non-residents using municipally owned beaches through differential fees or by setting aside separate areas for each. The decision in the case *Matthews v. Bay Head Improvement Association*, 95 N.J. 306 (1984) recognized that, under the Public Trust Doctrine, not only does the public have the right to use the land below the

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

mean high water mark, but also they have a right to use a portion of the upland dry sand area, on quasi-public beaches, ". . .where use of dry sand is essential or reasonably necessary for enjoyment of the ocean, the doctrine warrants the public's use of the upland dry sand area subject to an accommodation of the interests of the owner."

Most recently, the Court's ruling in *Raleigh Avenue Beach Association v. Atlantis Beach Club, Inc., et al.*, 185 N.J. 40 (2005) used the criteria established in the *Matthews* case, and recognized that this principle also applies to the upland dry sand of a wholly privately owned and operated beach. The decision also confirms that the Department has the authority to regulate fees charged for use of beaches under CAFRA. The decisions in these cases guide the Department in upholding the Public Trust Doctrine and providing adequate public access. Other such cases include *Arnold v. Mundy*, 6 N.J.L. 1, 3 (Sup. Ct. 1821); *Bell v. Gough*, 23 N.J.L. 624 (E. & A. 1852); *Martin v. Waddell's Lessee*, 41 U.S. 367, 10 L.Ed. 997 (1842); *Shively v. Bowlby*, 152 U.S. 1, 14 S.Ct. 548, 38 L.Ed. 331 (1894); *Slocum v. Borough of Belmar*, 238 N.J.Super. 179, 185 (Law Div. 1989).

#### 7:7-16.10 Scenic resources and design

(a) – (f) (No change from proposal.)

(g) Rationale: A project which is of a scale and location that has significant effect on the scenic resources of a region is considered to have a regional impact and to be of State concern. This rule, applies only to developments which by their singular or collective size, location and design could have a significant adverse effect on the scenic resources of the coastal zone.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Restoration of areas of low scenic quality, such as abandoned port facilities and blighted urban areas, through large-scale new construction and design that is compatible with the surrounding region, is also encouraged by this rule. Specific issues of concern include those addressed by the rules on Historic and Archaeological Resources, High Rise Structure, Public Access, and Buffers and Compatibility of Uses.

#### 7:7-16.11 Buffers and compatibility of uses

(a) – (b) (No change from proposal.)

(c) Rationale: The juxtaposition of different uses may cause various problems. An activity may cause people to experience noise, dust, fumes, odors, or other undesirable effects. Examples of possible incompatible uses include factories or expressways next to housing, residential developments next to farms, and residential, commercial or industrial development adjacent to wetlands or endangered or threatened wildlife or vegetation species habitat. Vegetated buffer areas between uses can overcome, or at least ameliorate, many of these problems especially if earthen berms are included. Buffers can benefit users of both areas. Where farms operate near a residential area, for example, a buffer can protect residents from of the noise and smells of farming, while protecting the farmers from the imposition of local regulations controlling hours in which machinery can be used.

Buffers serve several important functions, including maintenance of wildlife habitat, water purification, open space and recreation, and control of runoff. Buffers may include fences, landscaped berms, and vegetated natural areas.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-16.14 Solid and hazardous waste

(a) – (b) (No change.)

(c) Rationale: The industrial growth that occurred after World War II left the State with numerous contaminated sites that have to be addressed to reduce the risks to current and future generations. While many sites have been cleaned up, many more are still in need of attention. To protect public health, preserve the environment, enhance the quality of life for the citizens of the State of New Jersey and prevent the creation of new contaminated sites, environmentally sound management and disposal of solid and hazardous wastes is needed.

SUBCHAPTER 17. MITIGATION

7:7-17.2 General mitigation requirements

(a) Mitigation shall be similar in type and location to the resource(s) lost or impacted and shall fully compensate for any ecological loss. The Department will consider proposals for out-of-kind mitigation provided the mitigation meets the goals and objective of this subchapter and would result in \*[an increase in the]\* ecological functions and values \*[as compared]\* **\*equal\*** to the ecological functions and values of the resource(s) prior to loss or impact.

(b) - (p) (No change from proposal.)

7:7-17.5 Property suitable for mitigation

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(a) (No change from proposal.)

(b) **\*Except as provided in (c) below,\*** **\*[The]\*** **\*the\*** Department shall approve mitigation **\*[through creation, restoration, or enhancement only]\*** on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of this chapter.

(c) – (h) (No change from proposal.)

#### 7:7-17.6 Conceptual review of a mitigation area

**\*(a) This section sets forth the requirements for the conceptual review of any potential mitigation area other than a proposed mitigation bank site. The requirements for conceptual review of a mitigation bank site are set forth at N.J.A.C. 7:7-17.23 (a) and (b).\***

Recodify proposed (a) - (c) as **\*(b) through (d)\*** (No change in text from proposal.)

#### 7:7-17.7 Basic requirements for mitigation proposals

(a) – (g) (No change from proposal.)

(h) The mitigation proposal checklists identified at (d) above require the following information:

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. – 10. (No change from proposal.)

11. Information and/or certifications regarding the presence or absence of endangered and/or threatened \*[species]\* wildlife and plant species habitat or other features on the proposed mitigation area relevant to determining compliance with this chapter;

12. (No change from proposal.)

13. A certification of truth and accuracy in accordance with N.J.A.C. 7:7-23.2(j); \*[and]\*

14. Consent from the owner of the proposed mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area\*[,]\*\*; and

**15. For a mitigation proposal that was not submitted as part of an application for an individual permit, documentation that public notice of the mitigation proposal was provided in accordance with N.J.A.C. 7:7-24 .\***

(i) – (j) (No change from proposal.)

7:7-17.8 Department review and approval of a mitigation proposal

(a) The Department shall, within 30 calendar days after receiving a mitigation proposal **\*submitted to comply with a condition of a coastal permit\***, review the proposal for completeness **\*in accordance with N.J.A.C. 7:7-17.7,\***and:

1. – 2. (No change from proposal.)

(b) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-17.10 Requirements for submerged vegetation habitat mitigation

(a) (No change from proposal.)

(b) Mitigation for temporary disturbance to a submerged vegetation habitat shall consist of the restoration of the disturbed area 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 areas within three years.\***

(c) - (f) (No change from proposal.)

7:7-17.14 Wetlands mitigation hierarchy

(a) (No change from proposal.)

(b) Mitigation shall be performed through restoration, creation, or enhancement of wetlands onsite in the same drainage area or estuary as the impacts or, if that is not feasible, then **\*either\*** offsite in the same drainage area or estuary as the impacts\*[,]\* or \*[if that is not feasible, then]\* through the purchase of credits from a mitigation bank with a service area that includes the area of impacts. In determining the feasibility of onsite or offsite mitigation or credit purchase, the Department shall consider the following factors regarding the proposed mitigation area:

1. – 5. (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(c) – (e) (No change from proposal.)

7:7-17.17 Financial assurance for mitigation projects; general provisions

(a) – (g) (No change from proposal.)

(h) The Department shall require additional financial assurance **\*in accordance with (f) above\*** if additional construction and/or monitoring is required to ensure success of the mitigation project.

(i) – (l) (No change from proposal)

7:7-17.22 Mitigation banks

(a) – (d) (No change from proposal.)

(e) The Department shall include in the banking instrument approving a mitigation bank, a schedule, as set forth in (e)1 through 8 below, under which a bank operator may sell credits. The Department shall adjust the amount of credits that can be released under (e)2 through 8 below to reflect the degree of progress the bank has shown toward meeting the goals and performance standards in the approved mitigation proposal:

1. – 7. (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

8. \*[Up to 20 percent of the]\* **\*The remaining\*** credits shall be released when monitoring in accordance with the banking instrument approving the bank indicates that the performance standards in the banking instrument have been met for five consecutive years.

(f) – (g) (No change from proposal.)

(h) The mitigation bank operator shall monitor the bank during and after construction until such time that the last credit is sold, the final inspection is conducted, or the bank is transferred to a **\*government agency or\*** charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator shall submit progress reports to the Department at least annually during and after construction, and more frequently if required by the banking instrument approving the bank.

(i) – (k) (No change from proposal.)

## SUBCHAPTER 23. APPLICATION REQUIREMENTS

7:7-23.4 Additional application requirements for an authorization under a general permit or for an individual permit

(a) In addition to meeting the requirements at N.J.A.C. 7:7-23.2, an application for an authorization under a general permit authorization or for an individual permit shall include the following material, in the number and format specified in the appropriate application checklist:

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. A completed application form, available from the Department at the address set forth at N.J.A.C. 7:7-1.6. This form requires basic information regarding the proposed development, including the name and address of the applicant and any designated agents, the specific location of the project, the types of permits or authorizations being sought, a brief description of the proposed activities and certifications **\*as\*** to the truth and accuracy of the information provided and **\*as to the\*** ownership of the property;

2. – 3. (No change from proposal.)

4. Site plans, certified in accordance with N.J.A.C. 7:7-23.2(i)\*,\* which include\*[s]\* the following, both on and adjacent to the site:

i. - viii. (No change from proposal.)

5. - 10. (No change from proposal.)

## SUBCHAPTER 24. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

### 7:7-24.3 Contents and recipients of public notice of an application

(a) (No change from proposal.)

(b) For any of the applications listed in N.J.A.C. 7:7-24.1(a), the applicant shall provide notice of the application to all of the persons or entities at (b)1 through **\*[6]\* \*7\*** below, in accordance with the time frames specified in N.J.A.C. 7:7-24.2. The notice shall include the information specified at (d) below.

1. – 4. (No change from proposal.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

5. The local Soil Conservation District if the project will disturb 5,000 square feet or more of land;\*[and]\*

6. All owners of real property, including easements, located within 200 feet of the property boundary of the site in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12b, unless the proposed development is one of those listed at (c)1 through 4 below, in which case the notice shall be provided as set forth in (c) below. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department\*[\*]\* \*\*; and

**7. If the site lies within the 12-mile circle or within 200 feet of the 12-mile circle described at N.J.A.C. 7:7-1.2(c), the State of Delaware. Notice shall be sent to the State of Delaware, Department of Natural Resources & Environmental Control, Delaware Coastal Management Program, 89 Kings Highway, Dover, DE 19901.\***

(c) – (e) (No change from proposal.)

(f) In addition to the public notice required at (a) and (b) above, an applicant for a waterfront development individual permit to install a submarine cable **\*in the ocean\***, or to perform sand mining in the ocean, shall provide to all of the entities listed below a copy of the completed application form and a copy of the NOAA nautical chart showing the proposed cable route or the limits of the proposed sand mining area that were submitted to the Department as part of the permit application:

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. - 6. (No change from proposal.)

(**Agency Note:** As discussed in the Summary of Agency-Initiated Changes, N.J.A.C. 7:7-10 proposed for recodification and amendment in the notice of proposal was repealed and replaced with a new N.J.A.C. 7:7-10 effective February 2, 2015. The new subchapter is recodified and amended below as part of this adoption.)

## SUBCHAPTER \*[10]\* **\*25.\* APPLICATION FEES**

### 7:7-\*[10.1]\*\***\*25.1\*** Application fees

(a) This subchapter establishes the application fees for:

1. A written determination of exemption from CAFRA pursuant to N.J.A.C. 7:7-\*[2.1(f)]\*\***\*2.2(f)\***, or from the Waterfront Development Law pursuant to N.J.A.C. 7:7-\*[2.3(h)]\*\***\*2.4(h)\***;

2. An authorization under a general permit, pursuant to N.J.A.C. 7:7-\*[7.5]\* **\*6.1\*** through \*[7.36]\*\***\*6.32\***, except for the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-\*[7.29]\*\***\*6.24\***;

3. (No change.)

4. A modification of an authorization under a general permit or an individual permit pursuant to N.J.A.C. 7:7-\*[4.10 or 7.3A, respectively]\*\***\*27.5\***.

(b) There is no application fee for:

1. \*[A jurisdictional]\*\***An applicability\*** determination pursuant to N.J.A.C. 7:7-\*[1.5(a)2]\*\***\*2.5\***;

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

- 2. An emergency \*[permit]\* authorization pursuant to N.J.A.C. 7:7-\*[1.7]\*\*21\*;
- 3. A permit-by-rule pursuant to N.J.A.C. 7:7-\*[7.2(a)1 through 21]\*\*4\*; \*[or]\*
- 4. An authorization under the general permit for habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-\*[7.29]\*\*7.24\* \*[\*]\*; **or**

**5. An administrative modification of a permit, N.J.A.C. 7:7-27.5\*.**

(c) – (g) (No change.)

Table A  
APPLICATION FEES

Determination of exemption

	Fee
Request for a written determination of exemption from CAFRA pursuant to N.J.A.C. 7:7-*[2.1]**2.2(f)*	\$500.00
Request for a written determination of exemption from the Waterfront Development Law pursuant to N.J.A.C. 7:7-*[2.3(h)]**2.4(h)*	\$500.00

Authorization under a general permit by certification \*[(Reserved)]\* **\*\$600.00\***

Authorization under a general permit pursuant to N.J.A.C. 7:7-\*[7.5 through 7.36]\*\*6\*

	Fee
General permit for habitat creation, restoration, enhancement, and	No fee

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

living shoreline activities, N.J.A.C. 7:7-[7.29]**6.24*	
Any other general permit	\$1,000

CAFRA individual permit

	Fee
CAFRA individual permit for the development of one single-family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
CAFRA individual permit for any other residential development	\$3,000 per unit
CAFRA individual permit for a commercial, industrial, or public development	\$3,000 per acre of the site (or fraction thereof)

Coastal wetlands individual permit

	Fee
Coastal wetlands individual permit for the development of one single family home or duplex and/or accessory development, which is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Coastal wetlands individual permit for any other development	\$3,000 per acre of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

	wetlands to be disturbed (or fraction thereof)
--	--

Waterfront development individual permit

	Fee
Waterfront development individual permit for the development of one single-family home or duplex and/or accessory development located landward of the mean high water line, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Waterfront development individual permit for any other residential development located landward of the mean high water line	\$3,000 per unit
Waterfront development individual permit for a commercial, industrial, or public development located landward of the mean high water line	\$3,000 per acre of the site (or fraction thereof)
Waterfront development individual permit for development located waterward of the mean high water line, such as a dock or bulkhead, at a single-family or duplex lot, where the development is not being constructed as part of a residential subdivision or multi-unit development	\$2,000
Waterfront development individual permit for any other	\$3,000 per acre of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

development located waterward of the mean high water line	water area impacted by the development (or fraction thereof)
---	--

Request to extend a general permit authorization or an individual permit \*[(Reserved)]\*

**\*pursuant to N.J.A.C. 7:7-27.3\***

	Fee
<b>Request to extend a general permit authorization</b>	<b>\$240.00</b>
<b>Request to extend a waterfront development individual permit for activities located waterward of the mean high water line*</b>	<b>25 percent of the total original permit application fee up to a maximum of \$3,000*</b>

Request for a modification of a waterfront development, coastal wetlands, or CAFRA individual permit pursuant to N.J.A.C. \*[7:7-4.10 or a general permit pursuant to N.J.A.C. 7:7-7.3A]\* **\*7:7-27.5\***

	Fee
<b>*Administrative modification</b>	<b>No fee*</b>
*[Modification of an authorization under a general permit]*	*[\$500.00]*

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Minor <b>*technical*</b> modification of a waterfront development, coastal wetlands, or CAFRA* <b>general permit authorization or*</b> individual permit	\$500.00
Major <b>*technical*</b> modification of a waterfront development*, <b>coastal wetlands, or CAFRA general permit authorization or</b> individual permit *[for development located landward of the mean high water line or a CAFRA individual permit]*	30 percent of the original application fee or \$500.00, whichever is greater

Additional application fee for stormwater review if a project is a “major development” pursuant to the Stormwater Management Rules (see N.J.A.C. 7:8-1.2)

	Fee
Base fee for any major development	\$3,000
Additional fee for review of groundwater recharge calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of runoff quantity calculations (see N.J.A.C. 7:8-5.4)	\$250.00 per acre of land disturbed by the project (or fraction thereof)
Additional fee for review of water quality calculations (see N.J.A.C. 7:8-5.5)	\$250.00 per acre of impervious surface subject to water quality review (or fraction thereof)
Additional fee if project disturbs vegetation within	\$2,000

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

a Special Water Resource Protection Area (see N.J.A.C. 7:8-5.5)	
---	--

7:7-\*[10.2]\* \*25.2\*

(No change in text.)

## SUBCHAPTER 26. APPLICATION REVIEW

### 7:7-26.7 Cancellation of an application

(a) (No change from proposal.)

(b) To cancel an application, the Department shall:

1. -2. (No change from proposal.)

3. If the applicant does not submit the fee and/or additional information, or a statement of good cause for delay under \*[(c)2]\* \*(b) 2\* above, the Department shall cancel the application and send the applicant a written notice of the cancellation.

## SUBCHAPTER 27. PERMIT CONDITIONS; \*EXTENSION,\* MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF AUTHORIZATIONS AND PERMITS

### 7:7-27.2 Conditions that apply to all coastal permits

(a) - (b) (No change from proposal.)

(c) The following conditions apply to all coastal permits:

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

1. – 3. (No change from proposal.)

4. A permittee \*[proposing]\* **\*conducting an activity involving\*** soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District \*[or designee]\* having jurisdiction over the site;

5. – 13. (No change from proposal.)

(d) In addition to the conditions at (c) above, the following conditions apply to all coastal permits except permits-by-rule:

1. (No change from proposal.)

2. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect so long as the \*[proposed]\* development or any portion thereof is in existence, unless the permit is modified pursuant to N.J.A.C. 7:7-27.5;

3. – 14. (No change from proposal.)

7:7-27.3 Extension of an authorization under a general permit or of a waterfront development individual permit for activities waterward of the mean high water line

(a) (No change from proposal.)

(b) The Department shall issue an extension only if:

1. – 2. (No change from proposal.)

3. The **\*permittee demonstrates that\*** regulated activities approved under \*[the]\* **\*any\*** authorization or individual permit for which an extension is sought have not been revised or

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

amended, unless the permittee has obtained a modification of the authorization or individual permit under N.J.A.C. 7:7-27.5; and

4. For an individual permit, **\*the permittee demonstrates that\*** the rules in this chapter governing the regulated activities authorized under the permit for which an extension is sought have not been amended such that the activities do not meet the rules as amended. **\*[In this instance, the individual permit shall expire on the date set forth therein, and the permittee shall comply with the requirements of N.J.A.C. 7:7-8.2(g).]\***

(c) (No change from proposal.)

(d) Within 15 calendar days after receiving a request for an extension of an authorization under a general permit subject to this section for which the application was deemed complete for review on or after **\*[(the effective date of these amendments)]\* \*July 6, 2015,\*** or within 30 calendar days after a request for an extension of a waterfront development individual permit for activities waterward of the mean high water line has been received by the Department, the Department shall take one of the actions identified below. During the Department's review of the extension request, regulated activities subject to the authorization or individual permit may continue.

1. – 2. (No change from proposal.)

(e) – (g) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

7:7-27.5 Modification of an authorization under a general permit or an individual permit

(a) – (b) (No change from proposal.)

(e) A major technical modification of an authorization under a general permit or an individual permit applies to any change in a project authorized pursuant to the authorization or individual permit, including any associated change to an approved site plan or other document, which is not addressed under \*[(b) or]\* (c) \*or (d)\* above and that does not require a new permit in accordance with (f) below.

(f) – (g) (No change from proposal.)

SUBCHAPTER 29. ENFORCEMENT

7:7-29.1 General provisions

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., N.J.S.A. 13:9A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-29.10, pursue the remedies specified in (a)1 through 5 below. Pursuit of any of the remedies specified under this section shall not preclude the **\*Department from\*** seeking **\*[of]\*** any other remedy specified.

1. – 5. (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(b) – (c) (No change from proposal.)

7:7-29.3 Assessment, settlement, and payment of a civil administrative penalty

(a) (No change from proposal.)

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-29.4, a notice of civil administrative penalty assessment becomes a final order *\*[and is deemed received]\** on the 36th calendar day following receipt of the notice of civil administrative penalty assessment by the violator;

2. If the Department denies an untimely submitted hearing request pursuant to N.J.A.C. 7:7-29.4(a), a notice of civil administrative penalty assessment becomes a final order on the 36th *\*calendar\** day following receipt of the notice of civil administrative penalty assessment by the violator;

3. If the Department denies a hearing request pursuant to N.J.A.C. 7:7-29.4(d) because it does not include all the required information, a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial *\*by the violator\**; or

4. (No change.)

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey\*, **R. 4:42-11(a)\***. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. – 2. (No change from proposal.)

(d) (No change from proposal.)

7:7-29.6 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities

(a) – (d) (No change from proposal.)

(e) The seriousness of the violation shall be determined as major, moderate, or minor as follows:

1. (No change from proposal.)

2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, safety, or the environment, the coastal regulatory program, or substantially deviates from the applicable law and/or condition. “Substantial deviation” shall include, but not be limited to, violations which are in substantial contravention of the law, requirement, and/or condition, and/or which \*[severely]\* **\*substantially\*** impair or undermine the protection, operation, or intent of the law, requirement, and/or condition. The

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Department will consider a violation to be of moderate seriousness if limited solely to upland areas that are not designated as a wetland or other special area identified at N.J.A.C. 7:7-9; and

3. (No change.)

(f) - (h) (No change from proposal.)

7:7-29.10 Grace period applicability; procedures

(a) - (e) (No change from proposal.)

(f) The designations of violations relating to N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq. and this chapter as minor (M) or non-minor (NM) are set forth in Table A below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table A and the rule to which the violation description corresponds, the rule shall govern.

Table A

<u>Rule Citation</u>	<u>Violation Description</u>	<u>Type of Violation</u>
N.J.A.C. 7:7-2.2, 7:7-2.3, and 7:7-2.4	Conducting regulated or prohibited activities under CAFRA, Wetlands Act of 1970, and/or Waterfront Development Statutes without prior Department approval	NM

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-8.2 and 7:7-27.3	Failure to submit a request to continue construction beyond the expiration of a permit no later than 20 working days prior to expiration of the permit, excluding permits authorizing activities located waterward of the mean high water line	M
N.J.A.C. 7:7-17.9, 7:7-17.11, 7:7-17.13, and 7:7-17.22	Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7-18	NM
N.J.A.C. 7:7-17.11 and 7:7-17.13	Failure to submit a construction completion report for the mitigation site within the required time frame of completion of construction	M
N.J.A.C. 7:7-17.11 and 7:7-17.13	Failure to submit an annual monitoring report at the required intervals following completion of construction of the mitigation site	M
N.J.A.C. 7:7-17.11 and 7:7-17.13	Failure to demonstrate to the Department at the end of the monitoring period that the mitigation	M

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

project is successful

N.J.A.C. 7:7-17.11 and 7:7-17.14	Failure to provide the government agency or charitable conservancy with a maintenance fund for the mitigation area transferred to the government agency or charitable conservancy	NM
N.J.A.C. 7:7-17.11 and 7:7-17.14	Failure to apply to the Wetland*s* Mitigation Council for approval of the amount of monetary contribution	NM
N.J.A.C. 7:7-17.11 and 7:7-17.14	Failure to apply to the Wetland*s* Mitigation Council for approval of the particular parcel of land to be donated following the Department's determination that land donation is the appropriate mitigation alternative	NM
N.J.A.C. 7:7-17	Failure to conduct mitigation as required by a Department approval or administrative order	NM
N.J.A.C. 7:7-17	Failure to comply with all conditions of a mitigation plan	NM

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-18	Failure to submit proof that a conservation restriction has been recorded	M
N.J.A.C. 7:7-21.3	Failure to comply with the terms of an emergency authorization.	NM
N.J.A.C. 7:7-21.3(e)	Failure to file a complete permit application and “as built” site plans for completed activities within 90 calendar days after verbal approval	NM
N.J.A.C. 7:7-21.3(i)	Failure to modify the activities to comply with the requirements of this chapter where directed to do so by the Department	NM
N.J.A.C. 7:7-23	Submittal of false information by the applicant, its consultants and/or agents	NM
N.J.A.C. 7:7-23.2(k)	Failure to provide complete and accurate information of which an applicant or its agents are aware, or reasonably should have been aware	NM

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-24.2	Failure to provide timely public notice of an application	M
N.J.A.C. 7:7-24.3(a)	Failure to provide verification that a copy of the entire application has been submitted to the municipal clerk	M
N.J.A.C. 7:7-24.3(b)	Failure to provide notice of the application to the following entities: construction official, environmental commission, county planning board, municipal planning board, local soil conservation district, and all owners of real property and easements within 200 feet of the property boundary of the site	M
N.J.A.C. 7:7-24.3(e)	Failure to provide verification that a copy of the entire application has been to the Pinelands Commission	M
N.J.A.C. 7:7-27.2(c)6	Failure to inform the Department of adverse	NM

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

	effects on the environment not described in the application or in the conditions of the permit	
N.J.A.C. 7:7-27.2(c)10	Failure to minimize noise during construction	NM
N.J.A.C. 7:7-27.2(c)13iii	Failure to allow the Department reasonable access to the site	NM
N.J.A.C. 7:7-27.2(d)3	Failure to record a permit with the county clerk	M
N.J.A.C. 7:7-27.2(d)4	Failure to notify the Department in writing and certify that all permit conditions have been met within five working days prior to operation of a CAFRA development	M
N.J.A.C. 7:7-27.2(d)7	Failure to comply with a permit condition that must be satisfied prior to the commencement of construction	NM
N.J.A.C. 7:7-27.2(d)8	Failure to post and maintain permits and approved site plans at the permitted site at all times	M

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

N.J.A.C. 7:7-27.2(d)14	Failure to notify the Department in writing at least three working days prior to starting work under a permit	M
N.J.A.C. 7:7-27.4	Failure to submit required documentation concerning the transfer of a property	M
N.J.A.C. 7:7-27.6	Failure to submit to the Department an application for modification of a general permit authorization or individual permit, should a permittee propose*[d]* a change in the development	NM
N.J.A.C. 7:7-27.6	Failure to provide public notice for request for modification of a permit authorization	M
N.J.A.C. 7:7-27.7 and 7:7-27.8	Failure to comply with the terms of a suspension or termination notice	NM
N.J.A.C. 7:7-27.8	Failure to properly remediate and restore	NM

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

impacts caused under a terminated permit or

approval

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

**(OFFICE OF ADMINISTRATIVE LAW NOTE:** As explained in paragraph 32 in the Summary of Agency-Initiated Changes, the Department is correcting the illustration in Appendix B below upon adoption. The illustration in adopted Appendix B below appears as corrected, without change symbolism.)

## **APPENDIX B**

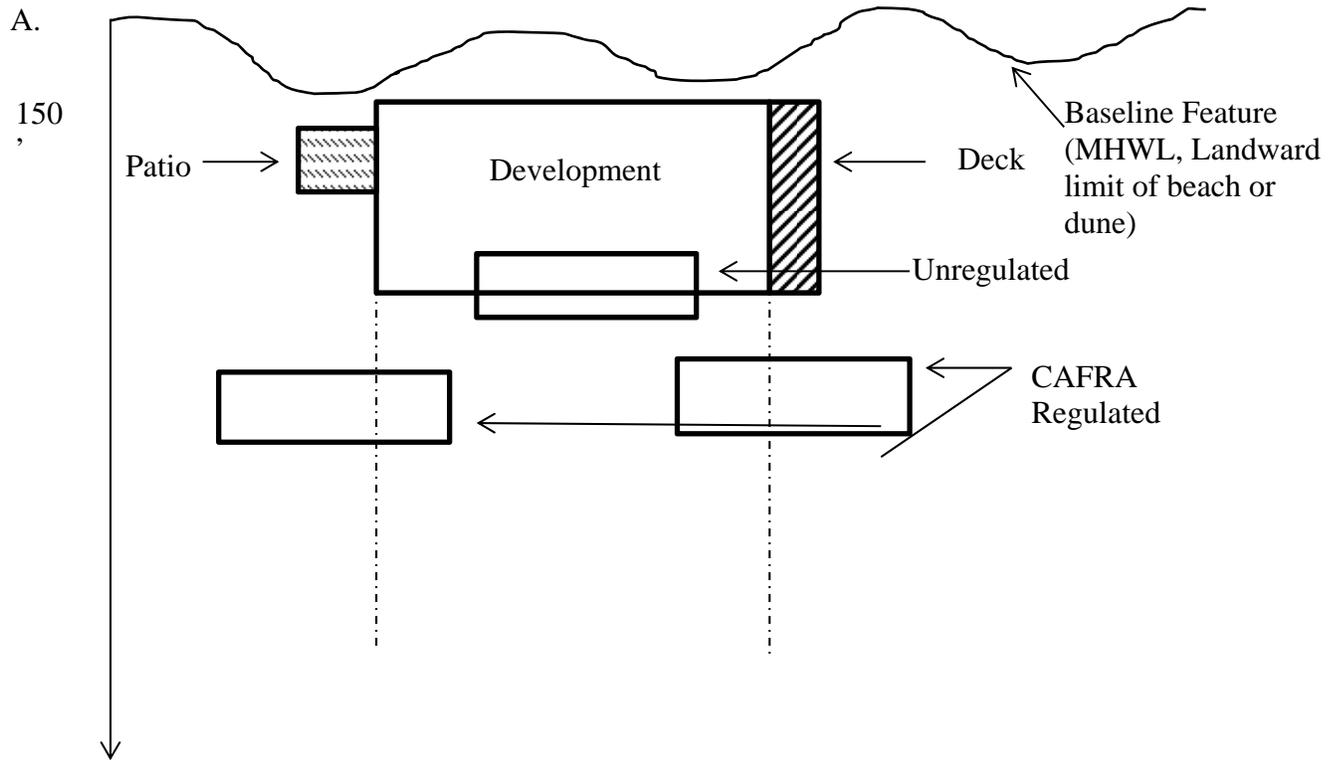
### **ILLUSTRATION OF INTERVENING DEVELOPMENT FOR PROPOSED**

**\*[DEVELOPMENT]\* \*DEVELOPMENT\* OTHER THAN A SINGLE-FAMILY HOME**

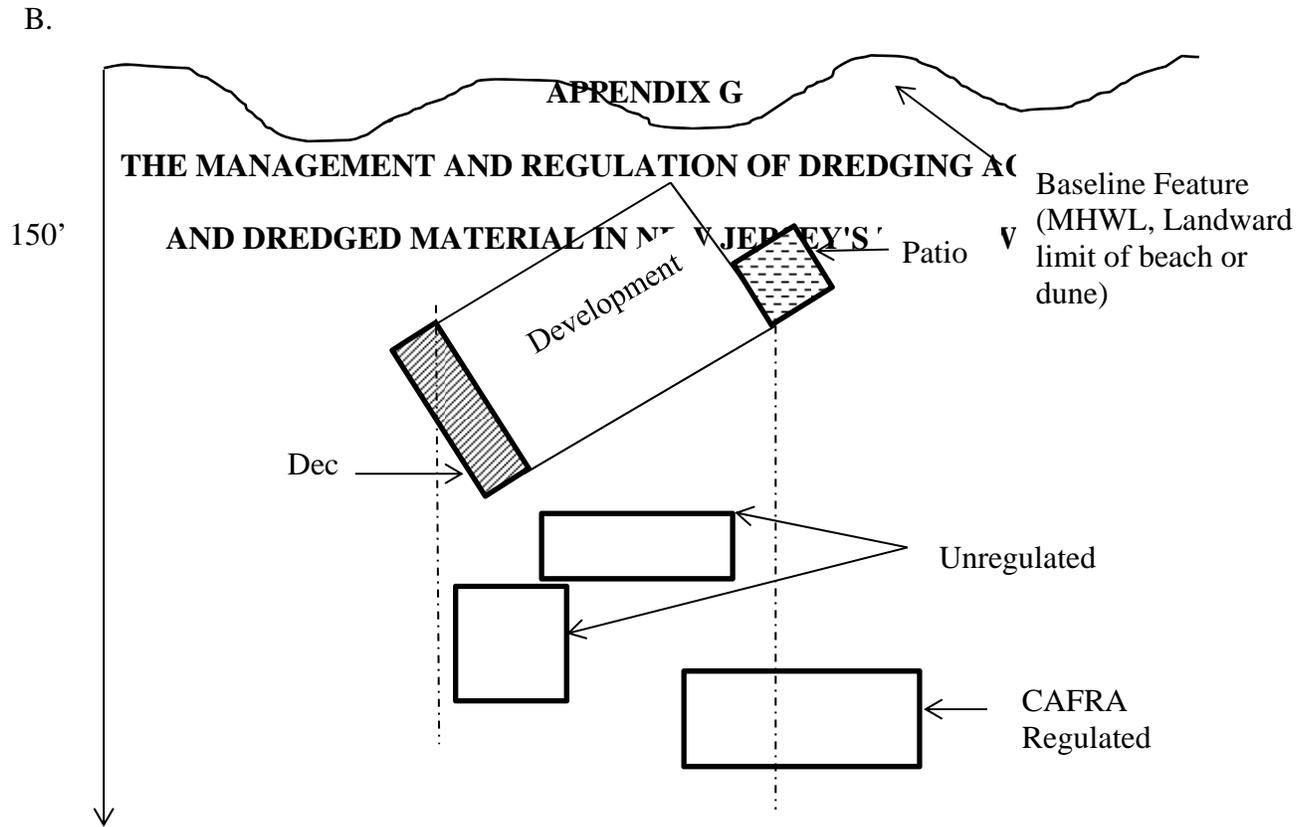
**\*[OF]\* \*OR\* DUPLEX**

**(incorporated by reference at N.J.A.C. 7:7-2.2(b)1)**

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.



NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.



NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## Chapters I – II

(No change from proposal.)

### Chapter III - Information Required of All Projects

A. –C. (No change from proposal.)

#### D- Sampling of Sediments

The proposed sampling plan must be presented to the Department for review and approval prior to samples being taken. In addition, the required information discussed in Section III-A must be submitted to the Department with the proposed sampling plan. The sampling plan must include the following information.

(1) (No change from proposal.)

(2) Operational Aspects of Sampling and Compositing

a. – c. (No change from proposal.)

d. Core samples \*[six]\* six feet or less in length may be homogenized. Separate cores may be composited only if the grain size and likelihood of contamination is similar based on depositional characteristics, spill history, location of outfalls, etc.

e. Cores greater than \*[six]\* six feet in length may be homogenized unless there are distinct visual strata in grain size and composition which are at least two feet in depth. The Department shall be notified of any such cores that show grain size stratification prior to

f. – g. (No change from proposal.)

### Chapter IV - Management of Dredging Activities and Dredged Material

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

A. – B. (No change from proposal.)

C - Upland Confined Disposal Facilities

(1) – (3) (No change from proposal.)

(4) Ground Water Discharges:

(a) – (b) (No change from proposal.)

(c) Permitting Process: The degree to which the discharge to ground water (DGW) emanating from the upland disposal of dredged material will be regulated pursuant to the NJPDES regulations and the GWQS is dependent upon the following characteristics:

- The classification of the ground water (Table 2);
- The nature of the upland CDF (Type A or B);
- The source and quality of the dredged material; and
- The management of the dredged material.

The NJPDES-DGW permitting process involving the upland disposal of dredged material will include any or all of the following components:

- Determination of leachate quality from dredged material;
- Ground Water Protection Plans; and/or
- An NJPDES-DGW permit.

In order to determine which components of the NJPDES-DGW permitting process apply, it must be determined whether the project involves a Type A or Type B upland CDF as defined below:

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Type A upland CDFs involve projects where the specific location(s) from which sediments are to be dredged is known prior to proceeding with the development of a Ground Water Protection Plan and issuance of a NJPDES-DGW permit. In these cases, leachate quality from the sediments to be dredged can be evaluated on a preliminary basis allowing for a wider variety of management and/or permitting alternatives.

Type B upland CDFs are constructed independent of any specific dredging project(s). As such, the leachate quality of all sediments to be placed within the upland CDF cannot be determined prior to development of a Ground Water Protection Plan and issuance of a NJPDES-DGW permit. Therefore, the only regulatory options available are those detailed below at IV-C(4)(c)ii and iii.

- i. (No change from proposal.)
- ii. Ground Water Protection Plans: Ground Water Protection Plans shall be developed for:
  - All Type B upland CDFs; and
  - All Type A upland CDFs where the anticipated quality of the leachate, determined as per IV-C(4)(c)i and in accordance with IV-C(4)(d), exceeds the Ground Water Quality Criteria for any parameter.

The Ground Water Protection Plan for any upland CDF must comply with the general provisions of N.J.A.C. 7:14A-7.6, which includes the following:

- An engineering design and construction plan of the proposed CDF;
- An operation and maintenance plan which details the use of the proposed CDF;

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

- Detailed evaluation of potential contaminant migration pathways which considers at a minimum the following:
  - Regional physiography;
  - Site specific geology and hydrogeology; and
  - Regional ground water use and receptors;
- Annual leachate discharge and contaminant loading into ground water from the upland CDF in consideration of:
  - Maximum leachate concentration determined as per IV-C(4)(c)i; and
  - Annual leachate volume estimated using the Hydrologic Evaluation of Landfill Performance (HELP) Model, (Schroeder et al., 1994; \*[EPA/600/9-94/168a]\*  
**\*EPA/600/R-94/168a\***; and
- Submission of results of a physical or mathematical ground water flow and/or contaminant transport model that depicts the fate of the DGW.

iii. – iv. (No change from proposal.)

(d) (No change from proposal.)

(5) – (6) (No change from proposal.)

D. – E. (No change from proposal.)

#### Chapter V - Use Alternatives

A. - G. (No change from proposal.)

#### H- Capping Open Water Disposal Sites

(1) (No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

(2) Authority: capping may be required for contaminated dredged material placed at an Open Water Disposal Site, in a Subaqueous Disposal Pit, or in a containment \*[srea]\* **\*area\***. The Department's authority to regulate dredged material disposal activities at these areas has been discussed in Sections IV-B, IV-D, and IV-E, respectively.

Disposal of dredged material in ocean waters (and thus any required capping of such material) is regulated by the USACE and USEPA. The State of New Jersey has discretionary authority to review disposal activities at ocean disposal sites pursuant to the Federal Coastal Zone Management Act. The review of proposed ocean disposal (and capping) operations at currently designated ocean disposal sites will be coordinated with the USACE and USEPA.

(3) – (4) (No change from proposal.)

(5) Testing Requirements: Only clean dredged material which will ensure the long-term isolation of the underlying contaminated dredged material is suitable for use in capping Open Water Disposal Sites. This involves a consideration of the physical and chemical characteristics of the capping material in relation to both the disposal site and the underlying contaminated dredged material. Such considerations must be evaluated as part of the process of selecting/siting the Open Water Disposal Site. Grain size analyses will be required to evaluate the potential long-term stability of the cap when subjected to the current and other erosive forces in the disposal area. The grain size data will also be used to ensure that the contaminated dredged material is not dispersed as a result of the capping operation. In addition, this information will be considered as part of the evaluation of the potential recolonization of the cap by benthic organisms.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

Chemical analyses of the proposed capping material will also be required to ensure it is acceptable for unrestricted open water disposal. Refer to Section IV-B-(3)(d) for applicable testing requirements (note: any dredged material that meets the Testing Exclusion criteria listed in Section III-C does not need to undergo bulk sediment chemistry testing). This information, together with the chemical data for the underlying contaminated dredged material, will be used in the development of a monitoring program for the open water disposal \*[bsite]\* **\*site\*** and its cap.

Given the interdependent and complex evaluations needed, the suitability of any material for use in the capping of an Open Water Disposal Site will be made on a case-by-case basis.

Dredged material proposed for capping at an ocean disposal site must be tested per the Green Book (USEPA and USACE, 1991) and regional implementation (USACE and USEPA, 1992) testing manuals, unless it meets the exclusionary criteria of the USEPA Ocean Dumping Regulations.

#### Chapters VI-VII

(No change from proposal.)

#### Attachments A-G

(No change from proposal.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

## APPENDIX H

### BOUNDARIES OF NON-MAINLAND COASTAL

#### CENTERS IN THE CAFRA AREA

For purposes of N.J.A.C. 7:7-13, this appendix sets forth the boundaries of the non-mainland coastal centers in the CAFRA area.

In accordance with N.J.A.C. 7:7-13.3(d), the \*[non-porous]\* **\*impervious\*** cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7-13.3(e). The placement of \*[non-porous]\* **\*impervious\*** cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the special area rules at N.J.A.C. 7:7-9.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. – IV. (No change.)

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

APPENDIX I  
CAFRA CENTERS

This non-regulatory appendix contains the list of CAFRA centers, CAFRA cores, and CAFRA nodes, the boundaries of which have been accepted by the Department under N.J.A.C. 7:7-13.16(b), and which are incorporated into and shown on the CAFRA Planning Map. As required under N.J.A.C. 7:7-13.17(b), an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable \*[non-porous]\* **\*impervious\***cover limits under this chapter.

The Department will update the list of CAFRA centers, CAFRA cores, and CAFRA nodes in this Appendix by notice of administrative change as part of the New Jersey Register notice required in N.J.A.C. 7:7-13.16(b). The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers, CAFRA cores, and CAFRA nodes are listed alphabetically.

I. – VII. (No change.)

NOTE: THIS IS A COURTSEY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

#### APPENDIX J

### BOUNDARIES OF MAINLAND COASTAL CENTERS IN THE CAFRA AREA RE-ESTABLISHED UNDER THE PERMIT EXTENSION ACT OF 2008 AS AMENDED JANUARY 18, 2010, \*[AND]\* SEPTEMBER 19, 2012\*, AND DECEMBER 26, 2014\*

For purposes of N.J.A.C. 7:7-13, this appendix sets forth the boundary descriptions of the mainland coastal centers whose March 15, 2007, expiration has been extended under the Permit Extension Act of 2008, N.J.S.A. 40:55D-136.1 et seq. and the January 18, 2010, \*[and]\* September 19, 2012, \*and December 26, 2014,\* amendments to that Act. The areas listed at N.J.A.C. 7:7-13.19(d) shall not be considered part of a mainland coastal center. In addition, the areas that are within the “environmentally sensitive area” defined by the Permit Extension Act of 2008, as amended, at N.J.S.A. 40:55D-136.3, were not extended by the Act and, therefore, are not part of the mainland coastal center. Further information on the Permit Extension Act and environmentally sensitive areas is described on the Department’s webpage at [\\*\[www.state.nj.us/dep/permitextension/peaesa.html\]\\*](http://www.state.nj.us/dep/permitextension/peaesa.html) \*www.nj.gov/dep/permitextension/peaesa.html\*.

In accordance with N.J.A.C. 7:7-13.3(d), the \*[non-porous]\* **\*impervious\*** cover allowed on a site within a mainland coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7-13.3(e). The placement of \*[non-porous]\* **\*impervious\*** cover on a site in a mainland coastal center may be further restricted by other provisions of this chapter, including the special area rules at N.J.A.C. 7:7-9.

NOTE: THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE JULY 6, 2015 NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. – III. (No change from proposal.)