
DRAFT

Routine Program Change

State of New Jersey Coastal Management Program

Request for Concurrence

Regulatory amendments adopted from June 2016 through January 2018

Coastal Zone Management Rules

New Jersey Administrative Code Title 7, Chapter 7

June 2019

Submitted by:
The New Jersey Department of Environmental Protection
Office of Policy Coastal Management
401 East State Street, 7th floor
Trenton, New Jersey 08608

Table of Contents

Introduction	1
Analysis of Changes.....	3
<i>Uses subject to management</i>	3
Dune walkovers; other beach and dune activities.....	3
Recreational docks and piers	8
<i>Special Management Areas</i>	8
Filled water's edge	8
Coastal high hazard areas/ V zones	9
Riparian zones.....	12
Coastal Wetlands	13
<i>Boundaries</i>	14
<i>Authorities and Organization</i>	14
Rule adoption.....	14
CAFRA findings	15
Rule rationales	15
<i>Coordination, Public Involvement, and the National Interest</i>	16
Public notice for maintenance dredging.....	16
Appendix 1: Tables of Rule Changes	17
Appendix 2: Discussion of Additional Program Change Approval Criteria	49
Appendix 3: Federal, State, and Local Agency Notice and Mailing List	54
<i>Appendix 3A: Content of Notice Letter</i>	55
<i>Appendix 3B: Mailing List</i>	58
Appendix 4: CZM Rule Text.....	62

Introduction

The New Jersey Coastal Management Program (NJCMP) is requesting approval from NOAA'S Office for Coastal Management (OCM) to incorporate regulatory amendments and new rules that were adopted by the New Jersey Department of Environmental Protection (Department) from June 2016 through January 2018 which address riparian zones, building standards in V zones and coastal A zones, coastal wetlands maps, public notice for maintenance dredging, as well as regulatory amendments made in response to issues identified through stakeholder outreach and to address other issues that have arisen since the July 6, 2015 adoption of

the consolidated coastal rules, into the enforceable policies of New Jersey's approved Coastal Management Program.

Amendments to the CZM Rules adopted on January 16, 2018 are related to filled water's edge areas, dune walkovers and other beach and dune development, CAFRA findings, coastal high hazard areas/ V zones, application requirements, rule rationales (which are not enforceable policies but are included for informational purposes) and minor updates and corrections.

Adopted Regulatory Amendments: N.J.A.C. 7:7-1.4, 1.5, 2.2, 2.3, 2.4, 4.2, 4.13, 4.14, 4.21, 4.22, 6.2, 6.3, 6.4, 6.5, 6.13, 6.17, 6.22, 6.23, 6.30, 6.32, 8.2, 9.2, 9.3, 9.5, 9.6, 9.8, 9.11, 9.12, 9.13, 9.14, 9.16 through 9.20, 9.23, 9.25, 9.28, 9.30, 9.32, 9.33, 9.38, 9.40, 9.43, 9.44, 9.45, 9.46, 9.47, 10.2, 10.3, 10.4, 10.5, 11.1, 11.2, 11.3, 11.4, 12.5, 12.9, 12.15, 12.16, 12.20, 12.21, 14.1, 14.2, 15.2 through 15.7, 15.9, 15.10, 15.11, 16.2, 16.3, 16.5, 16.6, 16.7, 16.8, 16.10, 16.12, 16.13, 17.5, 19.2, 23.2, 23.6, 24.1, 24.3, 26.5, and 27.3

Adopted New Rules: N.J.A.C. 7:7-4.23 and 5.3

Also included in this request for concurrence are minor changes to public notice requirements for applications for maintenance dredging projects of one-half mile or longer and minor citation changes that were adopted in the CZM Rules as part of the Department's December 18, 2017 adoption of comprehensive changes to the Freshwater Wetlands Protection Act (FWPA) Rules. The regulatory amendments to the FWPA Rules will be the subject of a separate program change request for concurrence.

Adopted Regulatory Amendments: N.J.A.C. 7:7-9.27, 17.11, 17.14, 24.3 and 24.4

The Wetlands Act of 1970 requires the Department to regulate activities in areas mapped as coastal wetlands on promulgated coastal wetlands maps. In response to a petition for rulemaking, the Department adopted updated two promulgated coastal wetlands maps applicable to the Holgate section of Long Beach Township, NJ to reflect current conditions.

Adopted Regulatory Amendments: N.J.A.C. 7:7 Appendix D

In response to comments on proposed amendments to the FHACA Rules (see below), the Department concurrently proposed amendments to the FHACA and CZM Rules. These amendments, adopted on June 19, 2017 and effective on July 17, 2017 incorporated riparian zone disturbance limits for certain activities in the CZM Rules to maintain consistency with the FHACA Rules.

Adopted Regulatory Amendments: N.J.A.C. 7:7-6.4, and 15.2

On June 20, 2016, the Department adopted amendments to the CZM Rules related to comprehensive amendments to the Flood Hazard Area Control Act Rules. For State permitting purposes, where both a flood hazard area permit and coastal permit are required, only a coastal permit must be obtained provided the

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project complies with both the CZM Rules and FHACA Rules. Amendments adopted in June 2016 maintain the consistency necessary to support this permitting process.

Adopted Regulatory Amendments: N.J.A.C. 7:7-6.23, and 17.12

Adopted Repeals and New Rules: N.J.A.C. 7:7-9.26

A summary of all rule changes included in this request for program change approval is included in Appendix 1. The Analysis of Changes section below highlights the most substantial regulatory amendments and new rules as they relate to the five program approval areas. The Department considers all adopted changes to the CZM Rules part of a routine program change. No adopted rule changes have such a significant effect on any program approval area as to constitute an amendment of the NJCMP.

Analysis of Changes

This routine program change involves changes to the NJCMP's enforceable policies. Changes are organized into topic areas and discussed relative to their impact on the five program approvability areas.

Uses subject to management

Dune walkovers; other beach and dune activities

Dune walkovers

A number of regulatory amendments in the January 16, 2018 rulemaking were related to clarifying and updating requirements for dune walkovers and facilitating these structures where appropriate to provide for access to the ocean while maintaining the integrity of the dune system.

CAFRA

The Coastal Area Facility Review Act (CAFRA) exempts from regulation "the construction of a patio, deck or similar structure at a residential development." The Department sets forth what will be interpreted as "similar structures" for the purposes of the CZM Rules at N.J.A.C. 7:7-2.2(c)5i through v. N.J.A.C. 7:7-2.2(c)5iv identifies timber dune walkover structures constructed in accordance with the specifications at N.J.A.C. 7:7-10.4, Dune creation and maintenance, as similar structures when they are constructed at a single-family home or duplex. In this rulemaking, the Department amended N.J.A.C. 7:7-2.2(c)5iv to include at-grade dune walkovers in the list of "similar structures" and amended the prior reference to reference to timber dune walkover structures to add the term "elevated" for consistency with the description of these same structures elsewhere in the rules and to differentiate between these walkovers and at-grade walkovers. The Department also added more

specific citations to where the standards for elevated timber dune walkovers and at-grade walkovers are located.

A number of regulatory amendments establish permitting options to facilitate the construction of dune walkovers at developments other than single-family home or duplex developments. The prior CZM Rules required an individual permit for such structures, despite the potential environmental impacts being minor and the major benefits of providing public access to the waterfront and of preventing excessive damage to dunes by providing one standard path for people to cross provided by these structures.

Permit-by-rule 23

New permit-by-rule 23 at N.J.A.C. 7:7-4.23 authorizes the installation of an at-grade dune walkover, such as a stabilization mat, at a residential, commercial, or public development other than a single-family home. Permits-by-rule authorize activities with very minimal environmental impact and do not require the submittal of a written application or application fee to the Department. New permit-by-rule 23 establishes design and installation standards to ensure minimal impacts on the dune upon which the walkover is installed. First, the permit-by-rule limits installation to one walkover per site, unless New Jersey 2012 High Resolution Orthophotography reflects that more than one walkover was present on the site on the date of the applicable image. In this case, the permittee may construct up to the number of walkovers existing on the site as shown on this imagery. New Jersey 2012 High Resolution Orthophotography is available for download at http://njgin.state.nj.us/NJ_NJGINExplorer/DataDownloads.jsp. The Department chose this imagery because the resolution allows walkovers to be clearly identified and because it was taken before Superstorm Sandy hit the Jersey Shore and destroyed many beach and dune structures.

Permit-by-rule 23 sets several design and construction parameters to ensure the installation of an at-grade walkover has only a *de minimis* impact on the dune. This permit does not authorize grading or excavation of a beach or dune. Any grading or excavation may adversely affect the dune and, therefore, must be reviewed directly by Department staff as part of an application for general permit 2 for activities on a beach or dune, or through an individual permit.

The permit-by-rule then establishes width limits for walkovers at different types of development. Walkovers at non-commercial properties cannot exceed six feet in width. The total width of the walkover structure plus any fencing or edging is limited to eight feet. Commercial properties may have a walkover as wide as 10 feet (12 with any edging or fencing). At any location, a walkover constructed under this permit must be fenced using sand fencing, split-rail fencing, or open handrails to prevent pedestrians from walking on the dune outside of the designated walkover area, unless fencing the walkover is prohibited by the municipality. The activity must also comply with any applicable management plan for the protection of State and Federally-listed threatened or endangered species, and/or N.J.A.C. 7:7-9.36, endangered or threatened wildlife or vegetation species habitat. For example, all cost-sharing agreements between the Department and municipalities for shore protection or beach nourishment require beach management plans where threatened or endangered species

are present. Any walkovers constructed within a shore protection or beach nourishment project area that received State funding would, therefore, need to comply with the terms of the applicable management plan.

General permit-by-certification 1A

New general-permit-by-certification 1A authorizes the installation of an elevated timber dune walkover at residential, commercial, or public development other than a single-family home or duplex. The existing general permits-by-certification at N.J.A.C. 7:7-5.1 and 5.2 are numbered general permit-by-certification 10 and general permit-by-certification 15 because they represent a more tightly circumscribed subset of activities authorized under general permits 10 and 15. Because the new general permit-by-certification is not linked to an existing general permit, the Department is designating it general permit-by-certification 1A.

The standards for the construction of an elevated timber dune walkover are similar to those for at-grade walkovers under permit-by-rule 23. The permit authorizes one walkover per site, unless New Jersey 2012 High Resolution Orthophotography reflects that more than one walkover was present on the site on the date of the applicable image. In this case, the permittee may construct up to the number of walkovers existing on the site on this imagery. This general permit-by-certification also does not permit grading or excavation of a beach or dune.

Elevated timber walkovers must be constructed in accordance with the standards and specifications described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). This requirement is consistent with the design and construction requirements for walkovers under prior N.J.A.C. 7:7-10.4(d). This publication provides different designs for walkovers in areas of heavy foot traffic (such as a condominium or community public access ramp) versus walkovers in areas of light foot traffic (such as an individual home). The publication provides lists of suitable materials, piling depths, piling placement guidelines (for example, pilings should not be encased in concrete), and other design guidance. This document is available from the Department at the address provided in N.J.A.C. 7:7-1.6.

The width limits and threatened and endangered species protection requirements are identical to those in permit-by-rule 23 as summarized above. While the limits regarding width of the access path, threatened and endangered species protections and other aspects of the new general permit-by-certification are the same as permit-by-rule 23 for at-grade dune walkovers, the Department is proposing that the elevated structures be authorized through a general permit-by-certification in order to ensure that applicants are aware of and certify that they are complying with the standards and specifications for construction of these structures, which necessarily involve placement of supports into the dune and, therefore, could have greater adverse impacts on the dune if not designed and constructed in accordance with the requirements of the general permit-by-certification. To encourage responsibly constructed and located elevated dune walkovers to facilitate public access and use of the waterfront while preserving the integrity of vegetated dune system, the Department does not charge an application fee for this general permit-by-certification. The regulatory amendments related to general permit-by-certification 1A have an operative date of July 6, 2018

(approximately six months after adoption) to allow the Department to complete the incorporation of these permits into the Division of Land Use Regulation's online permitting system.

General permit 2

Prior general permit 2 at N.J.A.C. 7:7-6.2 authorized "beach and dune maintenance activities." The Department has renamed this general permit to clarify that it authorizes a number of activities on a beach and dune subject to the requirements in Subchapter 10, not just beach and dune maintenance activities. The regulatory amendments improve organization and include citations to update dune walkover standards in N.J.A.C. 7:7-10.4 (e) and (f), discussed below. New N.J.A.C. 7:7-6.2(d) requires that any activity authorized under general permit 2 must be conducted in accordance with the Operation and Maintenance Manual associated with the Federal or State project or, if such a manual does not exist, the activity cannot jeopardize the design template for the engineered beach or dune. An Operation and Maintenance Manual is developed as part of a Federal- or State-funded beach replenishment project and specifies the roles, responsibilities, and requirements for conducting and maintaining an engineered beach project partially funded by the U.S. Army Corps. of Engineers (USACE). Engineered beaches and dunes are specifically designed for shore protection; activities that do not comply with the procedures for operation and maintenance developed by the project engineers or that would otherwise affect the design template are not authorized under this permit and, in general, will not be authorized by the Department under any circumstances. New N.J.A.C. 7:7-6.2(e) requires that the activity complies with any applicable management plan for protection of State-listed and Federally listed threatened or endangered species and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36, thereby ensuring protection of these species and their habitats.

Standards for dune walkovers

The Department adopted new and amended requirements for dune walkover in N.J.A.C. 7:7-10.4 (e) and (f). First, the Department updated the standards for at-grade dune walkovers at single-family homes or duplexes. The fencing options were expanded to include split rail fencing and open handrails as acceptable means of fencing a walkover, in addition to sand fencing, and flexibility was added to allow a walkover to remain unfenced if the municipality in which it is constructed specifically prohibits the fencing of walkovers. New N.J.A.C. 7:7-10.4(e)4 clarifies that any grading or excavation associated with the installation of the walkover does not lower the beach or dune below design specifications. The prior rules' preference for the use of unrolled sand fencing as a base for the at-grade walkover was deleted because newer materials, such as stabilization mats, are relatively easy to place and remove seasonally and are Americans with Disabilities Act-compliant. While the prior rule cited sand fencing as the preferred option because it allows growth of beach grass, frequently-used walkovers do not support the growth of beach grass. A small area designated as a walkover need not support the growth of vegetation.

The Department also deleted the requirement that solid boardwalk type walkovers be elevated at least one foot above the dune. While this requirement was intended to allow sand transfer and vegetation growth

under the walkover, the slight one-foot elevation is not sufficient to support vegetation growth and an unelevated, at-grade walkover allows for sand transfer over the walkover itself.

New requirements for at-grade walkovers at developments other than a single-family home or duplex were added; the prior rules did not contain standards or best management practices for these projects. The first requirement concerns the number of walkovers permitted per site. Each site is limited to one walkover unless the New Jersey 2012 High Resolution Orthophotography reflects that more than one walkover was present on the site as of the date of the image, in which case up to the number of walkovers depicted in the image may be constructed, which is the same requirement as in permit-by-rule 23 and general permit-by-certification 1A, summarized above. However, because these standards apply to developments larger than a single-family home or duplex, where it may be appropriate and beneficial for additional dune walkovers to be allowed to adequately address anticipated foot traffic in a manner that ensures the dune is not negatively impacted, and apply to projects authorized under a general permit or individual permit after detailed Department review, there is an additional alternative for applicants who seek to construct more than one walkover. If an applicant can demonstrate that more than one walkover is necessary to provide access to the beach from the development, more than one walkover can be permitted. The Department will consider several factors in determining whether more than one walkover is necessary. First, the Department will consider the number of people that are served by the development during normal and peak usage times. The length of dune and beach frontage on the site is also a consideration. Sites with a smaller area of beach frontage are less likely to require additional walkovers to meet the needs of their development. The Department will also consider the distribution of development on the site.

The width requirements for walkovers and any associated edging are identical to the width requirements in permit-by-rule 23 and general permit-by-certification 1A. Any grading or excavation associated with installing the walkover cannot lower the beach or dune below design specifications. Finally, sand fencing, split rail fencing, or open handrails must be installed on both sides of the walkover in most cases. This provision requires fencing to prevent degradation of the dune caused by people walking over at multiple, unofficial access points. However, some municipalities do not permit walkovers to be fenced and in those cases, fencing will not be required.

A new rationale was added at N.J.A.C. 7:7-10.4(h) to explain the importance of dunes in the protection of landward development from storm damage.

Construction of structures related to the tourism industry

The 2017 rulemaking also included amendments to general permit 22 at N.J.A.C. 7:7-6.22, which authorizes the construction of certain structures related to the tourism industry at hotels and motels, commercial developments, and multi-family residential developments over 75 units. The Department amended N.J.A.C. 7:7-6.22(a)6i to require the development under this general permit be limited to the most landward one-third of the useable beach berm area. The permit already allowed a structure to occupy a maximum of 33 percent of the total width of the beach berm area, and required that the structure be at least 50 feet landward of the

mean high water line unless the development is on the most landward portion of the beach where the width of the beach does not allow the 50-foot minimum to be met. The rule also required that the structure does not conflict with ocean views or other beach uses. In order to preserve the most waterward portion of the beach berm for public access to the beach and ocean, the Department added the additional requirement that applicants locate development under this general permit within the “upper,” most landward one-third of the beach berm in all cases. This amendment allows for the placement of certain tourism developments on beaches while maintaining beach areas closest to the water for use by the public.

Recreational docks and piers

N.J.A.C. 7:7-12.5 establishes the standards for constructing recreational docks and piers in general water areas. To ensure safe navigation, new N.J.A.C. 7:7-12.5(b)10 requires that photocell lights and reflectors be placed along the dock and on mooring piles starting from a point that is 50 feet outshore of the mean high water line to the end of the dock at 10-foot intervals. The lights and reflectors must be installed and operational within 72 hours of completion of construction. This provision is intended to alert boaters to the presence of a structure when travelling at night or in low light conditions.

Special Management Areas

Filled water's edge

The filled water's edge special area rule, at N.J.A.C. 7:7-9.23, seeks to preserve waterfront areas that were previously created by filling open water areas for water dependent uses, such as marina development. However, through implementation of this rule, the Department became aware that provisions of the rule did not always have the intended result and, in some cases, prevented owners of a water dependent development from further developing their property to keep the water dependent use viable. In addition, some filled water's edge sites may not be suitable for a water dependent development due to the size, configuration, or some other unique aspect of the particular site. However, the rule did not include a mechanism to address such unique circumstances. The regulatory amendments to the filled water's edge rule adopted January 16, 2018 sought to address these issues.

The Department amended N.J.A.C. 7:7-9.23(d), to acknowledge that there may be filled water's edge sites with water access on which a water dependent use is not feasible, and to reference the factors that the Department will take into account in determining if the applicant has demonstrated that such a use is not feasible. Most filled water's edge sites with water access must continue to comply with existing N.J.A.C. 7:7-9.23(d)1, 2, and 3 and, if the site is already developed with a water dependent development, with recodified N.J.A.C. 7:7-9.23(g). However, if the applicant demonstrates that water dependent development is not feasible in accordance with new N.J.A.C. 7:7-9.23(e), non-water dependent development may be permitted by the Department.

N.J.A.C. 7:7-9.23(e) sets forth the factors the Department will consider when determining the feasibility of water dependent development on a filled water's edge site. The first factor is the length of water frontage on the site and the corresponding area of upland to support a water dependent use on the site. This factor

recognizes that there may be situations, such as a generally pie-shaped (triangular) site or other oddly shaped parcel, which results in a large upland area, but too little water frontage to support a water dependent use. Correspondingly, there could be situations where a site with extensive water frontage is too narrow to allow for parking and other amenities necessary to support a water dependent use. Second, the Department will consider the presence of special areas between the upland and navigable water that would preclude approval of a water dependent development. For example, if the waterfront portion of the site abuts shellfish habitat, the Department may determine that a water dependent use, like marina development, is not appropriate and will consider approving non-water dependent development. Third, the Department will consider if water dependent development is compatible with the surrounding development. Fourth, if land or water is contaminated such that a water dependent use would pose an ecological risk or endanger public health, the Department will consider that fact in determining if water dependent development is infeasible. Finally, the Department will also consider conditions unique to the property that result in peculiar and exceptional practical difficulties in the development of a water dependent use which could include the depth of water adjacent to the site, unusual current or other natural conditions, or the ability to obtain authority from the State to use tidelands necessary to support a water dependent use on the site. These new and amended provisions allow the Department to make commonsense determinations of the suitability of a site for water dependent development and allow other types of development on filled water's edge sites as appropriate.

Prior N.J.A.C. 7:7-9.23(d)3 allowed for a mix of water dependent and water oriented uses with other types of development on "large" filled water's edge sites "of about 10 acres or more upland acres" where a greater mix of uses may be acceptable and allows for a reduced waterfront portion on such properties, as long as the non-water related uses do not adversely affect access to or use of the waterfront portion of the site. The Department amended this provision to apply to any filled water's edge site, rather than just "large" sites. Size is just one factor in determining if a mix of uses is appropriate for a site. Removing the size requirement for this provision provides flexibility for owners of water dependent development, such as marinas, to complement their operations with other uses and ensure year-round economic viability of water dependent development as long as other uses do not interfere with access to and use of the water dependent development.

Coastal high hazard areas/ V zones

V zones are areas subject to flooding that are potentially subject to breaking wave heights three feet or more above the tidal stillwater elevation during a 100-year flood. The "100-year flood" refers to a flood that statistically has a one percent chance of being equaled or exceeded in any given year. Development in V zones is particularly vulnerable to damage from flooding and waves during coastal storms. V zones, therefore, require stringent building standards to protect the public from the impacts of flooding and coastal storms. For this reason, the Federal Emergency Management Agency (FEMA) and the New Jersey Department of Community Affairs have incorporated additional standards for buildings located in these areas to ensure that such buildings are suitably resistant to displacement, buoyancy, and structural damage during flood events. Additionally, the Department's Flood Hazard Area Control Act (FHACA) Rules at N.J.A.C. 7:13 include lowest floor elevation requirements designed to protect public health and safety, with amendments previously

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adopted to further align the requirements of the FHACA Rules with equivalent FEMA and Department of Community Affairs Uniform Construction Code (UCC) requirements. The Department made several regulatory amendments to the CZM Rules to align with the FHACA Rules, Federal flood reduction standards, and the UCC to promote wise use of the coast and protect coastal residents and their property from harm while acknowledging the development history of certain areas in the State. In developing these regulatory amendments, Department staff met with representatives of FEMA and New Jersey's Department of Community Affairs.

The Department added a new definition at N.J.A.C. 7:7-1.5 for the term "FEMA flood mapping." This term replaces the term "FIRM," which was deleted. The new definition is consistent with the term in the FHACA Rules and includes effective FEMA Flood Insurance Studies (which include community FIRMs), as well as preliminary or advisory FEMA mapping, if the more recent advisory or proposed (preliminary) mapping results in higher flood elevations, wider floodway limits, greater flow rates, or a greater area included in the V zone than depicted in the most recent effective FEMA Flood Insurance Study. The Department has determined that, considering the detailed analysis conducted by FEMA, advisory or preliminary mapping constitutes the best available flood data. As such, the Department determined that it is the most protective of public health, safety, and welfare to allow for the use of advisory or preliminary maps to determine which activities are appropriate on a given site. The term "FIRM" was replaced with "applicable FEMA flood mapping" wherever it occurred in the CZM Rules (see N.J.A.C. 7:7-6.4(e)2i and iv, 6.5(d)2i and iv, 9.18(a), 15.2(e)3ii(1) and (4), and 15.2(f)2ii(1) and (4)).

The Department made several additional amendments to N.J.A.C. 7:7-9.18, the special area rule that establishes standards for development in coastal high hazard areas. Prior N.J.A.C. 7:7-9.18(b), which prohibited residential development, including hotels and motels, except for certain infill development and development in Atlantic City, and prior N.J.A.C. 7:7-9.18(c), which generally discouraged commercial development, were deleted and replaced with new N.J.A.C. 7:7-9.18(b), (c), (d), and (e). While some of the new requirements are similar to the prior provisions, the new standards are intended to ensure consistency with the FHACA Rules, the UCC, and Federal flood reduction requirements.

New N.J.A.C. 7:7-9.18(b) prohibits residential and commercial development in coastal high hazard areas unless it is provided for under new N.J.A.C. 7:7-9.18(c), (d), (e), or (f). New N.J.A.C. 7:7-9.18(c) establishes the conditions that must be met for residential development, landward of the mean high water line, to be approved in coastal high hazard areas. As in the prior rules, new N.J.A.C. 7:7-9.18(c)1 allows single-family or duplex infill development if it complies with N.J.A.C. 7:7-15.2(e) or (f), but adds the requirement that the development must comply with the Federal flood reduction standards at 44 CFR Part 60 and the Uniform Construction Code. New N.J.A.C. 7:7-9.18(c)2 allows residential development in Atlantic City or in a special urban area within the Hudson River Waterfront Area that complies with the Federal flood reduction standards at 44 CFR Part 60 and the Uniform Construction Code at N.J.A.C. 5:23. Development in a special urban area within the Hudson River Waterfront Area must additionally comply with the special urban area rule at N.J.A.C. 7:7-9.41, and the Hudson River Waterfront rules, N.J.A.C. 7:7-9.46. The prior rules allowed development in

Atlantic City in coastal high hazard areas in accordance with N.J.A.C. 7:7-9.18(g), which was limited to development on existing piers or the boardwalk. This new paragraph, in combination with new N.J.A.C. 7:7-9.18(d) concerning commercial developments, expands the existing Atlantic City exception to more generally refer to development that complies with the Federal flood reduction standards and the UCC. The Department also now allows residential development within special urban areas within the Hudson River Waterfront Area to allow residential development in already densely-developed areas while protecting people and property from flooding by requiring compliance with State construction standards and Federal flood reduction standards.

New N.J.A.C. 7:7-9.18(d) establishes that hotel and commercial development is acceptable in coastal high hazard areas if it is located in Atlantic City or in a special urban area within the Hudson River Waterfront Area, complies with the applicable special area rules for those locations, and complies with the Federal flood reduction standards at 44 CFR Part 60 and the UCC. This provision is intended to steer development to already densely developed areas, allow reasonable hotel and commercial development essential to the tourism economy in key areas of the State, and protect people and property from flooding and coastal storms through compliance with the UCC and Federal standards.

N.J.A.C. 7:7-9.18(e) is a new provision that conditionally allows water dependent development and amusements in coastal high hazard areas throughout the State provided the development complies with the Federal flood reduction standards and the UCC. Water dependent development, such as marinas, is essential to the economy and lifestyle of many coastal communities. If constructed in accordance with applicable standards, these developments are acceptable in coastal high hazard areas and are preferable to permanent residences in order to reduce the number of people in harm's way during storms and flood events. Amusements are an essential component to the State's coastal tourism economy and are similarly preferable to residential development in coastal high hazard areas. If constructed in accordance with the UCC and Federal standards, such development does not pose a significant risk to communities during storms and flood events.

Prior N.J.A.C. 7:7-9.18(d) through (f) were recodified as (g) through (i) to accommodate the above-described amendments. The requirement that development comply with impervious and vegetative cover requirements at recodified N.J.A.C. 7:7-9.18(g) was expanded to include residential development within Atlantic City and within special urban areas in the Hudson River waterfront area by referring to N.J.A.C. 7:7-9.18(c)2. As in the prior rule, infill single family home or duplex development is not required to comply with impervious cover and vegetative cover requirements, in accordance with N.J.A.C. 7:7-13. Prior N.J.A.C. 7:7-9.18(g), which describes acceptable development in coastal high hazard areas in Atlantic City, was deleted because proposed new N.J.A.C. 7:7-9.18(c), (d), and (e) clearly establish what development is acceptable in such areas.

The rule rationale at recodified N.J.A.C. 7:7-9.18(i) was updated to reflect the above-described amendments and to reflect FEMA's change in terminology in referring to V zones on FEMA flood maps as zone V or VE, rather than the previous label of "zone V1-30." FEMA's current flood mapping procedures designate areas as "zone VE" when a base flood elevation is provided and as "zone V" when a base flood elevation is not

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provided. Older maps number V zones from 1 through 30 based on the base flood elevation in relation to NGVD, while newer maps simply label a zone “zone VE” for every V zone where a base flood elevation is provided. To reflect this simplification, which is reflected in currently-available FEMA mapping, the Department is deleting the reference to the numbered V zones and instead referring to “zone V” and zone “VE.”

To facilitate the above-described amendments, the Department added a definition of “UCC,” which is defined as “the Uniform Construction Code, N.J.A.C. 5:23.”

While some of the adopted regulatory amendments affect what type of development, and in what areas of the State, may be allowed in coastal high hazard areas, the rules continue to strictly limit development in these areas to ensure protection of people and property through limiting most development to areas which are already substantially developed and applying stringent design and construction standards to any structure proposed in these areas.

Riparian zones

Riparian zones are defined as the land and vegetation within and adjacent to a regulated water. A riparian zone exists along both sides of every regulated water and includes the regulated water itself. The CZM and FHACA rules establish riparian zones as the area within 50, 150, or 300 feet of a regulated water, except certain lands and waters, such as the Atlantic Ocean, manmade lagoons, the barrier island complex, and certain manmade waters do not have a riparian zone. Riparian zones are regulated under the FHACA Rules and the CZM Rules. In June 2016, the Department adopted comprehensive amendments to the FHACA Rules with related amendments to the CZM Rules. In this rulemaking, the Department repealed and replaced the riparian zone rule at N.J.A.C. 7:7-9.26 with standards that are consistent with the FHACA Rules. For Department permitting purposes, where both a flood hazard area permit (under the FHACA Rules) and coastal permit (under the CZM Rules) are required, applicants may instead apply for and receive just a coastal permit, provided the activities authorized meet all applicable requirements of the FHACA Rules. The updated riparian zone standards at N.J.A.C. 7:7-9.26 facilitate this process. Specifically, the adopted section includes the method for determining the location and width of riparian zones along regulated waters, expansion of the list of regulated waters that do not have a riparian zone, and incorporation of the substance of the definition of “top of bank” from the flood hazard area rules, as well as other changes maintaining consistency between the two chapters and clarifying the prior provisions. The establishment of a 150-foot riparian zone for regulated waters that flow through an area that contains acid soil deposits from the prior version of the rule was not continued in the new rule. The 2016 regulatory amendments to the FHACA Rules and CZM Rules deleted all standards related to acid-producing soil deposits. The Department determined that the local Soil Conservation Districts have the training and expertise to guide prospective developers to design projects that avoid exposing acid-producing soil deposits and mitigate any impacts from such exposure during construction more effectively than the prior riparian zone standards. The designation of a 150-foot riparian zone in areas with acid soils had resulted in unintended adverse impacts and implementation issues. For example, requiring development and stormwater discharges to be located outside the 150-foot riparian zone along waters

flowing through areas containing acid producing soil has caused significant erosion, leading to increases in the sediment load of the regulated water the riparian zone is intended to protect as well as lowered pH levels within these waters, which threaten aquatic biota. The adopted regulatory amendments leave consideration of acid soil deposits to those with the appropriate expertise (local Soil Conservation Districts), avoid redundant regulation, and avoid further unanticipated consequences. Under the adopted rules, areas with acid soils have a 50-foot riparian zone, unless they meet other criteria for a 150-foot or 300-foot riparian zone, such as the presence of Category One waters, certain trout waters, or threatened or endangered species that are critically dependent on the regulated water for survival.

In June 2017, the Department adopted additional regulatory amendments to the FHACA Rules and CZM Rules related to activities in riparian zones. First, general permit 4 at N.J.A.C. 7:7-6.4, which authorizes the construction of one or two single-family homes or duplexes, was amended to correct an unintentional prohibition on the use of the general permit in riparian zones. In the prior rule, development under general permit 4 was required to comply with several special area rules, including the riparian zone special area rule at N.J.A.C. 7:7-9.26. This rule, at N.J.A.C. 7:7-9.26(e), requires all development in riparian zones authorized under the CZM Rules to conform to the requirements applicable to a flood hazard area individual permit, permit-by-rule, or general permit, found in N.J.A.C. 7:13. However, the FHACA Rules do not have provisions allowing the construction of two single-family homes or duplexes. This discrepancy essentially prevented the use of coastal general permit 4 in riparian zones, which was not the Department's intent when promulgating this general permit. To correct this unintended conflict, the Department deleted the reference to N.J.A.C. 7:7-9.26, Riparian zones, and instead established specific standards for activities under general permit 4 in a riparian zone. When constructing one or two single-family homes or duplexes in a riparian zone under general permit 4, no disturbance can be located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water. This requirement is consistent with the requirement in the FHACA Rules at N.J.A.C. 7:13-11.2. The Department additionally added riparian zone disturbance limits for 50-foot, 150-foot, and 300-foot riparian zones, consistent with the disturbance limits applicable to the construction of one single-family home or duplex in the FHACA Rules.

The housing use rule at N.J.A.C. 7:7-15.2 establishes individual permit standards for the construction of single-family homes and duplexes in the coastal zone. As part of the June 2017 amendments, the Department incorporated the riparian zone standards added to general permit 4 at N.J.A.C. 7:7-15.2(e)2 for the construction of one or two single-family homes or duplexes. The Department also added a reference to N.J.A.C. 7:7-9.26, Riparian zones, to the standards for expansion or reconstruction of a legally constructed habitable single-family home or duplex and/or accessory development at N.J.A.C. 7:7-15.2(f)1 to ensure these activities do not adversely impact riparian zones.

Coastal Wetlands

In the rulemaking adopted on October 17, 2016, the Department amended coastal wetlands boundaries on coastal wetlands maps applicable to the Holgate section of Long Beach Township, Ocean County, promulgated

under and listed in the CZM Rules, N.J.A.C. 7:7. On March 10, 2014, the Department received a petition for rulemaking requesting that the Department amend Coastal Wetlands Maps 252-2112 and 259-2112 to exclude a portion of property from the area of mapped coastal wetlands. The petitioners contended that the area no longer met the definition of coastal wetlands established in the Wetlands Act of 1970 (N.J.S.A 13:9A-1 et seq.) due to overwash during Superstorm Sandy. Department staff concluded that overwash had indeed occurred during Superstorm Sandy, resulting in 2.3 to 5.4 feet of sand being deposited on what was previously coastal wetlands. Staff conducted site investigations and determined that a portion of the petitioners' property no longer met the definition of a coastal wetland, while areas on adjacent properties which were not mapped as coastal wetlands now met the definition in the Wetlands Act. During the public comment period, an adjacent landowner provided information to indicate that the area of wetlands proposed to be mapped on their property was incorrect and overestimated the area of wetlands. Considering this information, and verifying it through a subsequent site inspection, the Department published a Notice of Substantial Change to the proposed map boundary. As adopted, the amendments to Coastal Wetlands Maps 252-2112 and 259-2112 resulted in 1.15 acres previously mapped as coastal wetlands being mapped as uplands and 0.78 acres formerly not mapped as coastal wetlands being mapped as coastal wetlands, across all properties considered in the proposal and substantial change notice. The adopted map amendments accurately reflect the conditions in the area, which changed since the original mapping effort in the 1970s and 80s, most recently due to overwash during Superstorm Sandy. The map amendments do not affect the standards for regulated activities in coastal wetlands.

Boundaries

The regulatory amendments and new rules adopted from 2016 through 2018 do not change the jurisdictional boundaries of the NJCMP. As discussed in the section above, amendments adopted in October 2016 update the coastal wetlands boundaries applicable to certain properties in Holgate to reflect current conditions; however, these amendments do not change the overall coastal zone boundary for areas under the jurisdiction of the NJCMP.

Authorities and Organization

Rule adoption

Because all of the changes described in this document were made to the coastal rules, they are by definition changes to the "authorities and organization" program approvability area. See the other sections of this summary and Appendix 1 for specific rule changes.

CAFRA findings

CAFRA at N.J.S.A. 13:19-10 is an enabling statute of the CZM Rules. In Hackensack Riverkeeper, Inc. and NY/NJ Baykeeper v. New Jersey Department of Environmental Protection, Docket No. A-1752-12T3 (App. Div. Dec. 22, 2015), the Superior Court, Appellate Division analyzed statutory authority granted to the Department and found that the Department did not possess the legislative authority to require public access as a condition of a permit approval granted pursuant to CAFRA or the Waterfront Development Law. In response to the court decision, the Legislature passed, and the Governor signed into law P.L. 2015, c. 260, which amended both CAFRA and the Waterfront Development Law to explicitly confirm the Department's longstanding authority and practice to require public access in its approval of CAFRA and waterfront development permit applications. The law amended the findings that must be made for the Department to issue a CAFRA permit to add the following:

"Provides, pursuant to standards established by rule or regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), on-site public access to the waterfront and adjacent shoreline, or off-site public access to the waterfront and adjacent shoreline if on-site public access is not feasible as determined by the department."

The Department has incorporated this statutory change into the CZM Rules. N.J.A.C. 7:7-1.4(b), which identifies the findings the Department must make concerning a proposed development in order to approve a CAFRA permit, was amended to include this finding. The Department applies its public access requirements on a case-by-case and fact-sensitive basis, taking into account the particular activity and site. The specific factors the Department is to consider are incorporated in N.J.A.C. 7:7-16.9. The Department will continue to apply these public access provisions in accordance with the Public Trust Doctrine and all applicable constitutional requirements to balance the public's right to use and access coastal waters with the individual rights of property owners.

Rule rationales

Although not considered enforceable policies of the NJCMP, the Department includes rationales for a number of sections of the CZM Rules to provide background information, scientific justification, or other information to inform the interpretation of the rule language and explain the Department's policies. Prior to the July 6, 2015 adoption of the consolidation of the Coastal Permit Program rules and Coastal Zone Management Rules, with amendments, rule rationales for various sections of the CZM Rules were referenced in the rules, but the rationale itself did not appear in the Administrative Code. Instead, the Code referenced the process for review of the rationale. As part of the rulemaking to consolidate the prior two coastal chapters into one chapter, most of the existing rule rationales were updated and the complete rationale incorporated into the Code version of the rules. However, several rationales were not ready for update at that time. Rather than incorporating the out-of-date rationales into the rules, those sections continued to include reference to the existence of the rationale and the process to be followed to review the rationale. These rationale statements have since been updated and were published in the New Jersey Administrative Code as part of this rulemaking.

The use rules, N.J.A.C. 7:7-15, establish conditions applicable to particular kinds of uses. Several use rules include standards for different types of development that fall within one overall category of use within a single section of the rules. Previously, each subsection had its own rationale statement. In this rulemaking, the Department combined and updated each smaller rationale statement to create one rationale statement for the entire section, with the exception of N.J.A.C. 7:7-15.4, which due to length and range of topics covered, maintains rationales for each subsection of specific standards.

While the prior rules contained rationales for most rules in N.J.A.C. 7:7-9, 12, 15, and 16, several subchapters or sections that would benefit from further background and information did not include any rule rationales. To facilitate understanding of the CZM Rules, the Department is adopted a number of new rule rationales for the following rules: N.J.A.C. 7:7-9.46, Hudson River waterfront area; N.J.A.C. 7:7-9.47, Atlantic City; all sections in N.J.A.C. 7:7-10, Standards for beach and dune activities, except for N.J.A.C. 7:7-10.1, Purpose and scope; all sections in N.J.A.C. 7:7-11, Standards for conducting and reporting the results of an endangered or threatened wildlife or plant species habitat impact assessment and/or endangered or threatened wildlife species habitat evaluation; all sections in N.J.A.C. 7:7-13, Requirements for impervious cover and vegetative cover for general land areas and certain special areas except N.J.A.C. 7:7-13.2, Definitions; N.J.A.C. 7:7-14.1, Rule on location of linear development; N.J.A.C. 7:7-14.2, Basic location rule; N.J.A.C. 7:7-15.4(b), standards for siting new energy facilities; and N.J.A.C. 7:7-16.6, Stormwater management.

Several rationales present in the previous rules were updated and a number of rationales were amended for minor corrections. See Appendix 1.

Coordination, Public Involvement, and the National Interest

Public notice for maintenance dredging

The Department has amended the public notice requirements at N.J.A.C. 7:7-24.3(c)5 and 24.4(c)5 to add maintenance dredging of a State navigation channel of one half-mile or longer to the types of activities where newspaper notice and notice to properties owners within 200 feet of any proposed above-ground structure is required instead of notice to all property owners within 200 feet of the site. Maintenance dredging does not involve above-ground structures, so public notice for these projects consists of newspaper notice in accordance with N.J.A.C. 7:7-24.5. Maintenance dredging projects are linear projects with similarly regional effects to linear development and shore protection projects, and thus have the same public notice requirements.

Appendix 1: Tables of Rule Changes

SUBCHAPTER 1. GENERAL PROVISIONS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-1.4 Standards for evaluating permit applications	Added: A statutory amendment to the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. by P.L. 2015, c. 260 amended the findings that must be made for the Department to issue a CAFRA permit for a proposed development to include the finding that the development, in accordance with Department rules and regulations, provides on-site public access to the waterfront and shore, or off-site public access where on-site access is not feasible. This finding was added to the list of CAFRA findings at N.J.A.C. 7:7-1.4(b)	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-1.5 Definitions	Added definitions of: • “FEMA flood mapping” • “UCC”	January 16, 2018	January 16, 2018	

SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
N.J.A.C. 7:7-2.2 CAFRA	Modified: - Amended language describing the authorizing mechanism for solar panels on sanitary landfills for consistency with other Department rules - Clarified scope of exemption for dune walkovers at single-family homes and duplexes under CAFRA	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3; N.J.S.A. 13:1D-9; N.J.S.A. 13:1D-29 et seq.; N.J.S.A. 13:9A-1 et seq.; N.J.S.A. 13:19-1 et seq.; State Permitting Program
N.J.A.C. 7:7-2.3 Coastal wetlands	Modified: Italicized scientific names of coastal wetlands plant species	January 16, 2018	January 16, 2018	
N.J.A.C. 7:7-2.4 Waterfront development	Modified: Amended language describing the authorizing mechanism for solar panels on sanitary landfills for consistency with other Department rules	July 6, 2015	July 6, 2015	

SUBCHAPTER 4. PERMITS-BY-RULE

PBR= permit-by-rule

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-4.2 Permit-by-rule 2 – development of a single-family home or duplex and/or accessory development on a bulkheaded lagoon lot	Modified Corrected grammatical error	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
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	Modified Corrected grammatical error	January 16, 2018	January 16, 2018	
7:7-4.14 Permit-by-rule 14 – reconfiguration of any legally existing dock, wharf, or pier at a legally existing marina	Modified - Clarified that scope of activities authorized under this PBR includes reconfiguration of pilings - Corrected grammatical errors	January 16, 2018	January 16, 2018	
7:7-7.21 Permit-by-rule 21 – application of herbicide within coastal wetlands to control invasive plant species	Modified: Replaced general term “pesticide” with more specific term “herbicide” to accurately reflect scope of activities authorized under PBR 21	January 16, 2018	January 16, 2018	
7:7-4.22 Permit-by-rule 22- reconstruction of a swimming pool, spa or hot tub and associated decking on a bulkheaded lot without wetlands	Added: Prohibition of PBR 22 activities on coastal bluffs	January 16, 2018	January 16, 2018	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-4.23 Permit-by-rule 23 - installation of an at-grade dune walkover at a residential, commercial, or public development other than a single-family home or duplex	Added: • New permit-by-rule to authorize installation of at-grade walkovers at developments other than single-family home/duplex (where such activities are exempt from permit requirement) • PBR 23 authorizes construction of 1 walkover, or up to the number that is depicted on 2012 New Jersey 2012 High Resolution Orthophotography • Installation cannot involve grading • Non-commercial properties: at most 6 ft wide, total width including walkover, fencing, and edging at most 8 ft • Commercial: at most 10 ft, total width up to 12ft • Walkover must be fenced on each side unless prohibited by municipality • The activity must comply with any applicable management plan for protection of State or Federally listed threatened or endangered species, as approved by the Department and the USFWS, and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 5. GENERAL PERMITS-BY-CERTIFICATION

GPBC= general permit-by-certification

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-5.3 General permit-by-certification 1A – installation of an elevated timber dune walkover at a residential, commercial, or public development other than a single-family home or duplex	Added: • New general permit-by-certification to authorize installation of elevated timber dune walkovers at developments other than single-family home/duplex (where such activities are exempt from permit requirement) • GPBC 1A authorizes construction of 1 walkover, or up to the number that is depicted on 2012 New Jersey 2012 High Resolution Orthophotography • Non-commercial properties: at most 6 ft wide, total width including walkover, fencing, and edging at most 8 ft • Commercial: at most 10 ft, total width up to 12ft • The activity must comply with any applicable management plan for protection of State or Federally listed threatened or endangered species, as approved by the Department and the USFWS, and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36	January 16, 2018	July 2, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 6. GENERAL PERMITS

GP= general permit

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-6.2 General permit 2 – activities on a beach and dune	Modified: - Renamed GP to reflect scope of activities authorized - Reorganized/updated references to beach and dune activity standards Added: - Requirement that activities are conducted accordance with the Operation and Maintenance Manual associated with the Federal or State project or, if such a manual does not exist, the activity cannot jeopardize the design template for the engineered beach or dune - Requirement that activities comply with any applicable management plan for protection of State-listed and Federally listed threatened or endangered species and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-6.3 General permit 3 - voluntary reconstruction of certain residential or commercial development	Modified: Corrected grammatical error	January 16, 2018	January 16, 2018	
7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes	Added: - Riparian zone standards consistent with FHACA Rules Modified: - Updated citations Deleted: - Reference to N.J.A.C. 7:7-9.26 (replaced with enumerated standards for use of GP4 in riparian zones)	July 17, 2017	July 17, 2017	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes	Deleted: - Removed requirement that a single-family home or duplex is not located on a bulkheaded lagoon lot to be authorized under the GP (mistakenly retained in 2015 rulemaking) Modified: - Updated citation - Replaced "FIRM" with "FEMA flood mapping"	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-6.5 General permit 5 - expansion, or reconstruction (with or without expansion), of a single-family home or duplex	Modified: Replaced "FIRM" with "FEMA flood mapping"	January 16, 2018	January 16, 2018	
7:7-6.17 General permit 17 – stabilization of eroded shorelines	Modified: Corrected typographical error	January 16, 2018	January 16, 2018	
7:7-6.22 General permit 22 – construction of certain structures related to the tourism industry at hotels and motels commercial development, and multi-family residential developments over 75 units	Added: Requirement that development is limited to the most landward one-third of the useable beach berm area	January 16, 2018	January 16, 2018	
7:7-6.23 General permit 23 – geotechnical survey borings	Deleted: Requirement to manage acid-producing soils in accordance with FHACA Rules	June 20, 2016	June 20, 2016	
	Modified: Corrected grammatical error	January 16, 2018	January 16, 2018	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-6.30 General permit 30 – commercial shellfish aquaculture activities	Modified: Updated web address for U.S. Coast Guard requirements	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq.
7:7-6.32 General permit 32 – application of herbicide within coastal wetlands to control invasive species	Modified: Replaced general term “pesticide” with more specific term “herbicide” to accurately reflect scope of activities authorized under GP 32	January 16, 2018	January 16, 2018	N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 8. INDIVIDUAL PERMITS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-8.2 Duration of an individual permit	Added: Clarification that coastal wetlands individual permit cannot be extended	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 9. SPECIAL AREAS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-9.2 Shellfish habitat	Modified: - Rule rationale to include discussion of Memorandum of Understanding between Assistant Commissioners of Land Use Management and Natural and Historic Resources for use of money from the dedicated account for shellfish habitat mitigation - Other minor updates and clarifications to rule rationale Deleted: - Deleted reference to "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993); this inventory is included within the publication, "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present), which remains referenced in this rule.	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-9.3 Surf clam areas	Modified: Corrected grammatical error	January 16, 2018	January 16, 2018	
7:7-9.5 Finish migratory pathways	Modified: Corrected, updated, and italicized species scientific names	January 16, 2018	January 16, 2018	
7:7-9.6 Submerged vegetation habitat	Modified: Minor corrections to spelling and grammar in rule rationale	January 16, 2018	January 16, 2018	
7:7-9.8 Canals	Modified: Minor update to rule rationale	January 16, 2018	January 16, 2018	
7:7-9.12 Submerged infrastructure routes	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-9.13 Shipwreck and artificial reef habitat	Modified: Updated rule rationale	January 16, 2018	January 16, 2018	
7:7-9.14 Wet borrow pits	Modified: Clarified rule rationale			

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-9.16 Dunes	Modified: - Rule rationale updated to include citation to study demonstrating protective function of engineered dunes during Superstorm Sandy - Minor corrections to rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-9.17 Overwash areas	Modified: Minor grammatical correction in rule rationale	January 16, 2018	January 16, 2018	
7:7-9.18 Coastal high hazard areas	Added: - New standards for development in coastal high hazard areas - Residential development landward of the mean high water line acceptable in Atlantic City and special urban areas within the Hudson River Waterfront Area if it complies with applicable special area rules, Federal flood reduction standards at 44 CFR Part 60, and the Uniform Construction Code (UCC) at N.J.A.C. 5:23 - Hotel and commercial development acceptable in Atlantic City and special urban areas within the Hudson River Waterfront Area if it complies with applicable special area rules, Federal flood reduction standards at 44 CFR Part 60, and the Uniform Construction Code (UCC) at N.J.A.C. 5:23. - Water dependent development & amusements are conditionally acceptable in coastal high hazard areas if compliant with Federal flood reduction standards at 44 CFR Part 60, and UCC	January 16, 2018	January 16, 2018	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-9.18 Coastal high hazard areas (continues)	Modified: - Definition of coastal high hazard area updated to replace “FIRM” with “FEMA flood mapping” - Provision allowing single-family home and duplex infill development meeting the standards of N.J.A.C. 7:7-15.2(e) or (f) updated to require compliance with 44 CFR Part 60 and UCC - Rule rationale updated to reflect new provisions Deleted: - Provision discouraging commercial development in coastal high hazard areas - Subsection on development in coastal high hazard areas in Atlantic City			N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-9.19 Erosion hazard areas	Modified: Updated rationale to incorporate current source for shoreline change maps	January 16, 2018	January 16, 2018	
7:7-9.20 Barrier island corridor	Modified: Spelling and grammar corrections	January 16, 2018	January 16, 2018	
7:7-9.23 Filled water’s edge	Added: - Flexibility to construct a non-water dependent use if water-dependent use is not feasible due to amount of water frontage vs. upland, presence of special areas, incompatibility of a water dependent use with surrounding development, land or water contamination, and/or unique site-specific conditions that result in peculiar and exceptional practical difficulties in the development of a water dependent development Modified: - Provision allowing for a mix of water dependent and non-water dependent uses to remove the need for the site to be “large” for the Department to consider such a mix Rule rationale to reflect new provisions	January 16, 2018	January 16, 2018	
7:7-9.25 Flood hazard areas	Modified: Clarified that prohibition on development within 100 feet of a navigable water body does not apply to the Atlantic Ocean	January 16, 2018	January 16, 2018	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-9.26 Riparian zones	Added: - New rule to maintain consistency with FHACA Rules, including the method for determining the location and width of riparian zones along regulated waters, expansion of the list of regulated waters that do not have a riparian zone, and incorporation of the substance of the definition of “top of bank” Deleted: - Prior rule, including standards related to acid-producing soil deposits	June 20, 2016	June 20, 2016	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-9.27 Wetlands	Modified: Updated citations to reflect regulatory amendments to FWPA Rules	December 18, 2017	December 18, 2017	
7:7-9.28 Wetlands buffers	Modified: Minor grammatical corrections in rationale	January 16, 2018	January 16, 2018	
7:7-9.30 Intermittent stream corridors	Modified: Minor grammatical correction in rationale	January 16, 2018	January 16, 2018	
7:7-9.32 Steep slopes	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-9.33 Dry borrow pits	Modified: Minor corrections and updates to rule rationale	January 16, 2018	January 16, 2018	
7:7-9.38 Public open space	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-9.40 Excluded Federal lands	Modified: Grammatical correction in rule rationale	January 16, 2018	January 16, 2018	
7:7-9.43 Meadowlands District	Modified: - Updated rule title from “Hackensack Meadowlands District” - Replaced “Meadowlands Commission” with “Sports and Exposition Authority” throughout to accurately reflect agency with jurisdiction over activities in the Meadowlands District under New Jersey law	January 16, 2018	January 16, 2018	
7:7-9.44 Wild and scenic river corridors	Modified: - Minor correction - Updated information on accessing of Chapter 16, “Streambank and Shoreline Stabilization Protection,” of the National Resources Conservation Service Engineering Handbook, National Engineering Handbook (NEH), Part 650, 1996	January 16, 2018	January 16, 2018	

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-9.45 Geodetic control marks	Modified: Very minor grammatical change in rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-9.46 Hudson River waterfront area	Added: New rule rationale	January 16, 2018	January 16, 2018	
7:7-9.47 Atlantic City	Added: New rule rationale	January 16, 2018	January 16, 2018	

SUBCHAPTER 10. STANDARDS FOR BEACH AND DUNE ACTIVITIES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-10.2 Standards applicable to routine beach maintenance	Added: New rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-10.3 Standards applicable to emergency post-storm beach restoration	Added: New rule rationale	January 16, 2018	January 16, 2018	
7:7-10.4 Standards applicable to dune creation and maintenance	Modified: - Standards for at-grade walkovers at single-family homes and duplexed updated to reflect current practice and prohibit lowering of beach or dune below design specifications Added: - New standards for at-grade walkovers at other developments - New rule rationale	January 16, 2018	January 16, 2018	
7:7-10.5 Standards applicable to dune creation and maintenance	Added: New rule rationale	January 16, 2018	January 16, 2018	

SUBCHAPTER 11. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-11.1 Purpose and scope	Added: New rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-11.2 Standards for conducting endangered or threatened wildlife or plant species habitat assessment	Added: - New rule rationale Modified: - Grammatical correction	January 16, 2018	January 16, 2018	
7:7-11.3 Standards for conducting endangered or threatened wildlife or plant species habitat evaluation	Added: New rule rationale	January 16, 2018	January 16, 2018	
7:7-11.4 Standards for reporting the results of impact assessment and habitat evaluations	Added: - New rule rationale Modified: - Grammatical correction	January 16, 2018	January 16, 2018	

SUBCHAPTER 12. GENERAL WATER AREAS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-12.5 Recreational docks and piers	Added: - Provision requiring photocell lights and reflectors to be placed along the dock and on mooring piles, starting 50 feet outshore of the mean high water line to the end of the dock in 10-foot intervals. Lights must be installed and operational within 72 hours of completion of construction. Modified: - Minor grammatical correction in rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-12.9 Dredged material disposal	Modified: Minor grammatical correction	January 16, 2018	January 16, 2018	
7:7-12.15 Submerged pipelines	Modified: Minor grammatical correction in rule rationale	January 16, 2018	January 16, 2018	
7:7-12.16 Overhead transmission lines	Modified: Minor grammatical correction in rule rationale	January 16, 2018	January 16, 2018	
7:7-12.20 Vertical wake or wave attenuation structures	Modified: Minor grammatical correction in rule rationale	January 16, 2018	January 16, 2018	
7:7-12.21 Submerged cables	Modified: Minor grammatical correction	January 16, 2018	January 16, 2018	

SUBCHAPTER 13. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER

The NJCMP is not including Subchapter 13 in this program change submission.

SUBCHAPTER 14. GENERAL LOCATION RULES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-14.1 Rule on location of linear development	Added: New rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq.
7:7-14.2 Basic location rule	Added: New rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 15. USE RULES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-15.2 Housing	Added: - New riparian zone standards for construction of single-family home or duplex and/or accessory development consistent with FHACA Rules - Require compliance with riparian zones special area rule for expansion/ reconstruction of single-family home or duplex and/or accessory development Modified: - Updated citations	July 17, 2017	July 17, 2017	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
	Modified: - Amendments throughout to replace “FIRM” with “FEMA flood mapping” - Consolidated and updated subsection rationales in new overall rule rationale - Minor grammatical corrections	January 16, 2018	January 16, 2018	
7:7-15.3 Resort/recreational	Modified: - Consolidated and updated subsection rationales in new overall rule rationale - Minor grammatical corrections	January 16, 2018	January 16, 2018	
7:7-15.4 Energy facility	Added: - New rationale for standards relevant to siting of new energy facilities Modified: - Minor grammatical corrections and clarifying changes that do not affect meaning	January 16, 2018	January 16, 2018	
7:7-15.5 Transportation	Modified: Consolidated and updated subsection rationales in new overall rule rationale	January 16, 2018	January 16, 2018	

7:7-15.6 Public facility	Modified: Consolidated and updated subsection rationales in new overall rule rationale	January 16, 2018	January 16, 2018
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NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-15.7 Industry	Modified: Minor changes to grammar and language in rule rationale that do not affect meaning	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-15.9 Ports	Modified: Minor changes to grammar and language in rule rationale that do not affect meaning	January 16, 2018	January 16, 2018	
7:7-15.10 Commercial facility	Modified: Consolidated and updated subsection rationales in new overall rule rationale	January 16, 2018	January 16, 2018	
7:7-15.11 Coastal engineering	Modified: - Updated web address to access shore protection guidance - Minor grammatical corrections in rule rationale	January 16, 2018	January 16, 2018	

SUBCHAPTER 16. RESOURCE RULES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-16.2 Marine fish and fisheries	Modified: - Minor grammatical correction - Clarifying language changes in rule rationale	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-16.3 Water quality	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-16.5 Groundwater use	Modified: Corrections/clarifications in rule rationale	January 16, 2018	January 16, 2018	
7:7-16.6 Stormwater management	Added: New rule rationale	January 16, 2018	January 16, 2018	
7:7-16.7 Vegetation	Modified: Minor correction	January 16, 2018	January 16, 2018	
7:7-16.8 Air quality	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-16.12 Traffic	Added: Published rule rationale	January 16, 2018	January 16, 2018	
7:7-16.13 Subsurface sewage disposal systems	Modified: Minor clarifying changes in rule rationale	January 16, 2018	January 16, 2018	

SUBCHAPTER 17. MITIGATION

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-17.5 Property suitable for mitigation	Modified: Requirement for approval from Green Acres expanded to include mitigation on land that is encumbered with Green Acres restrictions, in addition to land acquired with Green Acres funding	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation	Modified: Updated citations to reflect regulatory amendments to FWPA Rules	December 18, 2017	December 18, 2017	
7:7-17.12 Requirements for riparian zone mitigation	Modified: Updated citations to reflect regulatory amendments to FHACA Rules	June 20, 2016	June 20, 2016	
7:7-17.14 Wetlands mitigation hierarchy	Modified: Updated citations to reflect regulatory amendments to FWPA Rules	December 18, 2017	December 18, 2017	

SUBCHAPTER 19. RELAXATION OF PROCEDURES; RECONSIDERATION OF APPLICATION OF RULES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-19.2 Reconsideration of the application of a rule(s) in this chapter	Modified: • Clarified length of comment periods on reconsideration initiation and decision • Corrected citations	July 6, 2015	July 6, 2015	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 22. Pre-application conferences

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-22.2 Request for a pre-application conference; scheduling; information required	Modified: Updated address of the Office of Dredging and Sediment Technology to reflect current Department organization	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 23. APPLICATION REQUIREMENTS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-23.2 General application requirements	Added: - Expanded list of persons who may submit an application to include “a person that has the legal authority to perform the activities proposed in the application on the site and to carry out all requirements of this chapter. - Explanation of what constitutes “written consent from the holder(s) of the right-of-way or easement” for a gas pipeline located within a municipally-owned right-of-way	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq.
7:7-23.6 Additional requirements specific to an application for an individual permit	Modified: - Clarified description of activities that require additional documents from the Pinelands Commission - Updated list of acceptable documents to remove Notice of Filing	January 16, 2018	January 16, 2018	State Permitting Program

SUBCHAPTER 24. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-24.1 Purpose and scope	Modified: Corrected citation	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program
7:7-24.3 Contents and recipients of public notice of an application	Modified: Clarified description of activities that require sending an entire copy of an application to the New Jersey Pinelands Commission	January 16, 2018	January 16, 2018	
	Added: Added maintenance dredging of a State navigation channel of one- half mile or longer to list of applications that require public notice to property owners within 200 feet of any proposed above ground structure and publication of newspaper notice	December 18, 2017	December 18, 2017	
7:7-24.4 Additional requirements for public notice of an application for a CAFRA individual permit	Added: Added maintenance dredging of a State navigation channel of one- half mile or longer to list of CAFRA individual permit applications that require public notice to property owners within 200 feet of any proposed above ground structure and publication of newspaper notice	December 18, 2017	December 18, 2017	

SUBCHAPTER 25. Application fees

The NJCMP is not including Subchapter 25 in this program change submission.

SUBCHAPTER 26. APPLICATION REVIEW

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-26.5 CAFRA individual permit—public hearing	Modified: Corrected grammar	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

SUBCHAPTER 27. PERMIT CONDITIONS; MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF AUTHORIZATIONS AND PERMITS

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7-27.3 Extension of an authorization under a general permit or waterfront development individual permit for activities waterward of the mean high water line	Modified: Clarified that the ability to extend an individual permit applies to individual permits for activities waterward of the mean high water line.	January 16, 2018	January 16, 2018	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

APPENDICES

NJ Administrative Code Citation (N.J.A.C.)	Summary of change	Date adopted by State	Date Effective in State	Enforcement Mechanism
7:7, Appendix D COASTAL WETLANDS MAPS (Incorporated by reference at N.J.A.C. 7:7- 2.3(c))	Modified Updated coastal wetlands boundaries depicted on Coastal Wetlands Map 252-2112 and Coastal Wetland Map 259-2112	10/17/2016	10/17/2016	N.J.S.A. 12:5-3 N.J.S.A. 13:1D-9 N.J.S.A. 13:1D-29 et seq. N.J.S.A. 13:9A-1 et seq. N.J.S.A. 13:19-1 et seq. State Permitting Program

Appendix 2: Discussion of Additional Program Change Approval Criteria

In accordance with the draft rule changes to NOAA's program change approval procedures, the following sections address additional criteria for approving the routine program change to the NJCMP.

2A. Changes or additions to the State's federal consistency list or geographic location descriptions

The Department is not requesting approval of any changes or additions to the federal consistency list or geographic location descriptions at this time.

2B. Changes to Necessary Data and Information

The Department is not requesting approval of any changes to Necessary Data and Information.

2C. NOAA's decision criteria

The Department believes that the CZM Rules, as amended, meet NOAA's eight decision criteria for enforceable policies.

2D. Impacts relating to other federal laws

The adopted rules do not impact any federal laws. Some of the CZM Rules serve to support the operation of federal laws, as described below. In no case does any provision attempt to supersede or infringe upon federal law. In addition, the following condition applies to all permits issued under the CZM Rules: "The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a coastal permit."

1. Resources or interests of any federally-recognized American Indian or Alaska Native tribal government

The CZM Rules do not affect the resources or interests of American Indian tribal government.

2. Threatened or endangered species under the federal Endangered Species Act

The adopted rules maintain protections for threatened and endangered species under several provisions, including N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats and N.J.A.C. 7:7-9.37, Critical wildlife habitats. Timing restrictions on certain activities, such as beach maintenance and dredging, are applied to protect threatened and endangered species. Subchapter 11 (N.J.A.C. 7:7-11) sets forth standards for conducting and reporting the results of or threatened wildlife or plant species habitat

impact assessments and endangered or threatened wildlife species habitat evaluations, which allow the Department to assess whether a proposed activity in the coastal zone would impact threatened or endangered species, including those protected under the ESA. New permits authorizing the installation of at-grade dune walkovers and the construction of elevated timber dune walkovers require compliance with any applicable management plan for protection of State and Federally listed threatened and endangered species approved by the Department and USFWS and/or comply with the endangered or threatened wildlife or vegetation species habitat rule at N.J.A.C. 7:7-9.36 and the critical wildlife habitat rule at N.J.A.C. 7:7-9.37.

3. Historic properties designated under the National Historic Preservation Act

The adopted rules maintain protection of historic resources, including properties designated under the National Historic Preservation Act. N.J.A.C. 7:7-9.34 establishes standards for historic and archaeological resources. These standards have not been substantively amended since their last approval by OCM.

4. Essential fish habitat designated under the Magnuson Stevens Fishery Conservation and Management Act

The adopted rules maintain protections of fish habitat under various provisions, including: N.J.A.C. 7:7-9.5, Finfish migratory pathways; N.J.A.C. 7:7-9.13, Shipwreck and artificial reef habitats; and N.J.A.C. 7:7-16.2, Marine fish and fisheries. These rules were not substantively amended since their last approval by OCM.

5. Marine mammals managed under the Marine Mammal Protection Act

The CZM Rules do not contain any specific standards related to the Marine Mammal Protection Act.

6. Other resources managed under other federal agencies

N.J.A.C. 7:7-9.44 contains standards for development in wild and scenic river corridors, including all rivers designated into the National Wild and Scenic Rivers System and any rivers or segments thereof being studied for possible designation into that system pursuant to the National Wild and Scenic Rivers Act (16 U.S.C. §§ 1271-1278), that are consistent with the requirements of that Act.

2E. The state shall identify the state's website where the public notices for the notification and submission requests are or will be and where, if applicable, state documents related to the request may be viewed.

The Department will post the public notice for notification and submission requests on the NJCMP webpage at <http://nj.gov/dep/cmp/>

The rule proposals referenced in this request can be found in the Department's proposal archive at http://www.nj.gov/dep/rules/notices_archive.html. The adoption documents can be found in the Department's adoption archive at http://www.nj.gov/dep/rules/adopt_archive.html.

2F. Any substantive correspondence between the state and federal agencies (not including NOAA's Office for Coastal Management) concerning the development of the changes that are the subject of the program change request

While not engaging in substantive written correspondence, representatives from FEMA attended meetings of the Adaptation and V zones stakeholder subcommittee on October 28, 2015 and February 22, 2016, at which they advised the Department on Federal requirements for development in V zones. Sign-in sheets and recordings from these meetings are available at <http://www.nj.gov/dep/workgroups/past.html>.

2G. Indicate if the program change was developed pursuant to section 309 of the Act and, if so, shall state the strategy title and years the strategy was carried out

This program change was not developed pursuant to a Section 309 strategy.

2H. *Indicate if the program change was developed as a necessary action pursuant to section 312 of the Act and, if so, shall briefly describe the necessary action.*

This program change was not developed as a necessary action pursuant to Section 312.

Appendix 3: Federal, State, and Local Agency Notice and Mailing List

Appendix 3A: Content of Notice Letter



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

PHILIP D. MURPHY
Governor

Land Use Management
401 East State Street
P.O. BOX 420

CATHERINE R. MCCABE
Commissioner

SHEILA Y. OLIVER
Lt. Governor

Mail Code 401-07B
Trenton, New Jersey 08625-0420
Phone: 609-292-2178
Fax: 609-633-0750

RE: Program Change to New Jersey's Federally approved Coastal Management Program

Dear Sir/Madam:

This letter is to inform you that the New Jersey Department of Environmental Protection (Department) is seeking approval from the National Oceanic and Atmospheric Administration's Office for Coastal Management (NOAA) to incorporate regulatory amendments to the Coastal Zone Management (CZM) Rules, N.J.A.C. 7:7, adopted by the Department from June 2016 through January 2018 which address riparian zones, building standards in V zones and coastal A zones, coastal wetlands maps, public notice for maintenance dredging, regulatory amendments made in response to issues identified through stakeholder outreach, and to address other issues that have arisen since the July 6, 2015 adoption of the consolidated coastal as a routine program change pursuant to Federal Regulation 15 C.F.R. 923.80-923.84

The Federal regulations at 15 CFR 923.80 through 923.84 require states with approved coastal management programs to submit any changes or amendments to their coastal management programs to NOAA so that they can determine if the program, after the change, remains approvable. Amendments are defined at 15 CFR 923.80(d) as substantial changes in, or substantial changes related to: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and (5) coordination, public involvement and national interest. The Department has determined that the above regulatory amendments do not result in a substantial change related to the five program approvability areas listed above and are therefore considered a routine program change. The routine program change package is available on the New Jersey Coastal Management Program's website at www.nj.gov/dep/cmp/czm_news.html.

Comments on whether or not this action should be considered a Routine Program Change should be sent within three weeks of the date of this notice to:

Joelle Gore, Chief
Stewardship Division
Office for Coastal Management
SSMC4, Room 10622
1305 East West Highway
Silver Spring, MD 20910

Should you have any questions concerning this program change, please contact Kimberly Springer of my staff at (609) 292-1932.

Sincerely,

Virginia Kopkash
New Jersey Coastal Program Manager

Appendix 3B: Mailing List

Ms. Karen Greene
National Marine Fisheries Service
James Howard Marine Sciences Lab
74 Magruder Rd
Highlands, NJ 07732
karen.greene@noaa.gov

Lieutenant Colonel Kristen Dahle
US Army Corps of Engineers,
Philadelphia District
Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107
Phone: 215-656-5822 Fax: 215-656-6724
Kristen.dahle@usace.army.mil

Mr. Mark Wheeler
Environmental Resources Branch
Planning Division
US Army Corps of Engineers, Philadelphia District
Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107
Phone: 215-656-6927
mark.s.wheeler@usace.army.mil

Mr. Charles Macintosh,
Asst Chief
Planning Division
US Army Corps of Engineers,
Philadelphia District
Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107
charles.p.macintosh@usace.army.mil

Mr. Edward Bonner
US Army Corps of Engineers,
Philadelphia District
Regulatory Branch
Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107
edward.e.bonner@usace.army.mil

Colonel Thomas D. Asbery
US Army Corps of Engineers, New York District
Planning Department
26 Federal Plaza
New York, New York 10278
Phone: 917-790-8700

Ms. Jodi McDonald, Deputy Chief
US Army Corps of Engineers, New York District
Regulatory Branch
26 Federal Plaza
Room 1937
New York, NY 10007
jodi.m.mcdonald@usace.army.mil

Mr. Stephan A. Ryba
US Army Corps of Engineers, New York District
Regulatory Branch
26 Federal Plaza
Room 1937
New York, NY 10278
Stephan.a.ryba@usace.army.mil

COL Frank Santamarro, Chief
US Army Corps of Engineers, New York District
Planning Department
26 Federal Plaza
New York, New York 10278

Mr. Joseph Picciano
FEMA
26 Federal Plaza
New York, NY 10278
FEMA-R2-ExternalAffairs@fema.dhs.gov

Mr. Eric Schrading, CWB
Field Supervisor
U.S. Fish and Wildlife Service
New Jersey Field Office
4 East Jimmie Leeds Road, Suite 4
Galloway, New Jersey 08205-4465
Fax: (609) 646-0352

Commander Robert Huller
US Department of Homeland Security
United States Coast Guard
1 Munro Avenue
Cape May, NJ 08204

Mr. Dan Montella
Environmental Protection Agency
Region 2
290 Broadway
Mail Code: 24th Floor
New York, NY 10007-1866
montella.daniel@epa.gov

Mr. Javier Laureano
Director, Water Programs Branch
Division of Environmental Protection & Planning
USEPA Region 2
290 Broadway
New York, NY 10007-1866
Phone: 212-637-4125

Mr. Robert F. Mckeeon, Director
North Atlantic Region
26 Federal Plaza
New York, New York 10278
robert.mckeeon@dot.gov

Mr. Don Benczkowski, Assistant
Director
Water Planning Office
Department of Environmental
Protection
Market Street, 15th Floor
P.O. Box 2063
Harrisburg, PA 17105-2063

Ms. Kisha Santiago-Martinez
Deputy secretary of State
Office of Planning, Development
&Community Infrastructure
New York Department of State
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231-0001
Kisha.Santago@dos.ny.gov

Mr. Joseph Femia, Director
Bergen County Planning Board &
Economic Development
One Bergen County Plaza, 4th Floor
Hackensack, New Jersey 07601-7076
jfemia@co.bergen.nj.us

Ms. Leslie Gimeno, PP, AICP Director
Cape May County Planning Board
4 Moore Road
Cape May Court House, New Jersey
08210
leslie.gimeno@co.cape-may.nj.us

Ms. Francesca Giarratana, PP, AICP,
Division Chief
Hudson County Division of Planning
Bergen Square Center
830 Bergen Avenue
Suite 6A
Jersey City, New Jersey 07306

Mr. Edward Sampson, Director
Monmouth County Planning Board
Hall of Records Annex, 2nd Fl

Mr. Robert Brewer Director
Cumberland County Planning Board
164 West Broad Street
Bridgeton, New Jersey 08302
Phone: 856-453-2175
bobbr@co.cumberland.nj.us

Mr. Mark Remsa
Economic Development and Regional
Planning
P.O. Box 6000
Mt. Holly, New Jersey 08060
edcoordinator@bcbridges.org

Mr. David Antonio, Chairman
Essex County Planning Board
900 Bloomfield Avenue
Verona, New Jersey 07044-1393

Ms. Leslie Floyd, Director
Mercer County Planning Board
McDade Administration Bldg.
640 South Broad Street,
P.O. Box 8068
Trenton, New Jersey 08650-8068

Mr. David McKeon, Director
Ocean County Planning Board
129 Hooper Avenue
P.O. Box 2191
Toms River, New Jersey 08754-2191
ocplanning@co.ocean.nj.us

Mr. Walter Lane, AICP/PP
Director of Planning
Somerset County Planning Division

Mr. Robert W. Scarborough
Delaware Coastal Programs
Department of Natural Resources &
Environmental Control
100 W. Water St., Suite 7B
Dover, DE 19904
302-739-9283
Bob.scarborough@state.de.us

Mr. John Peterson, Department Head
Dept. of Regional Planning & Development
Atlantic County Department of Planning
P.O. Box 719 Rt. 9 & Dolphin Ave
Northfield, New Jersey 08225
peterjohn@aclink.org

Mr. Andrew Levecchia
Camden County Planning Board, Director
Charles J. DePalma Public Works Complex
2311 Egg Harbor Road
Lindenwold, New Jersey 08021
Andrew.Levecchia@camdencounty.com

Mr. Robert Damminger, Chairman
Gloucester County Planning Board
1200 North Delsea Drive
Clayton, New Jersey 08312

Mr. George Ververides, Director
Middlesex County Planning Board
40 Livingston Avenue
New Brunswick, New Jersey 08901

Mr. Michael Lysicatos, Acting Director
Passaic County Planning Board
County Administration Building

One East Main Street
Freehold, New Jersey 07728

20 Grove Street
P.O. Box 3000
Somerville, New Jersey 08876
lane@co.somerset.nj.us

930 Riverview Drive, Suite 250
Totowa, NJ 07512
mlyscatos@passaiccountynj.org

Salem County Planning Board
Attention: Jim McKelvie
110 Fifth Street, Suite 500
Salem, NJ 08079

Ms. Kamal Saleh, Planning Board
Secretary
Union County Planning Board
Union Co. Admin. Bldg.
10 Elizabethtown Plaza
Administration Building, 6th Floor
Elizabeth, New Jersey 07207

Appendix 4: CZM Rule Text

Full text of the enforceable policies subject to this Routine Program Change request for concurrence follows. Additions are in underlined bold **thus**; deletions are in brackets and strikethrough ~~thus~~.

N.J.A.C. 7:7
COASTAL ZONE MANAGEMENT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.3 Review, revision, and expiration

As provided by the Federal Coastal Zone Management Act, the Department shall periodically review the rules and revise, amend, or readopt the rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:7-1.4 Standards for evaluating permit applications

(a) All applications for coastal permits shall be approved, conditionally approved, or denied pursuant to this chapter.

(b) The Department shall issue a permit pursuant to only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;
2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative and recovery capacities of the air and water environments at the site and within the surrounding region;
3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety and welfare;
4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;
5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish and human life processes at the site and within the surrounding region;
6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety and welfare; and
7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas and existing public scenic attributes at the site and within the surrounding region. [-]; **and**

8. Provides, pursuant to standards established in this chapter, onsite public access to the waterfront and adjacent shoreline, or offsite public access to the waterfront and adjacent shoreline if on-site public access is not feasible as determined by the Department.

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

applicable to N.J.A.C. 7:7-13, Requirements for 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.

...

“Engineering certification” means a document, signed and sealed by a New Jersey licensed professional engineer, which confirms that one or more requirements of this chapter are met, and which is accompanied by all supporting documentation, calculations, and other information upon which the certification is based. Upon clear and compelling evidence of a threat to public health, safety, welfare, and the environment, a New Jersey licensed professional engineer employed by the Department can reject an engineering certification submitted under this chapter.

...

“FEMA flood mapping” means information published or publicly released by FEMA regarding the frequency, location, and/or extent of flooding in a community, such as flood elevations, flood profiles, flow rates, and floodway limits, and FEMA 100-year flood elevation as defined in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2. For the purposes of this chapter, such information shall include only that information adopted as part of the most recent effective FEMA Flood Insurance Study, dated on or after January 31, 1980, or any more recent advisory or proposed (preliminary) flood mapping, if the more recent advisory or proposed (preliminary) mapping results in higher flood elevations, wider floodway limits, and greater flow rates, than depicted in the most recent effective FEMA Flood Insurance Study, or indicates a change from an A zone to a V zone or coastal A zone. Effective and proposed (preliminary) FEMA flood mapping can be viewed at <https://msc.fema.gov> and advisory flood mapping for coastal areas, where available, can be viewed at <http://www.region2coastal.com>. Questions regarding the availability, use, derivation, or modification of FEMA flood mapping should be directed to FEMA at (800) 358-9616.

~~[“FIRM” means the Federal Insurance Rate Map, as defined at 44 CFR 59.1, established by FEMA for a particular community for purposes of the National Flood Insurance Program on which the Federal Insurance Administrator has delineated, among other things, flood hazard areas.]~~

...

“UCC” means the Uniform Construction Code, N.J.A.C. 5:23

...

SUBCHAPTER 2. APPLICABILITY AND ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 When a permit is required

No change.

7:7-2.2 CAFRA

(a) Subject to the interpretation and definition of certain statutory terms as provided at (b) below and subject to the exemptions identified at (c) below, a CAFRA permit shall be required for)

1. Any development located on a beach or dune;
2. A development located in the CAFRA area between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result either solely or in conjunction with a previous development, in:
 - i. A development if there is no intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - ii. A residential development having three or more dwelling units if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters;
 - iii. A commercial development having five or more parking spaces or equivalent parking area if there is an intervening development that is either completed or under active construction as of July 19, 1994 between the proposed site of the development and the mean high water line of any tidal waters; or
 - iv. A public development or industrial development;
3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a qualifying municipality or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:
 - i. A residential development having 25 or more dwelling units;
 - ii. A commercial development having 50 or more parking spaces or equivalent parking area;or
 - iii. A public development or industrial development;
4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a qualifying municipality or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:
 - i. A residential development having 75 or more dwelling units;

- ii. A commercial development having 150 or more parking spaces or equivalent parking area; or
- iii. A public development or industrial development; and

5. Except as otherwise provided above, a development in the CAFRA area at a point 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, that would result, either solely or in conjunction with a previous development in:

- i. A residential development having 25 or more dwelling units;
 - ii. A commercial development having 50 or more parking spaces or equivalent parking area;
- or
- iii. A public development or industrial development.

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. In addition, the repair and maintenance of utilities within rights-of-way on beaches and dunes are not development, provided that all disturbed areas are restored to their pre-disturbance condition. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1. The method for determining whether an existing development is an intervening development is as follows:

i. For proposed developments other than single family home or duplex and/or accessory development as described in (b)1ii below, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix B, incorporated herein by reference). If the proposed development does not fall entirely within these lines, then the existing development is not considered intervening development.

ii. For a proposed single family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, excluding shore protection structures) that is not part of a larger development, extend a line landward and perpendicular to the mean high water line from each of the widest shore-parallel points of the footprint of the existing development (see Appendix C, incorporated herein by reference). If the proposed single family home or duplex and/or accessory development extends beyond these lines more than 15 feet on either side or a cumulative total of 20 feet, then the existing development is not considered intervening development.

iii. Existing developments that may be considered intervening development include above-ground structures such as houses, garages, cabanas or bath houses which are fully enclosed and

served by a municipal sewer system, and commercial, industrial or public buildings provided the above-ground structure received all necessary Federal, State and local approvals and was:

- (1) Completed or under active construction as of July 19, 1994;
- (2) Exempt from CAFRA; or
- (3) Constructed under a CAFRA permit.

iv. Existing developments that are not considered intervening development include shore protection structures, seawalls, bulkheads, retaining walls, gabions, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds without foundations, docks, piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures associated with the tourism industry or constructed under the general permit for the construction of certain types of temporary and seasonal developments at hotels and motels, commercial developments, and multi-family residential developments of 75 units, N.J.A.C. 7:7-6.22.

2. If located in an area other than a beach or a dune, public development is not the following:

- i. The maintenance, repair or replacement (including upgrade) of existing petroleum, sewage or natural gas pipelines, and associated pump stations and connection junctions, and electrical substations, located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way, provided that the replacement of sewage pipelines and associated pump stations does not result in an increase in the associated sewer service area;
- ii. The maintenance, repair, modification, or replacement of sanitary system components other than pipelines and associated pump stations, including upgrading of systems from primary to secondary treatment, provided that an increase in capacity will not result;
- iii. The construction, maintenance, repair or replacement (including upgrade) of water lines, telecommunication and cable television lines, including fiber optic cables, poles and transfer and/or switching stations associated with telecommunication lines, provided the transfer and/or switching station is located completely within paved roadways or paved, gravel, or cleared and maintained rights-of-way. This does not include the construction of telecommunication towers such as cellular telephone towers;
- iv. The maintenance, repair or replacement of existing and functional railroads and related structures located completely within cleared and maintained rights-of-way;
- v. The maintenance and repair of existing stormwater management facilities which receive, store, convey or discharge stormwater runoff;
- vi. The construction of less than 1,200 linear feet of new stormwater pipes;
- vii. The construction or expansion of educational facilities;
- viii. The construction of seasonal or temporary structures related to the tourism industry; or
- ix. The construction, maintenance, repair or replacement of power lines.

3. In addition to the activities identified at (b)2 above, if located more than 150 feet from the mean high water line of any tidal waters, or the landward limit of a beach or a dune, whichever is most landward, public development is not the following:

- i. The construction of a new road, sanitary sewer pipeline, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length or the extension of a road, sanitary sewer pipeline, stormwater management facility, petroleum pipeline or natural gas pipeline of less than 1,200 feet in length, not to exceed a cumulative total of 1,200 feet in any one municipality at any one

site, unless the construction is located within a development requiring a CAFRA permit in which case it shall be considered part of the development for which a permit is required; or

ii. The construction of telecommunication towers such as cellular telephone towers.

4. Equivalent parking areas will be calculated at 270 square feet per parking space, including one half of the associated aisle area, excluding access drives. This calculation shall apply to both paved and unpaved parking areas.

5. A development that is used solely for the storage of food or other merchandise, excluding storage of agrichemical and petroleum products, and that is not associated with any on-site manufacturing or industrial process and is not specifically included in the definition of industrial development at N.J.A.C. 7:7-1.5 is considered a "commercial development."

6. Municipal or other government administrative, public works, or emergency services buildings that are not specifically included in the definition of public development at N.J.A.C. 7:7-1.5 or parks which are publicly owned or controlled are considered commercial developments.

7. Churches, synagogues or other houses of worship are considered commercial developments.

8. Development or expansion of existing developments "either solely or in conjunction with a previous development" is described at (b)8i through iv below. "Previous development" includes developments that either were previously constructed after September 19, 1973 or developments that previously received a CAFRA permit which remains valid but the approved development has not yet been built. For the purposes of (b)8i, ii and iii below, contiguous parcels shall include, but not be limited to, those land areas which directly abut or are separated by a general access roadway or other right-of-way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

i. The construction of any residential or commercial development on contiguous parcels of property, regardless of present ownership, where there is a proposed sharing of infrastructure constructed to serve those parcels including, but not limited to, roads, utility lines, drainage systems, open spaces or septic drain fields;

ii. The construction of any residential or commercial development on contiguous parcels of property which were under common ownership on or after September 19, 1973, regardless of present ownership, or any subdivision or re-subdivision of a parcel of land which occurred after September 19, 1973;

iii. The construction of any residential or commercial development on contiguous parcels of property, where there is some shared pecuniary, possessory, or other substantial common interest by one or more individuals in the units;

iv. The addition of one or more parking spaces or dwelling units or equivalent to any existing dwelling units or parking spaces or equivalent parking area for which construction had commenced subsequent to September 19, 1973 where such addition, when combined with the existing dwelling units or parking area, results in a total exceeding the regulatory threshold. Any dwelling units or parking areas in existence on or before September 19, 1973 which have been determined by the Department to be exempt from the requirements of this subchapter due to on-site construction on or before September 19, 1973 will not be counted when determining if a new or expanded development exceeds the regulatory threshold.

(1) The addition of parking spaces by restriping is not regulated.

v. The total number of dwelling units or parking spaces in a new or expanded development need not be restricted to any single municipal tax block nor to any one period in time in order to require a permit;

vi. The construction of a development below the regulatory threshold as defined in this section, where such construction is part of a larger planned development in which the total development will exceed the regulatory threshold.

9. Commercial development not located on a beach or a dune and not located within 150 feet of the beach, dune or mean high water line unless there is an intervening development as described at (b)1 above, excludes development which:

i. Does not cause the number of parking spaces (either solely or in conjunction with the existing development) to exceed the regulatory threshold of the appropriate zone; or

ii. Does not propose development of any new parking spaces, regardless of whether the total number of existing parking spaces exceeds the regulatory threshold of the appropriate zone.

10. The elevating of an existing residential, commercial, industrial, or public building on pilings does not require a CAFRA permit, unless the elevating of the existing building is associated with an enlargement and such enlargement is not exempt under CAFRA pursuant to (c)4 below or unless the elevating of the existing building involves excavation, filling, or grading on a beach or a dune. Additional parking spaces located under a building elevated in accordance with this paragraph are not counted toward the parking space or equivalent parking area limits at (a) above.

11. Residential developments which include the offsite construction of more than 1,200 linear feet of new sewer pipelines or roads require a CAFRA permit regardless of the number of dwelling units. For all other residential developments which are not located on a beach or dune, whether a CAFRA permit is required is based on the number of dwelling units proposed only and not the length of roadways or sewer pipelines on-site.

12. The classification or removal from classification of the municipality in which a development is located as a "qualifying municipality" affects the requirement for a CAFRA permit for such development as follows:

i. If construction of the development under a valid CAFRA permit has been started and the municipality in which the development is located either becomes classified or is removed from classification as a "qualifying municipality," the permittee is obligated to comply with all conditions of the permit;

ii. If construction of the development under a valid CAFRA permit has not been started at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, the permittee need not comply with the conditions of the issued permit;

iii. If construction of the development is started in accordance with all necessary approvals at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not require a CAFRA permit for the

development provided construction continues to completion with no lapses in construction that cumulatively total one year or more;

iv. If site plan approval is obtained for the development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not, for a period of one year from the date that the municipality is removed from classification as a "qualifying municipality," require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

v. If preliminary subdivision approval is obtained for a residential development pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), and no subsequent site plan approval is required, at a time when the municipality in which the development is located is classified as a "qualifying municipality" such that the development does not require a CAFRA permit under (a)3 or 4 above, and if subsequently the municipality is removed from classification as a "qualifying municipality," the Department shall not, for a period of one year from the date that the municipality is removed from classification as a "qualifying municipality," require a CAFRA permit for the development, provided construction is started within this one-year period and continues through completion with no lapses in construction that cumulatively total one year or more;

vi. For the purposes of (b)12iii through v above, construction means having completed one of the following, as approved as part of the municipal site plan or subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) The subsurface improvements for the roadways; or
- (3) The bedding for utilities.

vii. Development under (b)12iii through v above is limited to the specific project depicted on the approved site plan or for residential developments only, the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

13. Development is not the following:

i. The installation of a wind turbine(s) provided the wind turbine(s) is:

- (1) On or structurally attached to a legally existing building;
- (2) Less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position;
- (3) No greater than 2,000 square feet in cumulative rotor swept area; and
- (4) Any portion of the tower of the wind turbine more than 100 feet above the ground surface is a freestanding monopole;

ii. The installation of a solar panel(s) provided the solar panel(s) is:

- (1) On or structurally attached to a legally existing building;
- (2) On or structurally attached to a utility pole (electric, telephone, cable and lighting) within a maintained utility right-of-way or on or structurally attached to a parking lot light pole;

(3) On legally existing impervious cover unless the solar panel would be located in a floodway; or

(4) On a sanitary landfill provided the solar panel is ~~[included in the Closure and Post-Closure Care Plan or modified plan as approved by the Department in accordance with N.J.A.C. 7:26]~~ **authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department pursuant to N.J.A.C. 7:26-2A.8 or 2A.9;** or

iii. The rehabilitation and use of an existing dredged material management area within the same footprint.

(c) A CAFRA permit shall not be required for:

1. A development which received preliminary site plan approval pursuant to the Municipal Land Use Law, N.J.S.A. 40:55-1 et seq., or a final municipal building or construction permit on or before July 19, 1994, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project depicted on the approved site plan or described in the building or construction permit.

ii. Any development that required a permit pursuant to CAFRA prior to July 19, 1994, shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this paragraph, "construction" means having completed one of the following as approved as part of the site plan:

(1) The foundation for one of the buildings or structures;

(2) All of the subsurface improvements for roadways;

(3) The installation of all of the bedding materials for utility lines; or

(4) The installation of a well or septic system, for projects which are exempt based on receipt of a final municipal building or construction permit.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

v. In the event the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 19, 1997. In cases where the municipal approval expired and was renewed or that a new permit was issued, the Department will require documentation that the new or renewed permit authorized the same construction as the original permit, and that the currently authorized construction would not result in additional adverse impacts to any special areas as defined at N.J.A.C. 7:7-9 that are greater than any adverse impacts associated with the development authorized before July 19, 1994, and the proposed construction is either 15 feet inshore of a bulkhead or no closer to the water than the original approval.

2. A residential development which received preliminary subdivision approval or minor subdivision approval pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1et seq., on or

before July 19, 1994, where no subsequent site plan approval is required, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. An exemption under this section is granted only for the specific project that was the subject of the subdivision approval, namely development of the subdivision which is consistent with the lot coverage, use and density restrictions of the zoning ordinances that were in effect at the time of the subdivision approval or that were authorized by the subdivision approval.

ii. Any development that required a permit pursuant to CAFRA prior to July 19, 1994, shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. For purposes of this paragraph, "construction" means having completed one of the following as approved as part of the subdivision approval:

- (1) The foundation for one of the buildings or structures;
- (2) All of the subsurface improvements for roadways; or
- (3) The installation of all of the bedding materials for utility lines.

iv. To determine if construction of a development or part of a development began by July 19, 1997, the Department shall evaluate such proofs as may be provided by the applicant, including, but not limited to, the following: documentation that the local construction official completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or 2.18(b)1i(3) for foundations of buildings or structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities.

3. The reconstruction of any development which was legally existing on and damaged subsequent to July 19, 1994 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; and further provided that such reconstruction does not result in:

- i. The enlargement or relocation of the footprint of the development; or
- ii. An increase in the number of dwelling units or parking spaces within the development.
- iii. A relocation landward or laterally may qualify for the exemption at (c)3 above if the Department determines, in writing, that such a relocation would result in less environmental impact than the in place reconstruction of damaged or destroyed development.

iv. Any person requesting a determination concerning relocation landward shall follow the procedures for an exemption determination at (f)2 below.

- v. An increase in the area covered by buildings and/or asphalt or concrete pavement.

4. The enlargement of any building provided that such enlargement does not result in:

- i. The enlargement of the footprint of the development; or
- ii. An increase in the number of dwelling units or parking spaces associated with the building;

5. The construction of a patio, deck, or similar structure at a residential development, provided such construction does not result in the grading, excavation, or filling of a beach or dune.

i. For the purposes of this paragraph, "similar structure" includes porches, balconies and verandahs. The exemption for the construction of a patio, deck, porch, balcony or veranda only remains in effect as long as the patio, deck, porch, balcony or veranda remains used for the

purpose that it was originally constructed. Further, the exemption shall not include the placement of any structure such as a pool, roof or enclosure with walls or windows on a patio, deck, porch, balcony or veranda. Such activities will require a CAFRA permit.

ii. For the purposes of this paragraph, the following shall be considered "similar structures" at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, or wetland: fences, flower boxes, gardens, a landscape wall (for example, railroad ties) no more than one foot in height (or a series of walls not to exceed a cumulative total of one foot in height), satellite dishes and antennas, and wooden boardwalks and gravel or brick/paver block walkways.

iii. For the purposes of this paragraph, the following shall also be considered "similar structures" at a residential development, provided that their construction does not include the placement of pilings or placement of a structure on a beach, dune, wetland or coastal bluff: sheds (with a footprint of 120 square feet or less), open carports, gazebos, propane tanks properly anchored, and showers, spas, hot tubs and above ground swimming pools (not exceeding 500 square feet of surface area) which do not discharge to surface waters or wetlands.

iv. For the purposes of this paragraph, the construction of **elevated** timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C. 7:7-10.4(d) and (e) **1, 2, and 3, respectively**, shall be considered a "similar structure" at a residential development.

v. For the purposes of this paragraph, the following shall not be considered "similar structures" at a residential development: swimming pools, garages, retaining walls, bulkheads, revetments, driveways and associated parking areas, paved yard areas, or outbuildings, except as provided at (c)5iii above.

6. Services provided, within the existing public right-of-way, by any government entity which involve:

i. The routine reconstruction, substantially similar functional replacement, or maintenance or repair of public highways. The paving of an existing unpaved roadway is not considered to be a substantially similar functional replacement;

ii. Public highway lane widening, intersection and shoulder improvement projects (including new paving or repaving) which do not increase the number of travel lanes;

iii. Public highway signing, lighting, guide rail and other nonintrusive safety projects, including traffic control devices; or

iv. Re-striping of public highways and the addition of toll booths provided that these activities do not result in any increase in asphalt or concrete pavement.

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994, provided that construction, as defined at N.J.A.C. 7:7-2.2(c)1iii, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. The expansion of an existing, functional amusement pier, provided such expansion does not exceed the footprint of the existing, functional amusement pier by more than 25 percent, and provided such expansion is located in the area beyond 150 feet landward of the mean high water line, beach or dune, whichever is most landward.

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-2.2(c)1iii on or before September 19, 1973, expired on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to special areas, as defined at N.J.A.C. 7:7-9, which additional impacts are greater than the impacts associated with the originally exempt development.

(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. A folded copy of the approved site plan or subdivision plan, a copy of the resolution approving the site plan or subdivision, or a copy of the building permit and approved plan and soil conservation district approval where required;

ii. In the event that the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 18, 1997. To make such a determination, the Department will require documentation that the new permit authorized exactly the same construction as the original permit, such as a copy of the original building permit with approved plan and soil conservation district approval where required and a copy of the new building permit with approved plan depicting the exact development as the original;

iii. The fee specified at N.J.A.C. 7:7-25.1; and

iv. 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.

2. For an exemption pursuant to (c)3, 4, and 5 above, the following shall be submitted:

i. Plans showing the existing structures and site conditions with locations and dimensions, and all proposed structures, filling, grading, excavation and clearing;

(1) For exemptions based on fire, storm, natural hazard or Act of God, the site plans submitted shall also indicate all preexisting structures to be rebuilt.

ii. Photographs of the site;

iii. The fee specified at N.J.A.C. 7:7-25.1; and

iv. 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.

3. For an exemption pursuant to (c)8 above, the following shall be submitted:

i. A description of the location of the amusement pier including county, municipality, lot(s) and block(s);

ii. A copy of a site plan showing the location of the existing, functional amusement pier and the proposed location of the expansion;

iii. Documentation concerning the size of the footprint of the existing functional amusement pier and the size of the proposed expansion;

iv. Photographs of the site;

- v. The fee specified at N.J.A.C. 7:7-25.1; and
- vi. 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.

7:7-2.3 Coastal wetlands

(a) Coastal wetlands permits are required for all activities in coastal wetlands delineated and mapped pursuant to the Wetlands Act of 1970 including, but not limited to:

1. The cultivation and harvesting of naturally occurring agricultural or horticultural products. This provision shall not apply to the continued production of commercial salt hay or other agricultural crops on lands utilized for these purposes on or before April 13, 1972;

2. The excavation of an individual mooring slip;

3. The maintenance or repair of bridges, roads, highways, railroad beds or the facilities of any utility or municipality. This provision shall not apply to emergency repairs necessitated by a natural disaster or a sudden and unexpected mechanical, electrical or structural failure.

Written notification of such repairs shall be provided to the Program within seven days after their initiation;

4. The construction of catwalks, piers, docks, landings, footbridges and observation decks;

5. The installation of utilities;

6. Excavation of boat channels and mooring basins;

7. The construction of impoundments;

8. The construction of sea walls;

9. The diversion or appropriative use of water;

10. The use of pesticides, except those applied to the skin or clothing for personal use;

11. Driving or causing to pass over or upon wetlands, any mechanical conveyance which may alter or impair the natural contour of the wetlands or the natural vegetation; and

12. Filling, excavation or the construction of any structure.

(b) The following activities are prohibited on regulated wetlands:

1. Placing, depositing or dumping any solid waste, garbage, refuse, trash, rubbish or debris;

2. Dumping or discharging treated or untreated domestic sewage or industrial wastes, either solid or liquid;

3. Applying any pesticide on areas containing significant stands of high vigor [~~Spartina alterniflora~~] **Spartina alterniflora** (Saltmarsh cordgrass), [~~Zizania aquatica~~] **Zizania aquatica** (Wildrice), [~~Typha sp.~~] **Typha sp.** (Cattail), and [~~Scirpus americanus~~] **Scirpus americanus** (common threesquare) as shown generally on wetlands maps;

4. The storage or disposal of pesticides;

5. The application of persistent pesticides.

(c) These rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the coastal wetlands maps (base map photography dated 1971, 1972) listed in chapter Appendix D and incorporated herein by reference.

7:7-2.4 Waterfront development

(a) The waterfront area regulated under this chapter varies in width in accordance with the following:

1. Within any part of the Hackensack Meadowlands District delineated at N.J.S.A. 13:17-4, the area regulated by this section shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

2. Within the CAFRA area, the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In those areas of the State outside both the CAFRA area and outside of the Hackensack Meadowlands District, the regulated waterfront area shall include:

i. All tidal waterways and lands lying thereunder, up to and including the mean high water line; and

ii. Adjacent upland areas within 100 feet of the mean high water line. For properties within 100 feet of the mean high water line that extend inland beyond 100 feet from the mean high water line, the regulated waterfront area shall extend inland to the lesser of the following distances:

(1) 500 feet from the mean high water line; or

(2) To the first paved public road, railroad, or surveyable property line that:

(A) Existed on September 26, 1980; and

(B) Generally parallels the waterway.

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 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) This chapter shall apply to all man-made waterways and lagoons subject to tidal influence.

(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. In accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, these development activities require a permit if the development activity 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 that extend outshore of the mean low water line or will help to maintain access from the navigable water to such improvement.

1. The removal or deposition of sub-aqueous materials (for example, dredging or filling).

2. The construction or alteration of a dock (fixed or floating), wharf, pier (including covered or enclosed structures such as gazebos or sheds located on or above the decking of the dock, wharf or pier), bulkhead, breakwater, groin, jetty, seawall, bridge, piling, boat lift, mooring dolphin, pipeline, cable, or other similar structure.

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this State prior to June 1, 1984, shall not require a permit.

4. The installation of temporary aids to navigation by any person, if they remain in place for more than 10 consecutive days.

(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. In the waterfront area defined in (a)3 above, the construction, alteration, expansion or reconstruction of an individual single family dwelling unit or addition to such unit, if constructed more than 100 feet landward of the mean high water line;

2. In the waterfront area defined in (a)3 above, the reconstruction, conversion, alteration or enlargement of any existing structure located more than 100 feet landward of the mean high water line, provided that no change in land use results, and that enlargements do not exceed 5,000 square feet;

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to special areas defined at N.J.A.C. 7:7-9, provided the addition is located in an existing cleared area of the site, and is set back a minimum of 15 feet landward of the mean high water line, where such changes or additions do not result in a change in the present land use of the site;

4. In the waterfront area defined in (a)3 above, the installation of a wind turbine(s) provided the wind turbine(s) is:

- i. On or structurally attached to a legally existing building;
- ii. Less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position;
- iii. No greater than 2,000 square feet in cumulative rotor swept area; and
- iv. Any portion of the tower of the wind turbine more than 100 feet above the ground surface is a freestanding monopole;

5. In the waterfront area defined in (a)3 above, the installation of solar panels provided the solar panels are:

- i. On or structurally attached to a legally existing building;
- ii. On or structurally attached to a utility pole (electric, telephone, cable and lighting) within a maintained utility right-of-way or on or structurally attached to a parking lot light pole;
- iii. On legally existing impervious cover provided the solar panels are not located within a floodway; or
- iv. On a sanitary landfill provided the solar panel is ~~[included in the Closure and Post-Closure Care Plan or modified plan as approved by the Department in accordance with N.J.A.C. 7:26]~~ **authorized under a solid waste landfill closure and post-closure plan or disruption approval issued by the Department pursuant to N.J.A.C. 7:26-2A.8 or 2A.9;**

6. The repair, replacement, renovation, or reconstruction, in the same location and size, as determined in accordance with (d)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 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. The size of a dock or pier over wetlands, a low-profile bulkhead where the top of the bulkhead is constructed at an elevation below the spring high water line, or a building over wetlands or water shall be measured in three dimensions, that is, length, width, and height; and

ii. The size of any dock, wharf, pier, or bulkhead, or building not identified at (d)6i above shall be measured in two dimensions, that is, length and width;

7. The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in two dimensions, that is, length and width, of the preexisting structure, of any floating dock, mooring raft, or similar temporary or seasonal improvement or structure, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map, or that appears on the applicable coastal wetlands map 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 and size as the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

8. The redecking and replacement of bridge surfaces provided there is no change in width, length or height.

(e) Those portions of a dock or pier proposed to be constructed landward of the mean high water line and in the coastal zone may be subject to the permits-by-rule at N.J.A.C. 7:7-4.4 and 4.5.

(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. 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 general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map;

iv. The fee specified at N.J.A.C. 7:7-25.1; and

v. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement; and

(2) The location of the mean high water line.

2. For a written determination of exemption pursuant to (d)3 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 general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map;

iv. The fee specified at N.J.A.C. 7:7-25.1; and

v. A site plan depicting the following:

(1) The location of the proposed construction, reconstruction, alteration, conversion expansion, or enlargement;

(2) The location of the mean high water line; and

(3) The limits of all special areas as defined at N.J.A.C. 7:7-9.

3. For a written determination of exemption pursuant to (d)4 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. 7:7-25.1;

iv. The total height and rotor swept area of the proposed wind turbine(s); and

v. A site plan depicting the following:

(1) The location of the proposed wind turbine(s);

(2) The height of the wind turbine(s) in relation to the ground surface elevation; and

(3) Details of the wind turbine monopole.

4. For a written determination of exemption pursuant to (d)5 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. 7:7-25.1;

iv. A site plan depicting the following:

(1) The location of the proposed solar panels; and

(2) The floodway, if appropriate; and

v. If located on a sanitary landfill, a copy of the Closure and Post-Closure Care Plan or modified plan as approved by the Department in accordance with the Solid Waste Management rules at N.J.A.C. 7:26.

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. 7:7-25.1; and

iv. A site plan depicting the following:

(1) The location of the proposed activity; and

(2) The mean high water line.

6. For a written determination of exemption pursuant to (d)6 and 7 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. 7:7-25.1;

iv. A copy of the Tidelands instrument (grant, lease or license);

- v. If applicable, a copy of any previous waterfront development permit issued for the structures to be replaced, renovated or reconstructed;
- vi. A copy of the applicable portion of the Tidelands Map or coastal wetlands map showing the location and dimensions of the structures to be replaced, renovated, or reconstructed;
- vii. Photograph(s) of the existing structures labeled as to orientation;
- viii. The general site location of the development, which shall be identified on a county or local road map or an insert from a USGS quad map; and
- ix. A site plan showing the location and dimensions of the structures to be replaced, renovated or reconstructed.

7. For a written determination of exemption pursuant to (d)8 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. 7:7-25.1; and
- iv. A site plan depicting the location of the existing and proposed bridge surface to be redecked.

(g) A waterfront development permit is required for the filling of any lands formerly flowed by the tide, if any filling took place after 1914 without the issuance of a tidelands instrument by the Department of Environmental Protection and Tidelands Resource Council or their predecessor agencies, even where such lands extend beyond the landward boundary of the upland area defined in (a)3 above, or up to and including the mean high water line in the areas defined in (a)1 and 2 above.

1. A waterfront development permit application submitted under this subsection must be submitted in conjunction with an application for a tidelands instrument.

(h) A waterfront development permit shall not be required for any development or activity in the upland area defined in (a)3 above and in manmade waterways and lagoons for which on-site construction, excluding site preparation, was in progress on or prior to September 26, 1980. For the purpose of this section, "construction, excluding site preparation" does not include clearing vegetation, bringing construction materials to the site, site grading or other earth work associated with preparing a site for construction or structures. For the purposes of this section, "construction, excluding site preparation" does encompass improvements which include, but are not limited to, paved roads, curbs, and storm drains.

1. Any person who believes that a proposed development is exempt from the requirements of this subchapter due to on-site construction may request in writing a determination of exemption from the Department in accordance with (g)2 below.

2. Exemptions shall be applied for and considered upon submission of information sufficient for the Department to determine that the physical work specified in (g)1 above necessary to begin the construction of the proposed development, was actually performed prior to September 26, 1980 in the area defined in (a)3 above.

i. Any lapse in construction activity of more than one year may be cause for denial of an exemption request, or where previously exempted, it may be cause for revocation of such exemption, by the Department.

ii. A finding that a proposed development is exempt from the requirements of this subchapter shall apply only to the development as conceived and designed prior to September 26, 1980. Any modification which expands or substantially changes the exempted development shall require a permit.

SUBCHAPTER 4. PERMITS-BY-RULE

7:7-4.2 Permit-by-rule 2 - development of a single-family home or duplex and/or accessory development on a bulkheaded lagoon lot

(a) This permit-by-rule authorizes the development (including expansion or reconstruction and expansion) of a single-family home or duplex and/or accessory development (such as garages, sheds, pools driveways, grading, excavation and clearing excluding shore protection structures) provided the single family home or duplex and accessory development are located on a bulkheaded lagoon lot and provided the proposed single-family home or duplex and/or accessory structures comply with all of the following:

1. Development under this permit-by-rule shall not result in 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;

2. The site is located on a man-made lagoon lot, with an existing bulkhead along the entire waterfront portion of the site;

3. All waterfront portions of the site are protected by a currently serviceable bulkhead;

4. There are no wetlands on the site landward of the bulkhead;

5. The proposed single family home or duplex and accessory structures, excluding decks, are set back a minimum of 15 feet from the waterward face of the bulkhead. If there is no alternative to locating the proposed single family home or duplex and accessory structures at least 15 feet landward of the bulkhead, the ~~[set-back]~~ **setback** shall be reduced if an engineering certification is provided demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing bulkhead and a conservation restriction is recorded for the property which states that any reconstruction of a bulkhead shall be within 18 inches of the existing bulkhead;

6. A silt fence is erected landward of the bulkhead with a 10-foot landward return on each end prior to construction. This fence shall be maintained and remain in place until all construction and landscaping activities are completed;

7. If the development includes the construction of a driveway, any newly constructed portion of the driveway shall be covered with a permeable material or else be pitched to drain all runoff onto permeable areas of the site;

8. The development shall meet the requirements of N.J.A.C. 7:7-9.25;

9. The single family home or duplex shall be serviced by an existing municipal sewer system; and

10. All sub-gravel liners must be made of filter cloth or other permeable material.

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. The solar panel development shall not be located in or on dunes, beaches, wetlands, floodways, or coastal bluffs;
2. The solar panel development shall be ~~[setback]~~ **set back** a minimum of 50 feet from the inland limit of any wetlands, beach, or dune;
3. The maintained lawn or landscaped area is not subject to a previous coastal permit requirement that it remain as vegetative cover; and
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. The solar panel(s) is located within 120 feet of an existing building on an actively maintained lawn or area of land that has been manipulated by contouring of the soil and/or by intentional planting of flowers, grasses, shrubs, trees or other ornamental vegetation, which is maintained in such a condition by regular and frequent (at least one time per year) cutting, mowing, pruning, planting, weeding or mulching; or
 - ii. The solar panel(s) is located on legally existing impervious cover.

7:7-4.14 Permit-by-rule 14 – reconfiguration of any legally existing dock, wharf, or pier at a legally existing marina

(a) This permit-by-rule authorizes the reconfiguration of any legally existing dock, wharf, or pier, **including pilings**, located at a legally existing marina, provided the marina is not located within shellfish habitat, submerged vegetation habitat, or a wetland.

(b) 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, 33 U.S.C. §§ 1251 et seq.

(c) The proposed reconfiguration shall:

1. Not extend outside of the area covered by an existing Tidelands instrument;
2. Not result in an increase in the number of boat slips;
3. Not hinder navigation;
4. Not increase the total linear footage of docks or piers within the marina;
5. Minimize the water area covered by structures by:
 - i. Providing a minimum of eight feet of open water between any docks if the combined width of the docks over water exceeds eight feet; and
 - ii. For sites which have existing dock or pier structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to relocate, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats~~[-]~~; **and**

6. Provide a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline[;].

7:7-4.21 Permit-by-rule 21 – application of [~~pesticide~~]herbicide within coastal wetlands to control invasive plant species

(a) This permit-by-rule authorizes the application of [~~pesticide~~]herbicide within coastal wetlands to control invasive plant species, provided:

1. The area to which the [~~pesticides are~~]herbicide is applied shall not exceed a total area of one-quarter acre or less on a site;
2. The activities do not adversely affect the habitat of any threatened or endangered wildlife or plant species, as described at N.J.A.C. 7:7-9.36; and
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 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

(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. No excavation, grading, or filling of a beach or dune is conducted;
2. The swimming pool, spa, or hot tub is set back a minimum of 15 feet from the waterward face of the bulkhead;
3. The footprint of the area covered by the current construction in combination with any existing swimming pool, spa, and/or hot tub, constructed under this permit-by-rule after 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 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;

5. The backwash system of the swimming pool, spa, or hot tub does not discharge to the adjacent water body;

6. Prior to construction, a silt fence is erected landward of the bulkhead with a 10-foot landward return on each end. The silt fence shall be maintained and remain in place until all construction and landscaping activities are completed; ~~and~~

7. All subgravel liners are made of filter cloth or other permeable material[-]; **and**

8. The swimming pool, spa, or hot tub and associated decking are not constructed on a coastal bluff.

7:7-4.23 Permit-by-rule 23 – installation of an at-grade dune walkover at a residential, commercial, or public development other than a single-family home or duplex

(a) This permit-by-rule authorizes the installation of an at-grade dune walkover, such as a stabilization mat, at a residential, commercial, or public development other than a single-family home or duplex, provided:

1. Only one walkover is installed at the site unless New Jersey 2012 High Resolution Orthophotography (available for download at http://njin.state.nj.us/NJ_NJGINExplorer/DataDownloads.jsp) reflects that more than one walkover was present on the site on the date depicted in the image. In such case, the maximum number of walkovers that may be installed shall be equal to the number of walkovers reflected on the 2012 orthophotography;

2. The installation does not require the grading or excavation of a beach or dune;

3. For non-commercial properties, the width of the at-grade walkover structure does not exceed six feet and the total width of the at-grade walkover, fencing, and/or edging does not exceed eight feet;

4. For commercial properties, the width of the at-grade walkover structure does not exceed 10 feet and the total width of the at-grade walkover, fencing, and/or edging does not exceed 12 feet;

5. The walkover is fenced on both sides using sand fencing, split rail fencing, or open handrails, unless prohibited by the municipality; and

6. The activity complies with any applicable management plan for protection of State or Federally listed threatened or endangered species, as approved by the Department and the USFWS, and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36.

SUBCHAPTER 5. GENERAL PERMITS-BY-CERTIFICATION

7:7-5.3 General permit-by-certification 1A – installation of an elevated timber dune walkover at a residential, commercial, or public development other than a single-family home or duplex

(a) This general permit-by-certification authorizes the installation of an elevated timber dune walkover at a residential, commercial, or public development other than a single-family home or duplex, provided:

1. Only one walkover is installed at the site unless New Jersey 2012 High Resolution Orthophotography (available for download http://njin.state.nj.us/NJ_NJGINExplorer/DataDownloads.jsp) reflects that more than one walkover was present on the site on the date depicted in the image. In such case, the maximum number of walkovers that may be installed shall be equal to the number of walkovers reflected on the 2012 orthophotography;

2. The construction of elevated timber dune walkover is in accordance with the standards and specifications described in Beach Dune Walkover Structures (Florida Sea Grant, 1981) available from the Department at the address set forth at N.J.A.C. 7:7-1.6;

3. For non-commercial properties, the width of the walkover structure does not exceed six feet and the total width of the elevated timber walkover, fencing, and/or edging not to exceed eight feet;

4. For commercial properties, the width of the walkover structure does not exceed 10 feet and the total width of the walkover, fencing, and/or edging not to exceed 12 feet; and

5. The activity complies with any applicable management plan for protection of State and Federally listed threatened or endangered species, as approved by the Department and the USFWS, and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36.

SUBCHAPTER 6. GENERAL PERMITS

7:7-6.2 General permit 2 – activities on a beach and dune [~~maintenance activities~~]

(a) This general permit authorizes the following activities on a beach and dune [~~maintenance activities provided~~]:

~~[1. The beach and dune maintenance activities are conducted in accordance with Best Management Practices set forth at N.J.A.C. 7:7-10.2, Standards applicable to routine beach maintenance; 7:7-10.3, Standards applicable to emergency post-storm beach restoration; and 7:7-10.4, Standards applicable to dune creation and maintenance;]~~

~~[2.]~~ (b) The beach and dune maintenance activities shall not be conducted in any wetlands; and

~~[3.]~~ (c) Public access to the beach shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(d) The activity is conducted in accordance with the Operation and Maintenance Manual associated with the Federal or State project, or where such manual does not exist, the activity does not compromise the design template of the engineered beach and/or dune.

(e) The activity complies with any applicable management plan for protection of State and Federally listed threatened or endangered species, as approved by the Department and the USFWS, and/or the endangered or threatened wildlife or vegetation species habitat rule, N.J.A.C. 7:7-9.36.

~~[(b)]~~ **(f)** As of November 5, 2015, the Department shall not approve authorization under this general permit to any municipality that does not have a Department-approved municipal public access plan in accordance with N.J.A.C.7:7-16.9(c) through (m).

7:7-6.3 General permit 3 - voluntary reconstruction of certain residential or commercial development

(a) This general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development provided:

1. Such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law;
2. The reconstruction does not result in the enlargement of the footprint of the development;
3. In the case of residential reconstruction, the reconstruction does not result in an increase in the number of dwelling units;
4. In the case of commercial reconstruction~~[(j)]~~:
 - i. The reconstruction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development; and
 - ii. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15;
5. The reconstruction does not result in additional impacts to special areas as defined at N.J.A.C. 7:7-9;
6. The reconstruction does not increase the area covered by buildings and/or asphalt or concrete pavement;
7. The reconstruction meets the requirements of N.J.A.C. 7:7-9.25 and 9.26; and
8. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(b) Authorization under this general permit is not required for repairs or maintenance, such as replacing siding, windows, or roofs which is not regulated, unless the repair or maintenance is associated with an expansion of the footprint of development.

7:7-6.4 General permit 4 - development of one or two single-family homes or duplexes

(a) This general permit authorizes 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.

(b) Development under this general permit shall 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.

(c) Development under this general permit shall comply with N.J.A.C. 7:7-9.22, Beaches; ~~[7:7-]9.25~~, Flood hazard areas; ~~[7:7-9.26, Riparian zones; 7:7-]9.27~~, Wetlands; ~~[7:7-]9.28~~, Wetland buffers; and ~~[7:7-]9.36~~, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this general permit within a riparian zone, as defined in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2 and in this chapter at N.J.A.C. 7:7- 9.26, shall comply with the following requirements: 1. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; 2. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed; and

3. Within a 150-foot or 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

~~[(d)]~~ **(e)** In addition to meeting the requirements at (c) **and (d)** above, the development of two single-family homes or duplexes under this general permit on filled water's edge sites that have included a water dependent use at any time since July of 1977, shall comply with N.J.A.C. 7:7-9.23~~[(e)]~~ **(g)** of the filled water's edge rule.

~~[(e)]~~ **(f)** Development under this general permit shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under ~~[(e)1]~~ **(f)1** or 2 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at ~~[(e)1ii]~~ **(f)1ii** below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this subparagraph, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

i. The road, seawall, or bulkhead is of sufficient size to be designated as the V zone boundary on the ~~[FIRM]~~ **applicable FEMA flood mapping**;

ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;

iv. The area of proposed construction is designated as an A zone, B zone, or C zone on the ~~[FIRM]~~ **applicable FEMA flood mapping**;

v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

vi. The proposed development does not include the construction of a shore protection structure.

~~[(f)]~~ **(g)** Development under this general permit shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at ~~[(m)]~~ **(n)1** below, unless the development meets either ~~[(f)]~~ **(g)1** or 2 below:

1. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at ~~[(f)]~~ **(g)1** above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

~~[(g)]~~ **(h)** Development under this general permit shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and 7:7-9.19, Erosion hazard areas, except as excluded under ~~[(g)]~~ **(h)1** below;

1. Development under this general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, and the erosion hazard areas rule, N.J.A.C. 7:7-9.19, if:

i. The lot was shown as a subdivided lot prior to July 19, 1993;

ii. The lot is served by a municipal sewer system; and

ii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

~~[(h)]~~ (i) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

~~[(i)]~~ (j) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

~~[(j)]~~ (k) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

~~[(k)]~~ (l) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

~~[(l)]~~ (m) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

~~[(m)]~~ (n) Development under this general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;
2. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;
3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with ~~[(m)]~~ (n) 1 above.

~~((a))~~ (o) This general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

7:7-6.5 General permit 5 - expansion, or reconstruction (with or without expansion), of a single-family home or duplex

(a) This general permit authorizes 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, and clearing, excluding shore protection structures), provided the single-family home or duplex and accessory structures are located landward of the mean high water line, and provided the single-family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this general permit shall not result in 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.

(c) Development under this general permit shall comply with N.J.A.C. 7:7-9.22, Beaches; 7:7-9.25, Flood hazard areas; 7:7-9.26, Riparian zones; 7:7-9.27, Wetlands; 7:7-9.28, Wetland buffers; and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this general permit shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (d)1 through 4 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following conditions:

i. The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

ii. The cross-sectional area of the primary frontal dune waterward of the proposed development, as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this subparagraph, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographical Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

- i. The road, sea wall, or bulkhead is of sufficient size to be designated as the V zone boundary on the ~~[FIRM]~~**applicable FEMA flood mapping**;
- ii. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;
- iii. The road, seawall or bulkhead is functional and is currently maintained by a public entity;
- iv. The area of proposed construction is designated as an A zone, B zone, or C zone on the ~~[FIRM]~~**applicable FEMA flood mapping**;
- v. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and
- vi. The proposed development does not include the construction of a shore protection structure.

3. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

- i. The single family home or duplex legally existed on July 19, 1993;
- ii. The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (d)4 below;
- iii. The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (d)3iv below;
- iv. For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (d)3ii above, provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;
- v. The dune area waterward of the single-family home or duplex is enhanced as follows:
 - (1) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and
 - (2) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6
- vi. A conservation restriction for the dune areas waterward of the existing and/or approved single-family home or duplex and/or accessory development which complies with N.J.A.C. 7:7-18 is recorded; and

4. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

- i. The development is the enclosure of a deck, patio, or porch;
- ii. The deck, patio, or porch enclosure is located on the non-waterward side of the single-family home or duplex;
- iii. The deck, patio, or porch legally existed on July 19, 1993;
- iv. The deck, patio, or porch abuts the dwelling;
- v. The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;
- vi. The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet; and
- vii. The dune area waterward of the single-family home or duplex is enhanced as follows:
 - (1) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site;
 - (2) Native dune vegetation shall be planted in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6; and
- viii. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development which complies with N.J.A.C. 7:7-18 is recorded.

(e) Development under this general permit shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (l)1 below, unless the development meets either (e)1 or 2 below:

1. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or
2. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)1 above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

(f) Development under this general permit shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and 7:7-9.19, Erosion hazard areas, except as excluded under (f)1 below;

1. Development under this general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, and the erosion hazard areas rule, N.J.A.C. 7:7-9.19, if:
 - i. The lot was shown as a subdivided lot prior to July 19, 1993;

ii. The lot is served by a municipal sewer system; and
iii. A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line.

(g) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(h) The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material.

(i) Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site.

(j) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations.

(k) For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed.

(l) Development under this general permit shall comply with the following setbacks:

1. On a site with coastal bluffs that are not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

2. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to other below grade structures; and

3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is

recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (l)1 above.

(m) This general permit does not authorize any activities regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

7:7-6.6 General permit 6 - construction of a bulkhead and placement of associated fill on a man-made lagoon

(a) This general permit authorizes the construction of a bulkhead on a lot located on a substantially developed manmade lagoon, provided that the bulkhead complies with the following:

1. The site is located on a substantially developed manmade lagoon;
2. The bulkhead shall be located at or above the spring high water line unless it is between two existing legally constructed bulkheads not more than 75 feet apart. In such cases, the connecting bulkhead shall not extend waterward of a straight line connecting the ends of the existing bulkheads;
3. There shall be no disturbance to wetlands during construction;
4. The bulkhead is located inshore of any wetlands;
5. A minimum 10-foot return shall be constructed at each end of the bulkhead unless it is tied into an existing adjacent bulkhead;
6. Clean fill from an upland source or the dredged material removed as part of the bulkhead installation, provided such dredged material meets the criteria for structural or non-structural fill material and is managed in accordance with Appendix G, shall be used for backfill.
7. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

7:7-6.13 General permit 13 – construction of recreational facilities at public parks

(a) This general permit authorizes the construction of the following recreational facilities at parks which are publicly owned or controlled for the purposes of public access. Construction of the facilities listed below is acceptable provided that the construction has no adverse impact on any special areas defined at N.J.A.C. 7:7-9 and provided that the facility complies with the specific conditions listed below for each facility.

1. Construction of the following facilities provided they are not located on a dune or in a wetland, except as noted at (a)3 below:
 - i. Playground equipment including, but not limited to, swings, slides, and jungle gyms;
 - ii. Picnic tables, benches and grills which are not seasonal;
 - iii. Gazebos, rain shelters and sheds provided they do not exceed a footprint 200 square feet;
 - iv. Pathways, bicycle paths and jogging and nature trails and associated fitness equipment provided they are not located on a beach; and
 - v. Fences which do not require permanent footings.
2. Construction of restroom facilities not located on a beach, dune, or in a wetland, provided that:

- i. The restroom facilities connect to an existing sewer line located within or abutting the park, or facilities discharge to a subsurface sewerage disposal system;
 - ii. The connection at (a)2i above shall be consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15;
 - iii. The restroom building shall be set back a minimum of 100 feet from the mean high water line unless the Department determines that there is no alternate location; and
 - iv. The restroom building shall be set back a minimum of 50 feet from the inland limit of any wetlands, unless the Department determines there is no alternate location.
3. Trail or boardwalk construction in wetlands is acceptable provided that:
- i. The width of the trail or boardwalk does not exceed six feet, except for barrier free trails or boardwalks designed in accordance with the Barrier Free Subcode of the Standard Uniform Construction Code, N.J.A.C. 5:23-7. The construction of restrooms, gazebos, rain shelters, or any covered or enclosed structure is not authorized on the boardwalk or trail;
 - ii. The height of the structure over wetlands, other than wetlands regulated under the Freshwater Wetlands Protection Act and implementing rules at N.J.A.C. 7:7A, shall be a minimum of four feet regardless of width;
 - iii. The project does not interfere with the natural hydrology of the area; and
 - iv. The project does not encroach upon or adversely affect the habitat of any threatened or endangered species.
- (b) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

7:7-6.17 General permit 17 – stabilization of eroded shorelines

(a) This general permit authorizes the stabilization of eroded shorelines along tidal waterways, excluding the Atlantic Ocean, provided that the proposed method complies with all of the following:

- 1. The stabilization materials are limited to live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, ~~choir~~ coir fiber products, fiber plugs, plants and clusters, selected plant materials, fiber pallets, fiber carpet, and wood stake anchor systems. Materials shall be installed in accordance with the construction guidelines of Chapter 16--"Streambank and Shoreline Stabilization Protection," of the National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, incorporated herein by reference, as amended and supplemented. This coastal general permit does not authorize the use of geotubes, stone, concrete, gabions, wood sheathing, pvc pipe, used tires, discarded Christmas trees, or other material not specifically stated in this paragraph;
- 2. The stabilization of the eroded shoreline shall have no adverse impact on special areas defined at N.J.A.C. 7:7-9;
- 3. No disturbance to wetlands shall occur;
- 4. Where shoreline stabilization will occur outshore of a wetland, the construction shall result in minimum feasible alteration or impairment of natural tidal circulation;
- 5. Where shoreline stabilization will occur outshore of a wetlands, the construction shall result in minimum feasible alteration or impairment of the natural contour or the natural vegetation of the wetlands;

6. For sites where grading is required, no grading shall occur below the spring high water line, and all soil or other graded materials shall be pulled back away from the water. Grading by pushing soil or other material below the spring high water line is prohibited;

7. The placement of bioengineering materials, with the exception of plantings, shall be limited to that necessary to protect the shoreline;

8. Plant material shall be chosen and installed in accordance with "Vegetation For Tidal Shoreline Stabilization In the Mid-Atlantic States" in Chapter 16--"Streambank and Shoreline Stabilization Protection," of the National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, incorporated herein by reference, as amended and supplemented.

9. For projects on public lands, public access to the waterfront shall be provided and maintained during construction, and thereafter; and

10. If the Department determines that construction has resulted in adverse shoreline sand movement, including erosion or shoaling, the Department may require the permittee to remove the shoreline stabilization materials.

7:7-6.22 General permit 22 –construction of certain structures related to the tourism industry at hotels and motels, commercial developments, and multi-family residential developments over 75 units

(a) This general permit authorizes the construction of structures such as equipment storage containers and sheds, stage platforms, bleachers, portable restrooms, food concession stands, gazebos, lockers, canopied shelters, and wooden walkways related to the tourism industry, at hotels and motels, commercial developments, and multi-family residential developments over 75 units provided that:

1. Except as provided in (a)1i below, the structure remains in place only from May 1 through October 31;

i. Underground utilities, floor decking, open drink and food concession stand shells, and stage shells may remain in place on a year-round basis;

2. All structures authorized by this general permit that are located on a beach, except underground utilities, shall be immediately removed from the beach and relocated to a secure place at any time that the National Weather Service issues a Severe Weather Alert for the municipality in which the development is located, for significant weather events, such as Coastal Flood Warning, Extreme Wind Warning, Hurricane Warning, Tornado Warning or Tropical Storm Warning, that would directly affect structures left on the beach, until the Severe Weather Alert is lifted.

3. The structure is not located on a dune, coastal bluff, or in a wetland;

4. Placement of the structure does not include the excavation, grading or filling of a beach;

5. The structure shall have no adverse impact on special areas defined at N.J.A.C. 7:7-9;

6. The structure is located a minimum of 50 feet landward of the mean high water line, except on beaches where the development is located on the most landward portion of the beach. Development on beaches shall additionally be subject to the following:

i. The development shall occupy a maximum of 33 percent of the total width of the beach berm area within the limits of the project **and is limited to the most landward one-third of the useable beach berm area**; and

ii. The total area of beach coverage, including all structures and support facilities, shall not exceed one acre. However, the Department reserves the right to limit the coverage to a greater extent due to prevailing beach conditions, public access and safety concerns;

7. The structure is located a minimum of 50 feet from any wetlands;

8. If the structure is proposed on a beach, the structure does not unreasonably conflict with ocean views or other beach uses;

9. If the structure is proposed on a beach, the beach is open to the public;

10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9; and

11. Where the structure(s) is located on a beach, for each year of the duration of the permit, the permittee shall submit on or before April 1st to the Department for its review and approval one copy of a revised site plan, dated no more than 30 days prior to the submittal, including supplemental documents as appropriate, showing:

i. The location of the beach berm area; and

ii. Compliance with (a)2 through 9 above. Based on review of this information, the Department may approve the structure(s) as proposed or require modifications to the footprint or design of the structures to comply with these standards.

(b) Seasonal and temporary structures related to the tourism industry at public developments are not regulated as public development under CAFRA pursuant to N.J.A.C. 7:7-1.5 and 2.2(b)2viii.

7:7-6.23 General permit 23 –geotechnical survey borings

(a) This general permit authorizes geotechnical survey borings including survey borings or excavations constructed for the purpose of obtaining information on subsurface conditions, for the purpose of determining the presence or extent of contamination in subsurface soils or groundwater, and for obtaining seismic information, provided the following conditions are met.

1. Borings and related site disturbance shall not be located in shellfish habitat (N.J.A.C. 7:7-9.2), submerged vegetation habitat (N.J.A.C. 7:7-9.6) or endangered or threatened wildlife or plant species habitats (N.J.A.C. 7:7-9.36).

2. Borings and related site disturbance shall comply with wild and scenic river corridors, (N.J.A.C. 7:7-9.44), wetlands (N.J.A.C. 7:7-9.27), and wetlands buffers (N.J.A.C. 7:7-9.28).

3. Borings for remedial investigation shall be permitted, constructed, and completed in accordance with the Well Construction and Maintenance; Sealing of Abandoned Well rules, N.J.A.C. 7:9D, and N.J.A.C. 7:26E-1.5(b) and 4 of the Technical Requirements for Site Remediation;

i. Any excavation shall not adversely impact existing remedial investigation/remediation action (RI/RA) activities:

ii. Workers on-site shall be notified, in writing, prior to the start of site preparation, of the possible presence of contaminated materials. Appropriate measures shall be taken to protect workers from exposure to possible contaminants; and

iii. Any potential or actual impact to existing monitoring wells shall be reported to the Department's Site Remediation Program and the licensed site remediation professional (LSRP) of record assigned to the case, if applicable. The LSRP (or the Site Remediation Program if there

is no LSRP involved in the case) will coordinate appropriate measures required to protect, decommission, or install the monitoring wells. The LSRP is responsible for ensuring that all damaged or destroyed wells are decommissioned in accordance with N.J.A.C. 7:9D. Any replacement wells shall be installed in accordance with N.J.A.C. 7:9D. Decommissioning of monitoring wells and drilling of regulated soil borings shall be performed by a New Jersey licensed well driller of the proper class in accordance with N.J.A.C. 7:9D.

4. Disturbance shall be limited to that which is necessary to access and conduct the geotechnical borings.

i. Disturbance to vegetation shall~~[7]~~ be limited to a maximum width of five feet for access.

5. Borings and related site disturbance shall not be conducted during the following time periods:

i. During the migration of anadromous fish from April 1 thru June 30 (inclusive);

ii. During the period from March 1 thru June 30 and from October 1 thru November 30 (inclusive), within and adjacent to waters on the Delaware River System from the mouth of bay to Delaware Memorial Bridge and tidal Maurice River, identified as American shad migratory pathways; and

iii. During the period from April 1 thru June 30 and from September 1 thru November 30 (inclusive), within and adjacent to waters on the Delaware River System from the Delaware Memorial Bridge to the New York State line and tidal portions of Rancocas and Raccoon Creeks, identified as American shad migratory pathways.

~~[6. Any acid-producing soils encountered shall be managed in accordance with the requirements for a regulated activity in an area with acid-producing soils in the Flood Hazard Area Control Act rules (N.J.A.C. 7:13).]~~

~~[7.]~~6. Bore holes shall be backfilled to the original surface level with appropriate, non-contaminated, soil material.

i. Sand may not be used for backfilling in either freshwater or coastal wetlands. Restoration of all bore holes must maintain the hydrologic integrity of the wetlands. To avoid the potential for draining a wetland by puncturing a hard-pan or confining layer, all borings must be sealed with grout or bentonite in accordance with the Department's Water Monitoring Management Program rules, N.J.A.C. 7:9-6.

ii. Water used to flush a boring may be discharged to the ground provided the boring is not conducted in proximity to a stream or in an area of hazardous waste or acid-producing soils. When the boring is performed in proximity to a stream, and water or drilling fluid is used to remove soil from the hole, the sediment-laden water shall not be allowed to flow overland such that it would enter the stream. Soil erosion and sediment control measures shall be used as necessary to contain/filter excess water. Drilling fluid shall be contained when working adjacent to a fish-populated watercourse during the relevant restricted period, and in any other situation where containment represents the only method of ensuring that there is no impact to adjacent streams.

7:7-6.30 General permit 30 – commercial shellfish aquaculture activities

(a) This general permit authorizes the construction and/or placement and maintenance of shellfish aquaculture equipment, including floating upwellers, shellfish rafts, racks and bags, lantern nets, and cages, provided:

1. The structures are located in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23;

2. The structures are not located within submerged infrastructure routes, N.J.A.C. 7:7-9.12, shipwreck and artificial reef habitat, N.J.A.C. 7:7-9.13, or wetlands, N.J.A.C. 7:7-9.27;

3. The structures are not located within 50 feet of any designated navigation channel, unless it is demonstrated that the proposed structure will not hinder navigation. The placement of structures within designated navigation channels is prohibited;

4. The boundaries of the area where the structures are placed are clearly marked in accordance with US Coast Guard requirements for regulatory and informational markers ((US Coast Guard "U.S. Aids to Navigation System"[<http://www.uscgboating.org/ATON/index.htm>]) <http://uscgboating.org/regulations/navigation-rules.php>. Specifically, the corners of the footprint of the area where the structures are placed must be marked with buoys or stakes;

5. The structures are constructed of non-polluting materials:

6. The structures are properly secured; and

7. No activity undertaken pursuant to this general permit shall prevent the catching and taking of free swimming fish from the tidal waters of the State in any lawful manner, pursuant to N.J.S.A. 50:1-33.

(b) Upon expiration or termination of the shellfish lease, or the cessation of shellfish aquaculture activities, whichever occurs first, within five days the permittee shall remove all structures placed within the lease area.

(c) Prior to the commencement of activities authorized by this general permit, the permittee shall notify the Department's Bureau of Shellfisheries in writing:

1. For Atlantic Coast Shellfish Leases:

Nacote Creek Shellfish Office

PO Box 418

Port Republic, NJ 08241

2. For Delaware Bay Shellfish Leases:

Delaware Bay Shellfish Office

1672 East Buckshutem Road

Millville, NJ 08332

(d) The notification under (c) above shall contain the following information:

1. A copy of the permit and associated plans;

2. The shellfish lease number;

3. The shellfish species to be cultured; and

4. The estimated date of commencement of activities.

7:7-6.32 General permit 32 – application of [~~pesticide~~]**herbicide** within coastal wetlands to control invasive plant species

(a) This general permit authorizes the application of [~~pesticide~~]**herbicide** within an area of coastal wetlands greater than 0.25 acres in size to control invasive plant species, provided the activities:

1. Do not adversely affect the habitat of any threatened or endangered wildlife or plant species habitat, as defined at N.J.A.C. 7:7-9.36;
2. Do not require the application of any pesticide on areas containing significant stands of high vigor Saltmarsh cordgrass (*Spartina alterniflora*), Wildrice (*Zizania ~~aquatic~~ **aquatica***), Cattail (*Typha sp.*), and Common threesquare (*Scirpus americanus*) as shown generally on wetlands maps, see chapter Appendix D; and
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 Bureau of Licensing and Pesticide Operations.

SUBCHAPTER 8. INDIVIDUAL PERMITS

7:7-8.1 Requirement to obtain an individual permit

A person shall obtain an individual permit under this subchapter in order to undertake any activity that does not meet the requirements of a permit-by-rule pursuant to N.J.A.C. 7:7-4, an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7-5, or an authorization under a general permit pursuant to N.J.A.C. 7:7-6.

7:7-8.2 Duration of an individual permit

(a) An individual permit for any activity waterward of the mean high water line is valid for five years from the date of issuance, and may be extended one time for five years pursuant to N.J.A.C. 7:7-27.3.

(b) An individual coastal wetlands permit cannot be extended.

~~((b))~~ **(c)** Except as provided in ~~((c))~~ (d), ~~and~~ (e) **and (f)** below, an individual permit for any activity landward of the mean high water line is valid for five years from the date of issuance.

~~((c))~~ **(d)** If construction under an individual permit for an activity landward of the mean high water line commences within five years from the date of issuance and construction must continue beyond five years from the original date of issuance, then the permit shall be valid until the project is completed, provided:

1. The permittee submits a written request for approval to continue construction that is received by the Department no less than 20 working days prior to the five-year expiration date of the permit. Construction may continue while the request is under review;
2. The permittee obtains written approval from the Department to continue construction of the project as authorized under the permit until completion; and
3. Construction beyond the five years from the original date of issuance of the permit does not cease for a cumulative period of one year or longer.

~~((d))~~ **(e)** If construction under an individual permit for an activity landward of the mean high water line does not commence within five years from the date of issuance due to circumstances that are beyond the permittee's control or has commenced but will cease for a cumulative period of one year or longer due to circumstances that are beyond the permittee's control, then the permit shall be valid for 10 years from the original permit issuance date, provided:

1. Where construction does not commence within five years from the date of issuance, the permittee submits a written request for approval to commence construction before the end of the period that is 10 years from the original permit issuance date and to continue construction thereafter to completion. The request must be received by the Department no less than 20 working days prior to the five-year expiration date of the permit. Construction may continue while the request is under review;

2. Where construction has commenced within five years from the date of issuance of the permit and the permit continues valid under ~~[(e)]~~(d) above, the permittee submits a written request for approval to cease construction and re-commence construction before the end of the period that is 10 years from the original permit issuance date and to continue construction thereafter to completion. The request must be received by the Department no less than 20 working days prior to the date that the cumulative one-year period in ~~[(e)]~~(d)3 above would be exceeded. Construction may continue while the request is under review; and

3. The permittee obtains written approval from the Department to, as applicable, commence and continue, or cease and re-commence and continue, construction of the project as authorized under the permit until completion.

~~[(e)]~~(f) The individual permit for an activity landward of the mean high water line for which the Department issued approval under ~~[(e)]~~(e) above shall expire if construction either does not commence or does not re-commence after cessation, whichever is contemplated by the approval, before the end of the period that is 10 years from the original permit issuance date. However, if construction does commence or re-commence before the end of that 10-year period and construction must continue beyond that 10-year period, then the permit shall be valid until the project is completed, provided:

1. The permittee submits a written request for approval to continue construction that is received by the Department no less than 20 working days prior to the 10-year expiration date of the permit. Construction may continue while the request is under review;

2. The permittee obtains written approval from the Department to continue construction of the project as authorized under the permit until completion; and

3. Construction beyond the 10 years from the date of issuance of the permit does not cease for a cumulative period of one year or longer.

~~[(f)]~~(g) 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.

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 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 declared complete for review. In determining the feasibility of compliance with the requirements in effect at the time the application is declared complete, 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.

SUBCHAPTER 9. SPECIAL AREAS

7:7-9.2 Shellfish habitat

(a) Shellfish habitat is defined as an estuarine bay or river bottom which currently supports or has a history of production for hard clams (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), eastern oysters (*Crassostrea virginica*), bay scallops (*Argopecten irradians*), or blue mussels (*Mytilus edulis*), or otherwise listed below in this section. A shellfish habitat area is defined as an area which meets one or more of the following criteria:

1. The area has a current shellfish density equal to or greater than 0.20 shellfish per square foot;
2. The area has a history of natural shellfish production according to data available to the New Jersey Bureau of Shellfisheries, or is depicted as having high or moderate commercial value in the Distribution of Shellfish Resources in Relation to the New Jersey Intracoastal Waterway (U.S. Department of the Interior, 1963)[, **and/or** "Inventory of New Jersey's Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1983-present); ~~[and/or the "Inventory of Delaware Bays Estuarine Shellfish Resources" (Division of Fish, Game and Wildlife, Bureau of Shellfisheries, 1993)];~~
3. The area is designated by the State of New Jersey as a shellfish culture area as authorized by N.J.S.A. 50:1 et seq. Shellfish culture areas include estuarine areas presently leased by the State for shellfish aquaculture activities or hard clam relay, transplant and transfer as well as those areas suitable for future shellfish aquaculture development; or
4. The area is designated as productive at N.J.A.C. 7:25-24, Leasing of Atlantic and Delaware Bay Bottom for Aquaculture.

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The List of Water Quality Limited Segments (known as the 303(d) list), prepared by the Department pursuant to the Federal Clean Water Act, 33 U.S.C. § 1313(d), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population, excluding those waterways listed at N.J.A.C. 7:7-15.3 and (l) below.

(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to "prohibited" status pursuant to N.J.A.C. 7:12-2.1(a)1ii. Development which would result in the destruction, condemnation

(downgrading of the shellfish growing water classification) or contamination of shellfish habitat is prohibited, unless the proposed development is a dock, pier, or boat mooring, expansion of an existing marina or construction of a new marina in limited infill situations, dredging, living shoreline, or a development required for national security constructed in accordance with (d)1, 3, 4, and 5, (e), (f), (g), (h), and (k) below. In addition, the construction of a dock or pier or the one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead when located in waters that have been classified as prohibited for the purpose of harvesting shellfish is acceptable in accordance with (d)2 and (i) below.

1. The term “destruction” includes actions of filling to create fast land, overboard dumping or disposal of solids or dredged materials which would smother shellfish populations, or create unsuitable conditions for shellfish colonization or the creation of bottom depressions with anoxic conditions.

(d) Construction of a dock, pier, or boat mooring in shellfish habitat is prohibited, except for the following:

1. Public fishing piers owned and controlled by a public agency for the sole purpose of providing access for fishing;

2. In waters which have been classified as prohibited for the purpose of harvesting shellfish; and

3. A single noncommercial dock, pier, or boat mooring associated with a single family dwelling provided the proposed dock, pier, or boat mooring meets the requirements at (d)3i through v below. If a lot has frontage on both a natural waterway and a man-made lagoon, the dock, pier, or boat mooring shall be located within the lagoon, unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with the recreational docks and piers rule at N.J.A.C. 7:7-12.5 or any other provisions of this chapter.

i. The proposed dock, pier, or boat mooring is:

(1) Constructed of non-polluting materials; and

(2) Designed and constructed in a manner that reduces the size of the structure to limit the area of shellfish habitat condemned and reduces adverse impacts to the marine ecosystem to the extent practicable. Reduction of the area of shellfish habitat condemned and adverse impacts to the marine ecosystem may include, for example, adjustment of the dimensions and location of the proposed dock, pier, or boat mooring to reduce the total area covered by the structure while ensuring that the requirements of this chapter are met.

ii. Unless the Department determines that a different length dock or pier is appropriate in order to ensure that the requirements of this chapter are met, a boat mooring shall not be located beyond, and a dock or pier shall not extend beyond, a straight line drawn between the outside corner of the outermost end of decking of the two nearest adjacent existing legal docks or piers (for a diagram illustrating how the maximum length of a single noncommercial dock or pier or location of a boat mooring is determined in accordance with this paragraph, see chapter Appendix E):

(1) If the dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway and the dock, pier, or boat mooring is to be located on the natural waterway as required under (d)3 above, the dock or pier shall not extend

beyond, or the boat mooring shall not be located beyond, the outermost end of decking of the nearest adjacent dock or pier on the natural waterway; or

(2) To meet the requirements of the submerged vegetation habitat rule at 7:7-9.6, a dock or pier shall be extended to the minimum length necessary, or the boat mooring shall be located where necessary to ensure that at mean low water a minimum water depth of four feet is present in the designated slips of the dock, pier, or boat mooring;

iii. The dock, pier, or boat mooring shall have no more than two designated slips. Boats shall not be moored at any area other than the two boat slips designated in the Department permit and/or the plan approved under that permit;

iv. Only one dock, pier or boat mooring shall be constructed per buildable lot pursuant to this subsection. Where two or more lots have been assembled for the purpose of building a single family dwelling, only one dock, pier or boat mooring shall be constructed pursuant to this subsection;

v. No dredging shall be performed in conjunction with the construction or use of the dock, pier, or boat mooring; and

vi. Mitigation for the condemnation of shellfish habitat or other impacts to the marine ecosystem shall be provided in accordance with N.J.A.C. 7:7-17;

4. The expansion of a legally existing, operating commercial marina that is open to the general public for the mooring of vessels, including marinas operated by public agencies, commissions, and authorities, provided that the expansion meets the requirements at (d)4i through vi below:

i. The marina expansion is designed and constructed in a manner that limits the area of shellfish habitat condemned and reduced to prohibited status pursuant to N.J.A.C. 7:12-2.1(a)1ii and reduces adverse impacts to the marine ecosystem to the maximum extent practicable. This shall be achieved by:

(1) Expanding the marina into areas other than shellfish habitat;

(2) Reconfiguring slips within the existing marina; and

(3) Adjusting the dimensions and location of the proposed marina expansion to minimize the total area covered by structures within shellfish habitat;

ii. The area in which the marina will be expanded has adequate water depths to accommodate vessels to be moored within the expanded marina. In no case shall the water depths be less than two feet at mean low water;

iii. No dredging shall be performed in conjunction with the construction or use of the marina expansion;

iv. With the exception of pilings, the portion of the marina expansion located at or waterward of the mean high water line shall be constructed of non-polluting materials;

v. The marina provides on-site restrooms and a pumpout facility; and

vi. Mitigation for the condemnation of shellfish habitat or other impacts to the marine ecosystem shall be provided in accordance with N.J.A.C. 7:7-17; and

5. The construction of a new commercial marina that is open to the general public for the mooring of vessels, including marinas operated by public agencies, commissions, and authorities, provided the marina meets the requirements at (d)5i through viii below:

i. The marina is located between two legally existing, operating commercial marinas where the distance between the two nearest adjacent existing legal docks or piers of each 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 (for an illustration, see chapter Appendix F);

- ii. The marina does not interfere with access to the existing marinas;
- iii. The marina is designed and constructed in a manner that minimizes the total area covered by structures within shellfish habitat;
- iv. The area in which the marina will be constructed has adequate water depths to accommodate vessels to be moored within the marina. In no case shall the water depths be less than two feet at mean low water;
- v. No dredging shall be performed in conjunction with the construction or use of the marina;
- vi. With the exception of pilings, the portion of the marina located at or waterward of the mean high water line shall be constructed of non-polluting materials;
- vii. The marina provides on-site restrooms and a pumpout facility; and
- viii. Mitigation shall be provided for the condemnation of shellfish habitat or other impacts to the marine ecosystem in accordance with N.J.A.C. 7:7-17.

(e) New dredging (defined at N.J.A.C. 7:7-12.7) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

- 1. The expanded portion of the marina, other than the access channel, will not be located within the shellfish habitat;
- 2. The marina provides on site restrooms, a marine sanitation disposal device and pumpout station; and
- 3. The width, depth and length of the to-be-dredged channel and boat basin are limited to the minimum dimensions needed to service the existing or expanded facilities.

(f) Maintenance dredging (defined at N.J.A.C. 7:7-12.6) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population, or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. 7:7-12.7 so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

(h) The establishment of a living shoreline in shellfish habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7-12.23.

(i) The one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead is conditionally acceptable in waters that are classified as prohibited for the purpose of harvesting shellfish, provided:

1. The replacement or reconstructed bulkhead is made of a non-polluting material;
2. The replacement or reconstructed bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (i)2i below;
 - i. Where the replacement bulkhead is constructed of a corrugated material, the replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead;
- and
3. A conservation restriction is placed on the bulkheaded property requiring that any future replacement bulkhead be located in the same location as the bulkhead replaced or reconstructed under this subsection.

(j) For the purpose of this rule all docks and piers, except public fishing piers defined in (d)1 above, are considered boat mooring facilities.

(k) Development required for national security for which there exists no other prudent and feasible alternative site is acceptable under this rule, provided that the shellfish resource is salvaged and mitigated pursuant to a plan approved in writing by the Department. The applicant is responsible for all the expenses of resource salvaging and mitigation. All such programs shall be coordinated with the appropriate shellfish management agency.

(l) N.J.A.C. 7:7-15.3 shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

(m) Rationale: Estuarine shellfish are harvested by both commercial and recreational shellfishermen. Hard clams are the most sought after species harvested as they occur in all estuarine waters. Oysters, bay scallops, and soft clams are predominantly harvested by commercial fishermen. In 2008, the commercial dockside landings for estuarine shellfish in New Jersey were valued at approximately \$6.63 million (United States Department of Agriculture). Shellfish are typically worth about six times the dockside value to the State's economy through processing, distribution and retail. In addition to being a harvestable resource, shellfish play an important role in the overall ecology of the estuary and are an important forage food source for a variety of finfish species, crabs, and migratory waterfowl. **Shellfish themselves are filter feeders and are, therefore, important for maintaining or improving water quality.**

There is an inherent conflict between **the protection of** shellfish habitat and water quality [~~protection~~] and boating related activities, such as mooring and dredging, though both are important [~~water-dependent~~] **water-dependent** activities in New Jersey. Boating related activities may affect shellfish habitat and the harvestability of shellfish. Mooring facilities can be a source of pollution with a high potential for improper disposal of human waste. Shellfish that occur in or near marinas and docks are unsafe for human consumption due to the potential health threats associated with the pollution generated [~~as a result of~~] **by the** leaching of toxic

chemicals and heavy metals from waterfront construction materials and boat-related pollutants, and human waste disposed in close proximity to these marinas and docks. Bivalve shellfish readily bioaccumulate and concentrate toxic substances and pathogenic microorganisms within their tissue, which poses a human health risk when contaminated shellfish is consumed. Due to the potential health threats associated with shellfish grown in polluted waters, shellfish are prohibited from being harvested for human consumption near mooring facilities. ~~[Dredging activities typically disturb and degrade the habitat environment.]~~

Dredging activities have a negative effect on the recruitment of shellfish by changing the composition of the substrate. Dredging disturbs and degrades shellfish habitat by adversely altering the water quality, salinity regime, substrate characteristics, natural water circulation pattern, and natural functioning of the shellfish habitat.

Motor fuels can be released into the aquatic environment via the operation of boat engines, fueling operations, and bilge pumping. The effects of petroleum hydrocarbons on fish and shellfish include direct lethal toxicity, sublethal disruption of physiology[,] **and/or** behavior, bioaccumulation, and development of an unpleasant taste to edible species. Motor fuels and exhaust ~~[often]~~**can** contain lead, cadmium, zinc, and other heavy metals. Heavy metals have been shown to cause suppression of growth or death of eggs, embryos, and larvae of hard clams. In addition, such contaminants are known to cause a variety of sublethal effects, including inhibited feeding behavior, retarded shell growth, and depression of cardiovascular function and respiration in various species of shellfish.

Boat maintenance operations may also have adverse impacts to estuarine organisms. Some detergents used to wash boats can be toxic to fish and invertebrates and may contribute to elevated nutrient levels, particularly **of** phosphorous. Toxins from various antifouling paints are harmful to shellfish and other invertebrates.

This rule intends to strike a balance between protection of shellfish habitat and recreational boating-related uses[,] **by** allowing maintenance dredging in shellfish habitats where an area has already been previously dredged[,] **and by allowing** new dredging at existing public boat launching facilities and major mooring/docking facilities. The dredging of larger marinas and boat launching facilities will allow the greatest number of boaters access to the water areas with the least amount of habitat disturbances and degradation. This is partly because ~~[the]~~ larger marinas are more likely than smaller ones to generate sufficient demand for a full service marina, and are required to provide restrooms, and a pumpout facility, as a condition for the dredging approval if they did not already have them. Dredging is allowed at larger marinas and boat launching facilities because their highly concentrated use pattern minimizes the overall physical space required for dockage/mooring area and channel maintenance. Additionally, direct disposal of human waste into the water is expected to be reduced when these better equipped marina facilities are equipped with pumpout facilities. Therefore, maintenance of these facilities is considered acceptable.

Marinas have infrastructure necessary to support recreational boating including pumpout facilities. The State has seen a decrease in the number of marina facilities through their conversion to other non-water dependent uses. The Marine Trades Association of New Jersey has provided a report based on information provided from marine businesses which indicates that over 500 boat slips and 17 marinas have been lost as of 2011. Not only does this result in a loss of slips available to the public, it results in the loss of jobs, revenue and marina services. 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 where mitigation through the minimization of the area 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 provided.

In accordance with N.J.A.C. 7:7-17.9, mitigation for impacts to shellfish habitat and the 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 reduce any future impacts to the marine ecosystem by prohibiting the construction of a shoreline protection structure other than 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. In 2016, the Assistant Commissioners of Land Use Management and Natural and Historic Resources signed a Memorandum of Understanding that establishes a framework for the use and management of funds from the Department’s dedicated account for shellfish habitat mitigation.

Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines by providing protection, restoration, or enhancement of these 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.

The one-time replacement, reconstruction, or renovation of a legally-existing bulkhead outshore of the existing bulkhead within waters classified as prohibited for harvesting shellfish is conditionally acceptable where the bulkhead is constructed of non-polluting materials and is located within 18 inches of the existing bulkhead, except where the replacement bulkhead is constructed of a corrugated material in which case it shall be located no more than 24 inches from the existing bulkhead. Non-polluting materials are required to minimize impacts to water quality. These requirements minimize impacts to water quality and the amount of substrate impacted by the bulkhead. The replacement or reconstruction of a bulkhead outshore of the existing bulkhead is allowed ~~[within shellfish habitat]~~ **in waters classified as prohibited for harvesting shellfish** in order to encourage the elimination of any polluting material in shellfish habitat and the correction or prevention of erosion, and because, in some cases, replacement

in kind (requiring the removal of the existing bulkhead which in most, if not all, instances will be constructed of a treated material that is not considered to be non-polluting) will have a detrimental impact to water quality through the sloughing of soil that has been in contact with the bulkhead sheathing that is being replaced. The replacement or reconstruction is limited to one time only in order to limit the encroachment into shellfish habitat.

The Navesink River, Shrewsbury River, and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare contain highly productive shellfish habitat. The Navesink and Shrewsbury Rivers are unique in that only three estuaries within the State have commercial soft clam densities. St. George's Thorofare is a commercially and recreationally valuable area that contains a high hard clam density according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife. In 1985, this 107-acre area was estimated to contain 6.2 million hard clams. The high abundance of hard clams, together with the fact that this waterbody is poorly flushed makes St. George's Thorofare a critical area that is sensitive to any potential pollution activities. ~~[These circumstances led to a moratorium being placed on this waterway against the construction of any new docks. Since then the moratorium has been lifted; however, the circumstances continue to render recommendations of denial for the construction of new docks.]~~ **Compliance with specific standards for boat mooring facilities with five or more slips within these watercourses is required so as to not adversely impact this highly productive shellfish habitat.**

Federal, State, and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs have been formed to protect these rivers. For example, the Navesink River Shellfish Protection Program represents a multi-agency pollution control program. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Departments of Environmental Protection and Agriculture, the United States Department of Agriculture and the USEPA. The memorandum serves to "...formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls (1987-93) has shown significant reductions in bacterial contamination of the Navesink River, to the point where ~~[the potential now exists for upgrading]~~, **after 25 years of being closed to shellfish harvest,** the shellfish classification of the ~~[river]~~ **Lower Navesink River was upgraded** to seasonally approved. **Other parts of the river are classified as special restricted.** The Shrewsbury River is a unique shellfish habitat in that it is only one of the three estuaries in New Jersey to have commercial densities of soft clams. Studies indicate that the Shrewsbury River is hydrologically connected to the Navesink River. As such, the Shrewsbury River ~~[has been]~~ **was** included as part of the "Navesink River Shellfish Protection Program." In addition, the Monmouth/Ocean Alliance to Enhance the Manasquan River was formed by Monmouth and Ocean Counties and the New Jersey Department of Environmental Protection to identify causes of shellfish water degradation and plan solutions for improved water quality and uses in the Manasquan River. **The Alliance requested that the Department ask USEPA to designate the Manasquan River Estuary a No Discharge Zone pursuant to the Federal Clean Water Act. The Department sought such a designation from USEPA and the Manasquan River Estuary was officially declared a No Discharge Zone by USEPA in June 1998.**

7:7-9.3 Surf clam areas

(a) Surf clam areas are coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams (*Spisula solidissima*), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:25-12.1(d)4. Surf clams are a marine fish and therefore are also subject to the marine fish and fisheries rule, N.J.A.C. 7:7-16.2.

(b) Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited except for the following:

1. Development that is of national interest provided:
 - i. There are no prudent and feasible alternative sites; and
 - ii. Impacts to the surf clam area are minimized.
2. Sand and gravel mining to obtain material for beach nourishment provided:
 - i. The beach nourishment project is in the public interest;
 - ii. There are no prudent and feasible alternative offshore borrow sites that would result in less impact to marine fish and fisheries;
 - iii. The impacts to surf clam areas are minimized through the following:
 - (1) The beach nourishment project is designed to minimize the volume of sand borrowed from the surf clam area;
 - (2) The borrow cut is designed to minimize the area disturbed, for example, by designing a deeper cut;
 - (3) The borrow site is located to avoid those more productive surf clam areas; and
 - (4) When appropriate, notice shall be provided to clambers in advance of the mining operation to allow for surf clam harvest; and
 - iv. The sand mining is not located within a surf clam conservation area as defined at N.J.A.C. 7:25-12.

(c) Rationale: Surf clams are the largest molluscan fishery in New Jersey, accounting for 47 percent (by weight) of the State's total reported molluscan commercial landings in 2011. Surf clam boats operate out of Point Pleasant, Atlantic City, and Cape May, while processing plants are located in Port Norris and Cape May. Historically, New Jersey leads all other states in surf clam landings because New Jersey vessels participate in both State and Federally controlled waters and the majority of the surf clam fleet land their catch in New Jersey ports. In 2011, 1.6 million bushels of surf clams were landed in New Jersey accounting for approximately 63 percent of the total Mid-Atlantic Region and New England Region's surf clam landings with an ex-vessel value of \$16.3 million. The Department's Division of Fish and Wildlife conducts annual surf clam stock assessments to determine the productivity of these resources.

The State has an interest in maintaining beaches for public recreational use and shore protection. Beach nourishment is the preferred method for accomplishing these goals. Therefore, this rule allows sand mining in surf clam areas provided use of other offshore borrow areas is not feasible and the impacts are minimized to the greatest extent practicable.

7:7-9.5 Finfish migratory pathways

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

1. Species of concern include(~~[Alosa pseudoharengus]~~ **Alosa pseudoharengus**), blueback herring (~~[Alosa sapidissima]~~ **Alosa aestivalis**), American shad (~~[Alosa sapidissima]~~ **Alosa sapidissima**), striped bass (~~[Morone saxatilis]~~ **Morone saxatilis**), Atlantic sturgeon (~~[Acipenser oxyrinchus]~~ **Acipenser oxyrinchus oxyrinchus**), Shortnose sturgeon (~~[Acipenser brevirostrum]~~ **Acipenser brevirostrum**) and American eel (~~[Anguilla rostrata]~~ **Anguilla rostrata**).

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

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

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

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

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

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

1. Trenching for utility pipelines and submarine cables in the public interest, provided there is no practicable or feasible alternative alignment, the impact area is minimized and that, following pipeline or cable installation, the disturbed area is restored to its preconstruction contours and conditions. This may include subsequent monitoring and replanting of the disturbed area if these species have not recolonized the disturbed area within three years. The use of directional drilling techniques for utility installations is strongly encouraged, rather than the use of trenching;
2. New dredging, as defined at N.J.A.C. 7:7-12.7, of navigation channels maintained by the State or Federal government provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example, dredging width, length, and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possesses submerged aquatic vegetation;
3. Maintenance dredging, as defined at N.J.A.C. 7:7-12.6, of previously authorized, existing navigation channels maintained by the State or Federal government provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;
4. New and maintenance dredging, as defined at N.J.A.C. 7:7-12.6 and 12.7, of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage, or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths, and widths) are minimized to the maximum extent practicable;
5. Maintenance dredging, as defined at N.J.A.C. 7:7-12.6, to regain access to existing private docks, piers, boat ramps, and mooring piles not associated with marinas that were previously

dredged to an authorized channel and/or mooring depth, width, and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. Construction of a single noncommercial dock or pier provided that:

i. There are no practicable or feasible alternatives to avoid impacts to submerged vegetation habitat at the site;

ii. The width of the structure will not exceed four feet, except for that portion of the structure adjacent to the mooring area, where the width and length may not exceed six and 20 feet, respectively;

iii. The pier shall have no more than two designated slips. No boats may be moored at a non-designated pier/dock area;

iv. No more than one pier shall be placed for every building lot and each building lot shall have a forty foot or greater frontage on the water. Where more than one lot has been assembled for the purpose of building, only one pier will be allowed;

v. No dredging shall be performed in conjunction with the use of the dock or pier;

vi. A minimum water depth of four feet at mean low water must be present in the area where the boats will be moored; and

vii. There is no alternative mooring area at the site that would have less impact on the submerged aquatic vegetation;

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

8. The establishment of a living shoreline in submerged vegetation habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7-12.23.

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

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats shall be conducted in accordance with N.J.A.C. 7:7-17.

(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 juvenile fin fish, bay scallops and blue crabs, and by nourishing fishery resources through primary biological productivity (synthesis of basic organic material) through ~~[detrital]~~ **detrital** food webs in a similar manner to salt marsh emergent ~~[Spartina]~~ **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~~. **This growth pattern forms** a vegetative community ~~and~~ **which** migrates 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 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.

7:7-9.8 Canals

(a) Canals are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing

natural surface water channels. The Cape May, Point Pleasant, and Delaware and Raritan Canals are the principal examples in the New Jersey coastal zone.

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

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

(d) Rationale: 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]~~ **has been** redeveloped as a State park with recreational boating and continued use as a water supply facility. ~~[This re-use is]~~ **Similar reuses in the coastal zone are** encouraged.

7:7-9.12 Submerged infrastructure routes

(a) A submerged infrastructure route is the corridor in which a pipe or cable runs on or below a submerged land surface.

(b) Any activity which would increase the likelihood of infrastructure damage or breakage, or interfere with maintenance operations is prohibited.

(c) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6]~~ **Submerged infrastructure routes are a large capital investment and much depends on the safe functioning of the infrastructure. Both human and natural systems suffer from accidental breakage, especially of large oil or gas pipeline. Activities which increase hazard for submerged infrastructure must, therefore, be excluded.**

7:7-9.13 Shipwreck and artificial reef habitats

(a) The shipwreck and artificial reef habitats special area includes all permanently submerged or abandoned remains of vessels and other structures, including, but not limited to, artificial reefs, anchors, quarry rocks or lost cargo, which serve as a special marine habitat or are fragile historic and cultural resources. An artificial reef is a man-made imitation of a natural reef created by placing hard structures on the sea floor for the purpose of enhancing fish habitat and fish stock. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines and other structures not constructed for the sole purpose of fish habitat.

1. Known sites include those shown either on National Ocean Survey (N.O.S.) charts or listed in the following publications: W. Krotee and R. Krotee, Shipwrecks Off the New Jersey Coast (1966); B.L. Freeman and L.A. Walford, Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities (1974); B. Preim, J. Carlson, B. Figley, A Guide to Fishing and Diving New Jersey Reefs, (2000); and the NJDEP Fisherman Magazine and the Artificial Reefs Association publication, Shipwrecks of New Jersey's Reefs (2003). In addition to

known sites, unidentified remains of vessels may exist within tidal waters. Shipwrecks may also be considered historic or archaeological resources pursuant to N.J.A.C. 7:7-9.34.

2. Shipwreck and artificial reef habitats may be subject to the marine fish and fisheries rule, N.J.A.C. 7:7-16.2.

(b) Acceptable uses of shipwreck and artificial reef habitats include finfishing, shellfishing, and scuba diving.

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a fish habitat is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef of equal habitat value.

(d) Rationale: Shipwrecks and other natural or artificial materials can serve as critical habitat for benthic finfish and lobsters, and other invertebrates which prefer shelter in hard substrates otherwise uncommon in New Jersey's marine waters. These areas function as congregation, refuge, feeding, and nursery areas for migratory species and support extensive fisheries. Although artificial reefs have been constructed for angling and diving, their goal is not solely to benefit human-use. A primary goal of an artificial reef is ecosystem and habitat enhancement. Due to the potential of reefs to serve as marine fish congregating areas, commercial and recreational fishing on artificial reefs may be regulated by the Department's Division of Fish and Wildlife, the Atlantic States Marine Fisheries Commission, and/or the Mid Atlantic Fisheries Management Council. As of ~~[2005]~~ **2015**, New Jersey had 15 reef sites ~~[encompassing approximately 26 square miles of sea floor]~~. **With the restoration of Federal funding in 2016, as many as 10 additional vessels are planned to be deployed to enhance these existing artificial reef habitats.** The sites are strategically located along the State's 120 mile coastline near navigable inlets. Shipwrecks are also fragile historic and cultural resources. Scuba divers from New Jersey and other states visit artificial reefs extensively.

7:7-9.14 Wet borrow pits

(a) Wet borrow pits are scattered artificially created lakes that are the results of surface mining for coastal minerals extending below groundwater level to create a permanently flooded depression. This includes, but is not limited to, flooded sand, gravel, and clay pits, and stone quarries. Where a wet borrow pit is also a wetland and/or wetlands buffer, the wetlands rule, N.J.A.C. 7:7-9.27, and/or wetlands buffers rule, N.J.A.C. 7:7-9.28, shall apply.

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. In addition, such activities must receive a water quality certificate.

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

(d) Surface mining is conditionally acceptable provided condition (b) above and the mining

rule, N.J.A.C. 7:7-15.8, are met.

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

(f) Filling of wet borrow pits for construction is conditionally acceptable provided (b) above is met and that:

1. The fill, including dredged material, is an appropriate particle size for the site, is clean, and will not degrade groundwater quality or flow. For the purposes of this subsection, dredged material shall comply with the acceptability conditions specified in Appendix G;
2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit is left as open water;
3. Land-water edges are maximized and vegetated to promote native wildlife;
4. A water quality buffer zone of at least 50 feet is designated in accordance with (i) below around remaining water areas;
5. A program for water quality monitoring and maintenance is included with the application; and
6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance.

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

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

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

(j) Rationale: The special area rules for wet borrow pits are less restrictive than the rules for other lakes, ponds, and reservoirs in that they allow sand and gravel extraction, dredge ~~[spoil disposal]~~ **material placement**, and filling, under specified conditions. This **less restrictive approach** is **appropriate** because they are already disturbed sites~~[-Also]~~, they are of relatively recent origin and, typically, vegetative succession is not as far advanced as along natural lakes. Wet borrow pits, therefore, tend to be less important as wildlife habitats than natural lakes. Finally, they are not connected to the wider estuarine system by streams.

On the other hand, their separation from streams means that they are most susceptible to water quality impacts caused by runoff. The water is still, and the only water loss is through

groundwater seepage and evaporation. Sediment collects quickly, enlarging marsh areas, and the eutrophic conditions that lead to sudden oxygen loss are concentrated by evaporation. Low levels of toxicity are quickly biomagnified to fatal levels. In general, these still water areas are much more sensitive to impacts of all kinds than flowing water.

Undisturbed wet borrow pits can become wildlife habitats for aquatic, amphibian, and terrestrial species[,] **by** offering productive edges, shallow waters, wetland areas, and important breeding and migratory habitats. Proposals that include wet borrow pits as wildlife preserves are, therefore, encouraged. Low intensity recreation which takes advantage of the scenic amenities of these lakes is also desirable if wildlife disturbance is minimized.

There is a severe shortage of dredged material management areas in New Jersey. The filling of wet borrow pits is essentially a reverse of the mining operation which created them, and has less negative impact than filling natural depressions, provided that the dredged material is clean and non-toxic and the particle size matches the neighboring natural substrates closely enough so as to not disturb groundwater movement. If the filling of wet borrow pits is designed to retain some surface water area, and to maximize land-water edges, much of the wildlife value can be preserved while providing needed spoil disposal sites.

The value of wet borrow pits as wildlife habitat may be enhanced by limited fingers of fill to enlarge the land-water interface. Filling can also create sites for waterfront housing. Since residential construction sites near surface water are much in demand, it is desirable to allow some residential and related uses, provided that housing is consistent with location and use rules, water quality is maintained, and a water quality buffer is preserved along the water's edge. The buffer would not block visual or physical access to the water, but would preserve water quality and provide wildlife habitat. Medford Lakes provides an example of an attractive residential community built around wet borrow pits, but siltation and eutrophication provide evidence for the need for a water quality buffer area.

The use of dredged material of appropriate grain size and that is clean as fill in the reclamation of wet borrow pits promotes the State's long-standing policy of treating dredged material as a resource and to beneficially use dredged material in appropriate applications rather than relying on disposal of dredged material in confined disposal facilities.

7:7-9.16 Dunes

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

1. Formation of sand immediately adjacent to beaches that are stabilized by retaining structures, and/or snow fences, planted vegetation, and other measures are considered to be dunes regardless of the degree of modification of the dune by wind or wave action or disturbance by development.

2. A small mound of loose, windblown sand found in a street or on a part of a structure as a result of storm activity is not considered to be a "dune."

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse

long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances, or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing, or alteration of dunes is prohibited, unless these activities are a component of a Department-approved beach and dune management plan. Examples of acceptable activities are:

1. Demolition and removal of paving and structures;
2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. 7:7-10);
3. Limited stairs, walkways, pathways, and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. 7:7-10, provided they cause minimum feasible interference with the beach and dune system;
4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. 7:7-10;
5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. 7:7-10;
6. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7-15.11; and
7. Linear development which meets the rule on location of linear development (N.J.A.C. 7:7-14.1).

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

(d) The maintenance of an engineered dune to the dune design template through alteration of the dune is conditionally acceptable provided:

1. It is demonstrated through pre- and post- construction surveys overlaid on the dune design template, that:
 - i. The existing dune is not consistent with the design template; and
 - ii. The proposed alteration of the dune will not result in the reduction of any portion of the dune below the design template;
2. A New Jersey licensed professional engineer certifies that alteration of the dune will not compromise the beach and dune system;
3. The activity:
 - i. Is conducted in accordance with the State Aid Agreement between the Department and municipality or county; and

ii. Complies with the management plan for the protection of State and Federally listed threatened and endangered species, as approved by the Department's Division of Fish and Wildlife and the USFWS;

4. All existing public accessways are maintained;

5. Any existing vegetation disturbed during the maintenance activities shall, at a minimum, be restored in accordance with the dune construction planting specifications in the Federal consistency determination or Department permit for the engineered dune, as applicable; and

6. Any sand transferred as part of the maintenance of the dune design template shall be moved only within the shore protection project and shall be placed within the existing dune system, or within the engineered beach berm in accordance with the beach rule, N.J.A.C. 7:7-9.22(b).

(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 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. **A study from the Coastal Research Center at the Richard Stockton College of New Jersey (Barone, D.A., McKenna, K. K., and S.C. Farrell, 2014, Hurricane Sandy: Beach-dune performance at New Jersey Beach Profile Network sites) concluded that Federally designed shore protection projects that included engineered dunes provided protection to landward structures during Superstorm Sandy. The communities that suffered the greatest damages from Superstorm Sandy were those where dunes were nonexistent, or where the elevations of dunes and**

beach berms were low or beach widths were narrow.

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 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 ~~[wind-blown]~~**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) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune, or a structure. An overwash area may, through stabilization and vegetation, become a dune.

1. The seaward limit of the overwash area is the seaward toe of the former dune, or the landward limit of the beach, in the absence of a dune.
2. The landward limit of the overwash area is the inland limit of sediment transport.
3. Verifiable aerial photography and other appropriate sources may be used to identify the extent of overwash.

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

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. 7:7-10;
2. Demolition and removal of paving and structures;
3. Limited, designated access ways for pedestrians and authorized motor vehicles between public streets and the beach that provide for the minimum feasible interference with the beach and dune system and are so oriented as to provide the minimum feasible threat of breaching or overtopping as a result of storm surge or wave runoff;
4. Shore protection structures which meet the coastal engineering rule at N.J.A.C. 7:7-15.11(g);
5. Linear development which meets the rule on location of linear development (N.J.A.C. 7:7-14.1);
6. Removal of newly deposited overwash fans from public roads and or developed lots; and
7. Construction of street-end beach accessways along the oceanfront, provided they are oriented at an angle against the predominant northeast storm approach, are limited in width to no more than ten feet, and are defined/stabilized with sand fencing. These standards should be included in all beach and dune management plans for oceanfront locations.

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the "design dune" goal discussed in N.J.A.C. 7:7-9.16(c).

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

1. The site is located within an area currently used and zoned for beach related commercial use, and is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility meets all the requirements of the flood hazard area rule, N.J.A.C. 7:7-9.25.

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(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 of which would be determined on a case-by-case basis, migrate the hazard and change the classification of the site so that it is no longer an overwash area.

7:7-9.18 Coastal high hazard areas

(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on ~~[the FIRM]~~ **FEMA flood mapping**, and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. The coastal high hazard area extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on ~~[the FIRM]~~ **FEMA flood mapping** or the inland limit of the primary frontal dune, whichever is most landward.

~~[(b) Residential development, including hotels and motels, is prohibited in coastal high hazard areas except for single family and duplex infill developments that meet the standards of N.J.A.C. 7:7-15.2(e) or (f) or development in Atlantic City in accordance with (g) below.~~

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

(b) Except as provided at (c), (d), (e), and (f) below, residential and commercial development is prohibited in coastal high hazard areas.

(c) Residential development landward of the mean high water line in coastal high hazard areas is conditionally acceptable provided the development is:

1. A single-family home or duplex infill development that meets the standards of N.J.A.C. 7:7-15.2(e) or (f) and complies with Federal flood reduction standards at 44 CFR Part 60 and the UCC; or

2. Located in Atlantic City or in a special urban area within the Hudson River Waterfront Area as described at N.J.A.C. 7:7-9.46(a)2, complies with the special urban area rule and Hudson River Waterfront rules, N.J.A.C. 7:7-9.41 and 9.46, as applicable, the Federal flood reduction standards at 44 CFR Part 60, and the UCC.

(d) Hotel and commercial development in Atlantic City or in a special urban area within the Hudson River Waterfront Area described at N.J.A.C. 7:7-9.46(a) are acceptable in coastal high hazard areas provided such development complies with the Atlantic City rule, N.J.A.C. 7:7-9.47 or special urban area and Hudson River Waterfront rules, N.J.A.C. 7:7-9.41 and 9.46, as applicable, the Federal flood reduction standards at 44 CFR Part 60, and the UCC.

(e) Water dependent development and amusements are conditionally acceptable within coastal high hazard areas provided the development complies with the Federal flood reduction standards at 44 CFR Part 60 and the UCC.

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

1. The site is landward of the boardwalk;
2. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
3. The facility is open to the general public and supports beach/tourism related activities, that is, retail, amusement and food services. Lodging facilities are excluded; and
4. The facility complies with all the requirements at N.J.A.C. 7:7-9.25, Flood hazard areas.

~~((e))~~ **(g)** Any development determined to be acceptable at (c)2, ~~[and]~~ (d), **and (f)** above shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

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

~~((g))~~ The following development in Atlantic City is acceptable in coastal high hazard areas provided it meets the standards of N.J.A.C. 7:7-9.47:

1. Development on or over existing ocean piers;

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

~~[(H)]~~ **(i)** 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]~~ **FEMA flood maps** as zone ~~[VI-30]~~ **V or VE**. On many ~~[FIRMs]~~ **FEMA flood maps**, 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]~~ **Most** developments allowed ~~[by]~~ **under** this rule are ~~[ones]~~ **those** which ~~[are related to beach use and/or tourism and, limited residential infill development.]~~ **comply with other State regulations (that is, the Uniform Construction Code (UCC) promulgated by the Department of Community Affairs) and Federal standards (that is, the flood reduction standards at 44 CFR Part 60).** ~~[These beach]~~ **Beach** use and tourism oriented developments **and water dependent developments are not subject to the UCC or 44 CFR Part 60, but** are subject to storm damage. ~~[but]~~ **However,** they enhance the public use and enjoyment of the beach and ocean **and accordingly are conditionally acceptable.**

Residential development (other than limited infill development) and commercial development in coastal high hazard areas is limited to the Hudson River Waterfront area and Atlantic City allowing reasonable development in already densely-developed areas while protecting people and property from the negative impacts of flooding and coastal storms.

The Uniform Construction Code and Federal flood reduction standards establish specifications for construction that reduce risk to people and property in the event of a flood. The Department has, therefore, determined that certain development in coastal high hazard areas that meets these standards is appropriate.

7:7-9.19 Erosion hazard areas

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

1. Erosion hazard areas may be identified by any one of the following characteristics:

- i. Lack of beaches;
- ii. Lack of beaches at high tide;
- iii. Narrow beaches;
- iv. High beach mobility;
- v. Foreshore extended under boardwalk;
- vi. Low dunes or no dunes;
- vii. Escarped foredune;
- viii. Steep beach slopes;
- ix. Cluffed bluffs as adjacent to beach;
- x. Exposed, damaged or breached jetties, groins, bulkheads or seawalls;
- xi. High long-term erosion rates; or
- xii. Pronounced downdrift effects of groins (jetties).

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

1. Linear development which meets the on location of linear development, N.J.A.C. 7:7-14.1;
2. Shore protection activities which meet the appropriate coastal engineering rule, N.J.A.C. 7:7-15.11;
3. Single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993, is conditionally acceptable provided that it meets the following conditions:
 - i. The site is located within an area currently used and zoned for beach related commercial use, and is landward of and adjacent to the boardwalk;
 - ii. The height of the building does not exceed 15 feet measured from either the elevation of the existing ground or the boardwalk (depending on the specific site conditions) to the top of a flat roof or the mid-point of a sloped roof;
 - iii. The facility is open to the general public and supports beach/tourism related recreational activities, that is, retail, amusement and food services. Lodging facilities are excluded;
 - iv. The facility meets all the requirements of the flood hazard area rule, N.J.A.C. 7:7-9.25;and
 - v. The development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13;
4. Single-family and duplex developments that meet the standards of N.J.A.C. 7:7-15.2(e) or (f);
5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. 7:7-10;
6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. 7:7-10; and
7. The following development in Atlantic City provided it meets the standards of N.J.A.C. 7:7-9.47:
 - i. Development on or over existing ocean piers;
 - ii. Pilings necessary to support development proposed on or over existing ocean piers; and
 - iii. Development on or over the Boardwalk.

(c) Rationale: 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 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 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, and past or on-going navigation channel dredging projects and past storm events.

The Department will use a computer program, entitled [“Metric Mapping Analysis of New Jersey's Historical Shoreline Data,” developed in 1988 for the Department by Stephen P. Leatherman, et al, of the University of Maryland Coastal Mapping Group,] **“Digital Shoreline Analysis System,” developed by USGS,** 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 Department 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: 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) Barrier island corridors are the interior portions of oceanfront barrier islands, spits and peninsulas. Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.

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

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

(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]~~ **Extensions** of development on barrier islands and spits are discouraged.

The ~~[policy]~~ **rule** recognizes the diversity of New Jersey's barrier islands, from ~~[Absecon]~~ **Absecon** Island with the resort city and urban center of Atlantic City to Long Beach ~~[island]~~ **Island** with largely single-family seasonal homes. Implementation of the policy is ~~[excepted]~~ **expected** to reinforce the existing character of New Jersey's developed barrier islands and **not** add appreciably to the public service costs and emergency evacuation (in times of hurricanes) problems of these islands.

7:7-9.23 Filled water's edge

(a) Filled water's edge areas are existing filled water, wetland, or upland areas lying between wetlands or water areas, and either (a)1 or 2 below, whichever is closer to the water:

1. The upland limit of fill; or
2. The first paved public road or railroad landward of the adjacent water area.

(b) Filled water's edge areas shall be determined through analysis of historic data including United States Department of Agriculture soil surveys, Tidelands maps, or aerial photography. Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge.

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

(d) On filled water's edge sites with direct water access (that is, those sites without extensive intertidal shallows or wetlands between the upland and navigable water), development shall comply with ~~[the following:]~~ **(d)1 through 3 below unless it is demonstrated that a water dependent use is not feasible on the site in accordance with (e) below. Where it is determined that a water dependent use is not feasible, the site may be developed with a non-water dependent use.**

1. Except as provided below, the waterfront portion of the site shall be:
 - i. Developed with a water dependent use;
 - ii. Developed with an at-grade deck provided:
 - (1) The deck is open to the general public;
 - (2) The use of the deck is water oriented;
 - (3) The deck is not enclosed; and
 - (4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or
 - iii. Left undeveloped for future water dependent uses;
2. On the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required as a special case at locations which

offer a particularly appropriate combination of natural features and opportunity for waterborne commerce and recreational boating; and

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

(e) The Department shall consider the following factors when determining whether a water dependent development is feasible on a filled water's edge site:

1. Length of water frontage on the site and the corresponding area of upland to support a water dependent use on the site;

2. Presence of special areas, such as shellfish habitat, submerged vegetation habitat, intertidal and subtidal shallows, or wetlands between the upland and navigable water that would preclude approval of a water dependent development;

3. Incompatibility of a water dependent development with the surrounding development;

4. Land or water contamination such that construction of a water dependent use will pose an ecological risk or endanger public health; and

5. Conditions uniquely affecting the particular property that result in peculiar and exceptional practical difficulties in the development of a water dependent development, such as the depth of water adjacent to the site, unusual current or other natural conditions, or the ability to obtain authority from the State to use tidelands necessary to support a water dependent use on the site.

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

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

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

i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area, as defined at N.J.A.C. 7:7-9.10, is increased by one, and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

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

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

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

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

~~[(h)]~~ **(i)** In the area known as Bader Field, a filled water's edge area located in the City of Atlantic City and described on the 2008 Atlantic City tax duplicate as Block 794, Lot 1, the water dependent use shall be provided in accordance with (d) above or an upland public walkway along the water's edge, no less than 20 feet wide, with a 40-foot-wide right-of-way shall be provided.

~~[(i)]~~ **(j)** The development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13.

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

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

~~[(k)]~~ **(l)** On all filled water's edge sites, development must comply with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

~~[(l)]~~ **(m)** The construction of a restaurant at a marina facility is acceptable within the filled water's edge portion of a site provided it meets the standards of N.J.A.C. 7:7-15.3(d)8.

~~[(m)]~~ **(n)** Rationale: The water's edge along New Jersey's shore, 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. The particular requirements for an average sized marina or port facility further narrows the filled water's edge potentially suitable

for such development to approximately 3 percent, or 19 miles, of the State's entire water's edge (NJDEP, Policy Assessment 1983).

Filled water's edge areas, though relatively scarce, are less environmentally sensitive than undisturbed water's edge areas. The buffering functions of the water's edge have already been lost through excavation, filling, and the construction of retaining structures. The filled water's edge, therefore, provides the best opportunity for intense use of the waterfront. Accordingly, certain kinds of development are allowed up to the limit of fill.

The 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 (that is, water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (that is, water-oriented uses) are favored over non-water related uses such as housing and offices. These non-water related uses can be situated away from the water. The rule permits the construction of decks for a water oriented use such as a restaurant, with appropriate awnings, seating, food and beverage areas because they serve the general public yet are not such substantial structures that would preclude their removal for a water dependent use.

However, there are situations where the development of a filled water's edge site with a water dependent use is not feasible due to proportion of waterfront to non-waterfront portions of the site, the presence of special areas that would preclude approval of a water dependent development, incompatibility of a water dependent use on the site with the surrounding uses, land or water contamination such that the construction of a water dependent use would pose an ecological risk or endanger public health, and/or other site-specific conditions that result in peculiar and exceptional practical difficulties in the development of a water dependent development. In such cases, development of the site with a non-water dependent use is acceptable.

Since many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses, and since few excellent sites remain for recreational and commercial boating, it is desirable to restrict redevelopment of sites currently or recently occupied by a water dependent use. Further, preserving slips open to the general public is necessary to protect the public's common law right to use tidal waters for navigation. Although housing at the water's edge can in some situations ensure the long term viability of a marina, it generates additional boating demand, which further aggravates limited marina space. Accordingly, in defining "Slip open to the general public," slips leased only to owners of associated housing or only to residents of a certain municipality would be excluded, unless any member of the general public could join by paying a reasonable fee. Marinas warrant special attention for several reasons. They benefit the State by attracting tourists and associated revenues and by serving the residents who go boating in New Jersey's coastal waters. Where consolidation of a marina's land based facilities is justified, the existing marinas services and boat slips must be maintained or, where possible, expanded. Upland boat storage is an exception. Upland storage for most (75 percent) of a marina's large boats, which cannot be easily trailered off-site, must be accommodated. However, space for only a small portion (25 percent) of boats that can be trailered off-site for winter storage must be retained.

Along the Hudson River, Delaware River, Raritan River, and Passaic River, and in other portions of the developed urban waterfront, potential for future water dependent and

maritime support services is also of concern. On these sites, economic revitalization must be balanced against the need to preserve and provide for water dependent and water-oriented uses.

7:7-9.25 Flood hazard areas

(a) Flood hazard areas are areas subject to flooding from the flood hazard area design flood, as defined by the Department under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. Flood hazard areas include those areas mapped as such by the Department, areas defined or delineated as an A or a V zone by FEMA, and any unmapped areas subject to flooding by the flood hazard area design flood. Flood hazard areas are subject to either tidal or fluvial flooding and the extent of flood hazard areas shall be determined or calculated in accordance with the procedures at N.J.A.C. 7:13-3.

(b) In a tidal flood hazard area below the mean high water line, this section shall apply only to the following activities:

1. Development of habitable buildings; and
2. Construction of railroads, roadways, bridges and/or culverts.

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

(d) In an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body **other than the Atlantic Ocean**, 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 impervious cover.

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

(f) Development in flood hazard areas shall conform with the applicable design and construction standards of the following:

1. The Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and implementing rules at N.J.A.C. 7:13, except in lands regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., pursuant to N.J.S.A. 58:16A-60;
2. The Uniform Construction Code, N.J.A.C. 5:23; and
3. The Federal flood reduction standards, 44 C.F.R. Part 60.

(g) Development in a flood hazard area shall comply with the requirements for impervious cover and vegetative cover under N.J.A.C. 7:7-13.

(h) If endangered and/or threatened wildlife or species habitat is present in the flood hazard area such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7-9.36, then the requirements of N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats, shall apply.

(i) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.

(j) Rationale: The goal of this rule is to reduce losses of life and property resulting from unwise development of flood hazard areas, and allow uses compatible with periodic flooding, agriculture and forestry, recreation, and fish and wildlife habitat and uses which require a water's edge location. This rule is consistent with the State Waterfront Development Law's objective of safeguarding port facilities and waterfront resources for the public's overall economic advantage. The rule will ensure that the State's waterfront is not pre-empted by uses which could function equally well at inland locations.

Flood hazard areas adjacent to rivers are subject to flooding in severe fluvial storms. They are also critical elements of the coastal ecosystems, providing flood storage capacity, physical and biochemical water filtration, primary productivity, and wildlife habitats.

For these reasons, the preferred rule is to preserve those flood hazard corridors that are in an undeveloped state with native or adapted forest vegetation for conservation purposes and to allow limited exceptions for water dependent uses, infill, and uses for which there is no feasible alternative location.

The location acceptability for a site under this rule applies only to flood hazard areas which have not been disturbed by filling. Sites subject to this rule, therefore, tend to be in a more natural state than sites subject to the filled water's edge rule. Accordingly this rule is more restrictive, discouraging development which would unnecessarily disturb vegetation, and requiring water dependency within 100 feet of a navigable water body.

The development 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 is conditionally acceptable provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.

7:7-9.26 Riparian zones

~~[(a) A riparian zone exists along every regulated water, except there is no riparian zone along the Atlantic Ocean nor along any manmade lagoon, stormwater management basin, or oceanfront barrier island, spit or peninsula. Regulated waters are defined in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.2.]~~

~~[(b) The riparian zone includes the land and vegetation within each regulated water described in (a) above, as well as the land and vegetation within a certain distance of each regulated water as described in (c) below. The portion of the riparian zone that lies outside of a~~

regulated water is measured landward from the top of bank. If a discernible bank is not present along a regulated water, the portion of the riparian zone outside the regulated water is measured landward as follows:

1. Along a linear fluvial or tidal water, such as a stream, the riparian zone is measured landward of the feature's centerline;
2. Along a non linear fluvial water, such as a lake or pond, the riparian zone is measured landward of the normal water surface limit;
3. Along a non linear tidal water, such as a bay or inlet, the riparian zone is measured landward of the mean high water; and
4. Along an amorphously shaped feature, such as a wetland complex, through which a regulated water flows but which lacks a discernible channel, the riparian zone is measured landward of the feature's centerline.

(c) The width of the riparian zone along each regulated water described in (a) above is as follows:

1. The riparian zone is 300 feet wide along both sides of any Category One water, and all upstream tributaries situated within the same HUC-14 watershed;
2. The riparian zone is 150 feet wide along both sides of the following waters not identified in (c)1 above:
 - i. Any trout production water and all upstream waters (including tributaries);
 - ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;
 - iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and
 - iv. Any segment of a water flowing through an area that contains acid producing soils; and
3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or (c)2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 establish 300-foot Special Water Resource Protection Areas along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

(e) Development in riparian zones shall conform with the requirements for a flood hazard area individual permit under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13-9, 10 and 11 or, in the alternative as applicable, a flood hazard area permit by rule at N.J.A.C. 7:13-7 or a flood hazard area general permit at N.J.A.C. 7:13-8.

~~(f) If endangered and/or threatened wildlife or species habitat is present in the riparian zone such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. 7:7-9.36, then the requirements of N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats, shall apply.~~

~~(g) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act rules at N.J.A.C. 7:13, the definition or description in N.J.A.C. 7:13 shall apply.~~

~~(h) The construction of a restaurant at a marina facility is acceptable within the riparian zone provided it meets the standards of N.J.A.C. 7:7-15.3(d)8.~~

~~(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.]~~

(a) A riparian zone is the land and vegetation within and adjacent to a regulated water. A riparian zone exists along both sides of every regulated water and includes the regulated water itself, except as provided in (b) below. The extent of a riparian zone is determined in accordance with (c), (d), and (e) below.

(b) There is no riparian zone within or along the following:

1. The Atlantic Ocean;

2. The barrier island complex;

3. Any lawfully existing manmade lagoon;

4. Any lawfully existing stormwater management basin or wastewater treatment pond;

5. Any segment of a regulated water enclosed within a lawfully existing pipe, culvert or bridge;

and

6. Any lawfully existing, manmade open channel that was created to convey stormwater, provided the channel is fully lined with manmade impervious material, such as a concrete low-flow channel within a stormwater basin or a ditch completely lined with concrete or asphalt.

(c) The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank. For the purposes of this section, the top of bank means the upper limit of the bank of a regulated water, which is typically characterized by an observable change or break in the slope of the land.

(d) Where the top of bank as defined in (c) above is not discernible along the regulated water, the top of bank shall be considered:

1. The centerline of the regulated water, for a linear regulated water that has a drainage area of less than 150 acres;

2. The limits of the two-year flood, for a linear regulated water that has a drainage area of 150 acres or more, except as provided in (d)3 below;

3. The normal water surface limit, for:

i. A linear fluvial regulated water that contains water at all times and has a drainage area of 10 square miles or more; or

ii. A non-linear fluvial regulated water, such as a lake or pond;

4. The mean high water line, for a non-linear tidal regulated water, such as a bay or inlet; and

5. The feature's centerline, for an amorphous or irregularly-shaped feature, such as a wetland complex through which a regulated water flows but lacks a discernible or coherent channel.

(e) The width of the riparian zone is as follows:

1. The width of the riparian zone along any regulated water designated as a Category One water, and all upstream tributaries situated within the same HUC-14 watershed, is 300 feet;

2. Except for the regulated waters listed at (e)1 above, the width of the riparian zone along the following regulated waters is 150 feet:

i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) located within one mile of a trout maintenance water (measured along the length of the regulated water); and

iii. Any segment of a regulated water flowing through an area that contains endangered or threatened wildlife or plant species habitat, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) located within one mile of such habitat (measured along the length of the regulated water). A list of critically dependent species is available from the Department at the website set forth at N.J.A.C. 7:7-1.6; and

3. For all other regulated waters not identified in (e)1 or 2 above, the width of the riparian zone is 50 feet.

(f) The extent of the riparian zone shall be determined in accordance with the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(d) through (h), where:

1. A regulated water:

i. Naturally forms, begins, or ends within a site;

ii. Lies in proximity to a railroad or roadway; or

iii. Enters or exits a pipe, culvert, or bridge;

2. An impoundment has been constructed along a regulated water; or

3. Coastal wetlands are located along or adjacent to a regulated water.

(g) The riparian zones established under this chapter are separate from, and in addition to, any other similar zones or buffers established to protect surface waters. For example, the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, establish a 50-foot and 150-foot transition area along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements of any other Federal, State, or local statute, regulation, or ordinance.

(h) Development in riparian zones shall conform with the requirements of the Flood Hazard Area Control Act Rules for a permit-by-rule at N.J.A.C. 7:13-6 and 7, a general permit-by-certification at N.J.A.C. 7:13-6 and 8, a general permit at N.J.A.C. 7:13-6 and 9, or an individual permit at N.J.A.C. 7:13-10, 11, and 12, as applicable.

(i) If endangered and/or threatened wildlife or species habitat is present within a riparian zone the requirements of N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitats, shall apply.

(j) For the purposes of this section, if a term is defined in this chapter and in the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, the definition in N.J.A.C. 7:13 shall govern. For any term used in this section that is not defined or otherwise described in this chapter but that is defined or described in the Flood Hazard Area Control Act Rules, the definition or description in N.J.A.C. 7:13 shall apply.

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

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

- i. National Wetlands Inventory Maps produced by the U.S. Fish and Wildlife Service at a scale of 1:24,000 (generalized locations only);
- ii. Coastal wetland maps, pursuant to the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) prepared by the DEP at a scale of 1:2,400; and
- iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii above are available from the Division of Land Use Regulation by e-mailing TidelandsMapServices@dep.state.nj.us and those referenced in (a)1iii above are available through NJ-GeoWeb (see <http://www.nj.gov/dep/gis/newmapping.htm>).

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

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

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-2.3, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils, and vegetation) specified under N.J.A.C. 7:7A-~~[1.4]~~**1.3** of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act is prohibited unless the development is found to be acceptable under the Freshwater Wetlands

Protection Act Rules, N.J.A.C. 7:7A, except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, coastal activities under the jurisdiction of the New Jersey Meadowlands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located waterward of the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in the Freshwater Wetlands Protection Act Rules at N.J.A.C. ~~4, 5, and 7~~ **5, 7, 9, and 10**. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands landward of the mean high water line that does not require a zoning certificate, resolution, or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7-9.43(c) in the Hackensack Meadowlands District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A ~~4, 5, and 7~~ **5, 7, 9, and 10**.

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

(c) Except as provided at (d) below, development of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent;
2. Has no prudent or feasible alternative on a non-wetland site;
3. Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and

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

(d) The establishment of a living shoreline in wetlands to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. 7:7-12.23. Where the Department finds the establishment of a living shoreline acceptable, mitigation shall not be required.

(e) Dumping solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(f) No action by the Commissioner shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the Department of Environmental Protection, the Natural Resource Council and the State Mosquito Control Commission in said Department, the Department of Health, or any mosquito control or other project or activity operating under or authorized by the provisions of chapter 9 of Title 26 of Revised Statutes. This rule does not supersede the authority of the State Mosquito Commission to undertake mosquito control projects authorized by chapter 9 of Title 26 of the Revised Statutes.

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

(h) For projects which require a waterfront development permit, the use of former dredged material management areas for continued placement of dredged material is conditionally acceptable provided:

1. The site has existing dikes or berms in sound condition, and/or has sufficient volume of previously placed dredged material with suitable geotechnical and engineering properties within the dredged material management area to allow for the construction or reconstruction of structurally sound dikes or berms. Where the construction or reconstruction of structurally sound dikes and berms is required:

i. These structures shall be designed:

(1) By a New Jersey licensed professional engineer; and

(2) In accordance with the requirements of Appendix G; and

ii. Any material placed on the exposed surfaces of the dikes and berms shall comply with the appropriate Soil Remediation Standards (N.J.A.C. 7:26D Appendix 1);

2. There are no anticipated adverse effects on threatened or endangered species;

3. There are no colonial nesting birds present on site which would be adversely affected (seasonal restrictions may be required);

4. No wetlands regulated pursuant to the Wetlands Act of 1970 would be adversely affected;

5. The former dredged material management area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

6. The required waterfront development permit and water quality certificate are obtained.

(i) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with N.J.A.C. 7:7-17.

(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.

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

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

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

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

White cedar stands, as well as other lowland swamp forests, play an important role in purifying water in coastal streams, retarding runoff, providing scenic value, and serving as a rich habitat for many 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) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem. Wider buffers than those noted below may be required to establish conformance with this chapter, including, but not limited to, N.J.A.C. 7:7-9.36 and 9.37.

1. A wetlands buffer or transition area of up to 150 feet in width shall be established adjacent to all wetlands defined and regulated under the Freshwater Wetlands Protection Act. (Refer to the Freshwater Wetland Protection Act Rules, N.J.A.C. 7:7A, for further guidance).

2. For all other wetlands, including wetlands regulated under the Wetlands Act of 1970, a wetland buffer of up to 300 feet shall be established.

(b) Subject to (a) above, all wetlands buffers (that is, transition area) associated with wetlands subject to the Freshwater Wetlands Protection Act shall be regulated in accordance with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(c) Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone between the wetlands and surrounding upland. The precise geographic extent of the actual wetlands buffer required on a specific site shall be determined on a case-by-case basis using these standards.

(d) In areas of the coastal zone which are within the Hackensack Meadowlands District, the appropriate buffer width shall be determined in accordance with the requirements set forth in the Hackensack Meadowlands District Zoning Regulations.

(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 ~~the~~ **the** 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~~) **Spartina** to reeds (~~Phragmites~~) **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;
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~~ **marsh hawks, black crowned night herons, and ospreys**; fall migration foraging stopovers for birds, including woodcock; nesting sites for ~~Wood Ducks, Black Ducks, and Mallards~~ **wood ducks, black ducks, and mallards**; and forage routes into and out of wetlands for ~~Raccoons, Mink, Muskrat, Fox, Deer~~ **raccoons, minks, muskrats, foxes, deer**, and others. Grassy wetlands edges serve as feeding sites for Wilson's ~~Snipe, Ruffed Grouse, Quail~~ **snipe, ruffed 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) Intermittent [~~Stream Corridors~~] **stream corridors** are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater.

1. Where an intermittent stream corridor is also a wetland, the wetlands rule, N.J.A.C. 7:7-9.27, shall apply.

(b) Uses that promote undisturbed growth of native vegetation and wildlife habitat value are encouraged.

(c) If the intermittent stream is a regulated area under the Flood Hazard Area Control Act Rules, then all uses shall comply with N.J.A.C. 7:13.

(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

(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.

7:7-9.32 Steep slopes

(a) Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. 7:7-9.29). Steep slopes include natural swales and ravines, as well as man-made areas, such as those created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes.

(b) Development on steep slopes is discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats, riparian zones, or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. 7:7-13.5(c).

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

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

(d) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~ **Preservation of steep slopes controls soil erosion, protects up-slope lands, minimizes pollution of surface waters, reduces flooding, preserves the banks of streams and intermittent streams, and maintains water flow in headwaters. When vegetation is disturbed, rainfall strikes surface soils causing soil particle movement through surface water flow and gravity, which results in increased surface runoff and downstream flooding. When this silty water enters a surface water body, increased turbidity and sedimentation usually follow, which can cause reduction of productivity and flood water storage capacity. Aesthetics are also affected when erosion occurs and topsoil is lost.**

In addition to naturally-occurring steep slopes, there are also man-made steep slopes left after such activities as mining and road grading. Development of both natural and man-made steep slopes can have significant detrimental impacts on water quality, species habitat, and flooding, as discussed above.

7:7-9.33 Dry borrow pits

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

(b) Surface mining is conditionally acceptable, provided the mining use rule at N.J.A.C. 7:7-15.8 is satisfied.

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

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

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

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

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

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

1. Waste disposal is compatible with neighboring uses;
2. Elevations of the landfill do not exceed original surface elevations before mining; and
3. The waste disposal complies with the solid and hazardous waste rule at N.J.A.C. 7:7-16.14.

(h) Filling or grading for construction is conditionally acceptable provided the fill, including dredged material, is clean and of a texture that will not disturb local groundwater flow. For the purposes of this subsection, dredged material shall comply with Appendix G.

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

(j) Rationale: Dry borrow pits have been used successfully ~~in~~ on Long Island to recharge ~~deleted~~ aquifers by channeling surface runoff and tertiary sewage effluent into them. These uses are encouraged in New Jersey's coastal areas, especially where there is a history of saline intrusion. There is a critical shortage in coastal areas of placement and disposal sites for ~~dredge spoil~~ dredged material and solid waste. Dry borrow pits offer opportunities of low-impact disposal if they are compatible with existing uses, the leachate is carefully controlled and the site reclaimed on conclusion. Dry borrow pits have comparatively low environmental value and so are acceptable sites for development if all other policies are satisfied. The use of dredged material of appropriate grain size and that is clean as fill in the reclamation of dry borrow pits promotes the State's longstanding policy of treating dredged material as a resource and to beneficially use dredged material in appropriate applications rather than relying on disposal of dredged material in dredged material management areas.

7:7-9.38 Public open space

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

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

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

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

(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. 7:7-9.47(e) through (j).

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

(g) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the buffers and compatibility of uses rule, N.J.A.C. 7:7-16.11. The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(h) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~

7:7-9.39 Special hazard areas

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones, and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b are used or disposed, including adjacent areas and areas of hazardous material contamination. **As the urbanization of New Jersey continues and leisure time increases, open space will play an increasingly important role in maintaining a desirable living environment for the residents of New Jersey. While the supply of open space has decreased under the growing pressure for development, the State's expanding population will require more public open space to satisfy its needs.**

Not only is open space the basic resource for recreation facility development, it also performs other worthwhile functions. Open space can create public spaces in densely settled areas, shape urban growth, provide buffers between incompatible uses, retain contiguous farmland, insure the preservation of wildlife corridors, increase the economic value of adjacent land, and preserve distinct architectural, historic, and geologic sites. In addition, undeveloped and minimally developed open space can positively affect water quality by, for example, absorbing stormwater runoff.

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

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

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

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

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

(c) Rationale: 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]~~agencies 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.

7:7-9.43 ~~[Hackensack]~~ Meadowlands District

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

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

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

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

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

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

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

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

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

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

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

(f) Coastal activities under the jurisdiction of the New Jersey ~~[Meadowlands Commission]~~ **Sports and Exposition Authority** shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws.

(g) The Department's Division of Land Use Regulation and New Jersey **Sports and Exposition Authority (formerly the New Jersey Meadowlands Commission)** will coordinate the review of proposed developments and activities within the Hackensack Meadowlands District through the process outlined in the November 9, 2005, Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. A copy of the Memorandum of Agreement may be obtained from the Department's Division of Land Use Regulation at the address or telephone number set forth at N.J.A.C. 7:7-1.6.

(h) Rationale: The New Jersey ~~[Meadowlands Commission]~~ **Sports and Exposition Authority** 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 **(now part of the New Jersey Sports and Exposition Authority)** 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.

7:7-9.44 Wild and scenic river corridors

(a) Wild and scenic river corridors are all rivers designated into the National Wild and Scenic Rivers System and any rivers or segments thereof being studied for possible designation into that system pursuant to the National Wild and Scenic Rivers Act (16 U.S.C. §§ 1271-1278). For rivers designated into the national system, the wild and scenic river corridor shall include the river and adjacent areas located within one-quarter mile from the mean high water line on each side of the river until a Federal River Management Plan has been adopted, after which time the wild and scenic corridor shall be the area defined in the adopted plan. For rivers under study for possible designation into the national system, the wild and scenic river corridor shall include the river and adjacent areas extending one-quarter mile from the mean high water line on each side of the river.

(b) Development in wild and scenic river corridors shall comply with (b)1 and 2 below, and the standards for the specific type of development at (c), (d), (f), (g) and (h) below. The standards for linear development are found at (e) below.

1. Development that would have a direct and adverse effect on any "outstandingly remarkable resource value" for which the river was designated or is being studied for possible designation into the National Wild and Scenic Rivers System is prohibited. For the purposes of this rule, "outstandingly remarkable resource values" means any of those extraordinary scenic, recreational, cultural, historical, or fish and wildlife attributes of a river corridor which, under the National Wild and Scenic Rivers Act, are required to be preserved and protected for the benefit and enjoyment of future generations.

2. The development shall comply with the standards set forth in the Federal River Management Plan adopted pursuant to the National Wild and Scenic Rivers Act for the wild and scenic river corridor if a plan exists.

(c) Development of docks, piers, and moorings on the Great Egg Harbor River and Maurice River and their tributaries shall comply with the following:

1. A dock, pier or mooring shall not extend to a depth greater than two feet at mean high water or further than 20 percent of the river width, as measured from mean high water line on one side of the river to the mean high water line on the opposite side of the river, whichever is less.

2. On the Great Egg Harbor River and Maurice River, development of a dock, pier, or mooring within 75 feet of the edge of a navigation channel is prohibited.

3. On the tributaries to the Great Egg Harbor River and Maurice River, development of a dock, pier, or mooring within 25 feet of the edge of a navigation channel, is prohibited.

(d) Where the need for shoreline stabilization has been demonstrated, biostabilization of eroding shorelines shall be used where feasible. These systems include live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, coir fiber products, fiber plugs, plants, fiber pallets, fiber carpet, and wood stake anchor systems. These materials shall be installed in accordance with the construction guidelines of Chapter 16, "Streambank and Shoreline Stabilization Protection," of the National Resources Conservation Service Engineering Handbook, National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, herein incorporated by reference as amended and supplemented. This document is available on the web at www.NTIS.gov ~~[for a fee]~~ **to download for free with the creation of a public access account** (order number PB98114358). Standards for structural shore protection are found at N.J.A.C. 7:7-15.11.

(e) Linear development shall be located within the right of way of an existing linear development route or outside of the wild and scenic river corridor where feasible. Where an analysis of alternatives demonstrates that proposed development which is in the public interest cannot be so located, the linear development shall be located and designed to minimize adverse effect on outstandingly remarkable resource values and the width of the clearing for the linear development shall be minimized.

(f) Communication and cellular towers are prohibited in a wild and scenic river corridor.

(g) Development of bridges is conditionally acceptable provided it complies with the following:

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;

2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;

3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;

4. A single crossing is used where feasible;

5. There is no reduction of the total width and volume of the water body passing under the bridge;

6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and

7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;

2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and

3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(i) Rationale: This rule reflects and incorporates the goals of the National Wild and Scenic Rivers Act, which recognizes outstandingly remarkable scenic, recreational, fish and wildlife, historic, cultural, and similar values of certain rivers of the State, in addition to the goals of reducing loss of life and property resulting from the over development of floodplains. The primary purpose of the National Wild and Scenic Rivers Act is to protect the free-flowing character and the outstandingly remarkable resource values of designated rivers. Construction within the established boundary that may adversely affect the reasons why a river was designated into the national system is prohibited, except for linear development in the public interest where no alternative is feasible. Such development must minimize impacts and provide mitigation.

The limits on the length of a dock on the Great Egg Harbor River or Maurice River help assure that docks will not adversely affect the outstandingly remarkable scenic and recreational resources in the future, including when the navigational channel changes. It will ensure continued use of the rivers for kayaking and canoeing without encumbrance by lengthy docks. Seine fisheries, including fisheries for alewife herring, have operated on these rivers for years. The marine fish and fisheries rule, N.J.A.C. 7:7-16.2, will ensure protection of the fisheries on these rivers. Hard engineering structures cause the velocity of the river to increase and thus increase the potential for scouring. In an effort to maintain these river corridors in a natural state to the maximum extent practicable, natural embankment stabilization techniques such as live cuttings and earth buttresses are encouraged.

7:7-9.45 Geodetic control reference marks

(a) Geodetic control reference marks are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, c.116. They include the following types:

1. Monument-(Mon), Disk-(DK): A standard United States Coast and Geodetic Survey or New Jersey Geodetic Control Survey disk set in a concrete post, pavement, curb, ledge rock, etc., stamped with a reference number, and used for both horizontal and vertical control.

2. Point (Pt.): A State highway, tidelands (riparian), city, etc. survey marker represented by a chiseled cross, punch hole, brass plug, etc. used for horizontal and vertical control. These stations are not marked, but if there should be an enclosing box, the rim is stamped with a number.

3. Rivet-(Rv.): A standard metal rivet set by the New Jersey Geodetic Control Survey, used for vertical control.

4. Mark-(Mk.): Same as point, but used only for vertical control. In the description of such marks there should appear a mark number followed by an equality sign and then the original name or elevation of the bench mark, and in parentheses the name of the organization which established the mark.

(b) The disturbance of a geodetic control reference mark is discouraged. When a geodetic control reference mark must be moved, raised or lowered to accommodate construction, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance, and arrangements shall be made to protect the position. If the position can not be protected, it may be altered in position after approval by the New Jersey Geodetic Control Survey and under the supervision of a licensed professional engineer or land surveyor using standard methods. Copies of field notes and instruments, tape, and rod specifications including calibration data, shall be submitted to the New Jersey Geodetic Control Survey.

(c) Rationale: 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.

7:7-9.46 Hudson River waterfront area

(a) The following terms, when used in this section, shall have the following meanings:

1. "Average building height" is defined as the mean height of the roof line of a building on a pier measured from the pier deck level to the top of the parapet or the midpoint of a sloped roof above pier deck level.

2. "The Hudson River Waterfront Area" extends from the George Washington Bridge in Fort Lee, Bergen County to the Bayonne Bridge in Bayonne, Hudson County, inclusive of all land within the municipalities of Bayonne, Jersey City, Hoboken, Weehawken, West New York, Guttenberg, North Bergen, Edgewater and Fort Lee subject to the Waterfront Development Law.

3. "Landward end of pier" means the end of the pier at its point of attachment to the upland.

4. "Pier" means a pile supported, decked structure extending from upland over water. The longest axis of a pier is generally perpendicular to the shoreline. See "platform" below.

5. "Pier deck level" means the lowest deck surface that is at or above the flood hazard area design flood elevation as defined at and determined in accordance with N.J.A.C. 7:13.

6. "Platform" means a pile supported, decked structure extending from upland over water. The longest axis of a platform is generally parallel to the shoreline. See "pier" above.

7. "Walkway" means areas along the waterfront, including areas on piers, that are devoted to activities by the public such as but not limited to walking, jogging and bicycle riding.

8. "Waterward end of pier" means the end of a pier most distant from its point of attachment to the upland.

(b) Non-industrial development within the Hudson River waterfront area shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing, and public access. Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River waterfront area development shall be consistent with all other applicable rules with particular attention given to N.J.A.C. 7:7-9.38, Public open space; N.J.A.C. 7:7-9.39, Special hazard areas; N.J.A.C. 7:7-9.41, Special urban areas; N.J.A.C. 7:7-9.48, Lands and waters subject to public trust rights; N.J.A.C. 7:7-15.14, High rise structures; N.J.A.C. 7:7-16.9, Public access rule; N.J.A.C. 7:7-16.10, Scenic resources and design; and N.J.A.C. 7:7-16.3, Water quality.

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

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

- i. The minimum length of public open space at the landward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;
- ii. The minimum length of public open space at the landward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of landward open space} = \frac{(ABH) - 40}{40} \times 20 + 20$$

Example:	Average Height	Minimum Landward Open Space Length
	80 feet	60 feet
	70 feet	42.5 feet
	60 feet	30 feet
	50 feet	22.5 feet
	40 feet	20 feet;

- iii. The minimum length of distal public open space at the waterward end of a pier required for any building less than or equal to 40 feet in average height shall be 20 feet;

iv. The minimum length of public open space at the waterward end of a pier required for any building above 40 feet in average height shall be computed as follows:

$$\text{Minimum length of waterward open space} = \frac{(ABH) < 2 >}{16 \text{ feet}} - (5 ABH) + 120 \text{ feet}$$

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

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

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

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

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

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

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

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

ix. All pier structures shall meet the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25.

(e) All waterfront development along the Hudson River shall develop, maintain, and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation restriction in favor of the Department. In addition to complying with N.J.A.C. 7:7-18, the conservation restriction shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties, and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. Public access to and along the main route of the Hudson Waterfront Walkway and on the adjacent piers shall be on a 24-hour unless it can be demonstrated to the Department that strict compliance with this provision is not practicable based on the risk of injury from substantial permanent obstructions or proposed hazardous operations, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property that would make 24-hour access not feasible.

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

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict compliance with this rule and the development, as proposed, would remain in compliance with N.J.A.C. 7:7-9.48. Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

(g) Rationale: The Hudson River waterfront area has historically been, and is currently, heavily populated and extensively developed. Development pressures are intense in this area. Given its preexisting density of development, this rule seeks to encourage further development if constructed to ensure the safety of people and property in order to steer development towards actively disturbed areas and away from undisturbed areas of the coast. Further, this rule serves to encourage redevelopment efforts in several cities in the Hudson River waterfront area to increase the economic and social vitality of these areas while making wise use of existing footprints of development and infrastructure. Building height requirements are different for buildings in this special area than for other areas of the coast in order to facilitate this redevelopment and are balanced by requiring public open space and visual access to the water through other means.

The public access requirements for development in the Hudson River waterfront area are intended to balance the public trust rights of people to access the water with site-specific safety needs. The rule facilitates the completion of the Hudson River Waterfront Walkway, which is intended to provide contiguous access to the waterfront for the public in accordance

with the Public Trust Doctrine. However, it is not unreasonable to limit night access or to limit access in cases where there is a documented threat to public safety due to unique circumstances on the property, such as hazardous operations.

7:7-9.47 Atlantic City

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

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

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

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

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

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

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

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

i. Garden Pier;

ii. Steel Pier;

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

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

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

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

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

5. The height of structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements, amusement rides, and wind

turbines, which shall not exceed 200 feet. The height of the wind turbine shall be measured from the decking of the pier to the tip of the blade at its highest position. There shall be no occupancy above the 100-foot elevation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Parking is prohibited on the piers.

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless the pier is associated with a marina which meets the resort recreational use rule, N.J.A.C. 7:7-15.3 or meets the standards at (c) above.

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

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

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

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

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

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

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

v. There shall be no more than one pedestrian bridge per casino-hotel.

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

i. The structure is not enclosed;

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

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

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

- i. The structure is not enclosed;
- ii. The structure extends no more than 12 feet into the Boardwalk right-of-way; and
- iii. There is a 14 foot six inch clearance between the structure and the deck surface of the Boardwalk.

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

(f) Development is discouraged in the street rights-of-way listed in (f)1 and 2 below as shown on the 2008 Atlantic City tax duplicate, and in the street right-of-way listed in (f)3 below, except in accordance with the provisions in (f)4 below.

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

- i. Lincoln Place (50 foot right-of-way);
- ii. Montpelier Avenue (60 foot right-of-way);
- iii. Texas Avenue (50 foot right-of-way);
- iv. Indiana Avenue (60 foot right-of-way);
- v. New York Avenue (50 foot right-of-way);
- vi. Tennessee Avenue (60 foot right-of-way); and
- vii. Rhode Island Avenue (50 foot right-of-way);

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

- i. Atlantic Avenue (100 foot right-of-way);
- ii. Pacific Avenue (60 foot right-of-way); and
- iii. Grammercy Place (60 foot right-of-way);

3. That portion of Albany Avenue (60 foot right-of-way) located southeast of Pacific Avenue as shown on the 2008 Atlantic City tax duplicate or an alternative alignment with a minimum 60 foot right-of-way approved by the Department which provides a comparable view corridor to the ocean and horizon.

4. The following development is conditionally acceptable provided that mitigation is performed pursuant to (j) below:

- i. Signage, extending no more than four feet into the street right-of-way and located a minimum of 14 feet six inches above the surface of the sidewalk; and
- ii. Below-grade utilities, roads, sidewalks, public stairs and ramps that provide access to the Boardwalk.

(g) Development is acceptable southeast of Pacific Avenue in or over the right-of-way of a street listed in (g)1 through 5 below as shown on the 2008 Atlantic City tax duplicate provided that it either meets the standards of (g)6 and 7 below or of (i) below.

- 1. Iowa Avenue (72 foot right-of-way);
- 2. Christopher Columbus Boulevard (50 foot right-of-way);
- 3. Park Place (50 foot right-of-way);
- 4. Pennsylvania Avenue (72 foot right-of-way); and
- 5. New Jersey Avenue (50 foot right-of-way).

6. With the exception of any existing pedestrian bridges on the 2008 Atlantic City tax duplicate, a corridor equal to the right-of-way width and 50 feet in height shall be maintained at street level within the street right of way between Pacific Avenue and the Boardwalk. The entire corridor shall be unenclosed, entirely devoid of structures, maintain views to the Boardwalk and allow unrestricted physical access to the public.

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

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

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

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

- i. The elevated pedestrian bridge meets the standards at (e)2i through iv above; and
- ii. The elevated pedestrian bridges shall be no closer to one another than 1,000 feet, as measured along the street right-of-way;

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

- i. The structure is not enclosed;
 - ii. The structure extends no more than 8 feet into the street right-of-way; and
 - iii. There is an eight-foot clearance between the structure and the surface of the sidewalk;
3. Signs which are not awnings, canopies, marquees, or other roof extensions are acceptable provided they meet the criteria of (i)3i through iii below:

- i. The structure is not enclosed;
 - ii. The structure extends no more than eight feet into the street right-of-way; and
 - iii. There is a 14 foot six inch clearance between the structure and surface of the sidewalk;
- and

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

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

- 1. The amount to be paid in mitigation shall be calculated as follows:
 - i. For development within a street right-of-way at grade, or below a height of 14 feet six inches above grade, the amount of mitigation is five times the property tax on the assessed value of the right-of-way area to be developed. The assessed value is an average of the value of the land on both sides of the area to be developed; and
 - ii. For development within a street right-of-way at a height of 14 feet six inches or greater above grade, the amount of mitigation is three times the Atlantic City tax on the assessed value

of the right-of-way area to be covered by development. The assessed value is an average of the value of the land on both sides of the right-of-way area to be covered by development;

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

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

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

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

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

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

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

(m) Rationale: The Department first established the Atlantic City special area on February 7, 2000, to encourage redevelopment of Atlantic City and its beach and oceanfront facilities in recognition of Atlantic City's unique situation based on the 1976 referendum approving casino gambling in the city. The rule was developed with extensive cooperation between the Department and the Atlantic City Mayor's office and Planning Department.

The goals of this rule are to: (1) provide a predictable permitting process for proposed developments in Atlantic City; (2) promote tourism; (3) maintain, enhance, and promote continued public access to the Atlantic Ocean and Absecon Inlet waterfront and adjacent beach areas; (4) allow Atlantic City to compete in the future with other gaming resorts throughout the nation; and (5) enable the city to reach its stated goals of becoming a world-class resort. The rule reflects the existing intensity of development in Atlantic City and the importance of the gaming industry to the continued enhancement of the tourist-oriented resort economy, and recognizes the need to promote continued public-use and tourism-related development. This is consistent with the goals of the Coastal Area Facility Review Act to promote multiple uses that support diversity and are in the best long-term, social, economic, aesthetic, and recreational interests of all the people of the State.

SUBCHAPTER 10. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7-10.2 Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand accumulated beneath a boardwalk; removal of sand from street ends, boardwalks/promenades, and residential properties; the repair or reconstruction of existing boardwalks, gazebos, and dune walkover structures; and limited sand transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes, and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance, except as provided at (a)9 below.

1. All routine beach maintenance activities shall be conducted in a manner that does not destroy, jeopardize, or adversely modify endangered or threatened wildlife or plant species habitat; and shall not jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species.

2. If the activities in (a) above are proposed to be conducted by a municipal or county agency on property owned by that governing body, then the municipal or county engineer must certify that the activities will be conducted in accordance with these standards. The appropriate municipal or county engineer is responsible for ensuring compliance with these requirements. If these activities are proposed to be conducted on privately owned property, then the property owner is responsible for ensuring that the activities will be conducted in accordance with these standards. If these activities are proposed to be conducted on State owned properties, then the

DEP, Bureau of Construction and Engineering must certify that the activities will be conducted in accordance with these standards.

3. All guidelines and specifications of this section must be incorporated into any contract documents or work orders related to proposed beach and dune activities, as described in this section. The Division of Land Use Regulation is available to assist in the development of specific maintenance plans for oceanfront locations, upon request.

4. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*), Least Terns (*Sternula antillarum*), and Black Skimmers (*Rynchops niger*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles, shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting seasons. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available from the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (a)4i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no beach raking, other mechanical manipulation of the beach, or the use of non-emergency vehicles shall take place between March 15 and August 31 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (a)4i above, but is subsequently found to contain a nest or unflighted chick of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no beach raking other mechanical manipulation of the beach, or use of non-emergency vehicles shall take place between March 15 and August 31 in those areas.

iv. The restrictions contained in (a)4 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

5. In areas documented by the Department as supporting known occurrences of Federally listed endangered or threatened plant species such as seabeach amaranth (*Amaranthus pumilus*), or known occurrences of State listed endangered plant species, such as sea-beach knotweed- (*Polygonum glaucum*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles, shall take place between May 15 and November 30.

i. The Department, in cooperation with the USFWS, shall develop a list of present and documented habitat areas where this restriction shall apply based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. If a particular beach area is not identified on the updated list as described (a)5 above, but is subsequently found to contain an occurrence of a Federally listed endangered or threatened plant species, or a State listed endangered plant species, the Department shall notify the permittee and no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles, shall take place between May 15 and November 30 in those areas.

iii. The restrictions contained in (a)5 above may be waived if the Department determines that the identified areas do not support occurrences of Federally listed endangered or threatened plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

6. Mechanical sifting and beach raking shall be limited to recreational beach areas only. For the purposes of this subsection, "recreational beach area" means all areas within 100 yards of a staffed lifeguard stand.

7. The excavation of sand accumulated beneath a boardwalk is conditionally acceptable provided:

i. The elevation of the area after the excavation is completed is not lower than either the upper beach berm design template for an engineered beach, or, for a non-engineered beach, the elevation of the existing beach berm;

ii. The excavated sand is relocated to the seaward toe of the existing dune, if present, or on the upper beach berm;

iii. Where breaching of an existing dune is necessary to allow for sand excavation, the following apply:

(1) The area of the dune breached shall be minimized; and

(2) The dune shall be restored to pre-existing conditions immediately upon excavation of the sand;

iv. Where sand is removed from the landward dune slope, the slope must be:

(1) Restored to the preexisting conditions and in no case be steeper than three horizontal to one vertical; and

(2) Revegetated in accordance with N.J.A.C. 7:7-10.4(b) and (c).

8. Any sand excavated from boardwalks, street ends, and single family lots shall be placed on the seaward toe of the existing dune, if present, or on the upper beach berm.

9. Placement of temporary sand fencing during the winter months, which results in the accumulation of sand that is later redistributed on the beach berm, is conditionally acceptable, provided:

i. The sand fencing is:

(1) Placed a minimum of 15 feet waterward of the seaward toe of any existing dune or, if no dune is present, from the waterward side of any structure;

(2) Installed no earlier than October 15 and removed prior to the Memorial Day weekend, unless threatened and endangered species timing restrictions apply;

(3) Installed in a manner that does not prevent public access along the tidal water and does not restrict public access to the beach from existing public access points; and

ii. The accumulated sand that is redistributed:

(1) Is placed on the beach;

(2) Does not result in the grading of the beach below the beach berm design template for an engineered beach or, for a non-engineered beach, below the elevation of the beach berm elevation existing prior to the redistribution; and

(3) Where feasible, does not result in the grading of the beach face to a slope steeper than 10 horizontal to one vertical.

(b) Projects involving the transfer of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. All sand transfer activities shall be conducted in a manner that does not destroy, jeopardize, or adversely modify endangered or threatened wildlife or plant species habitat; and shall not jeopardize the continued existence of any local population of an endangered or threatened wildlife or plant species.

2. The amount of sand transferred at any one time shall be limited to one foot scraping depth at the borrow zone. This borrow zone may not be rescraped until the sand volume from the previous scraping activities has been fully restored.

3. The borrow zone shall be limited to the area between the low water line and the inland limit of the berm. It is strongly recommended that a program of beach profiling be utilized to monitor the condition of the beaches and to ensure compliance with the standards of this section.

4. If the purpose of the sand transfers is to repair eroded dunes (dune scarps), all filled areas shall be stabilized with sand fencing and planted with beach grass in accordance with Department or Soil Conservation Service standards. Fencing shall be in place within 30 calendar days of the transfer operation, while the vegetative plantings may be installed during the appropriate seasonal planting period (October 15 through March 31, anytime the sand is not frozen).

5. There shall be no disturbance to existing dune areas.

6. In areas of documented habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers (*Charadrius melodus*), Least Terns (*Sternula antillarum*), and Black Skimmers (*Rynchops niger*), no sand transfers shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting seasons. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available from the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. If a particular beach area is identified on the updated list as described in (b)6i above as habitat for threatened or endangered beach nesting shorebirds, regardless of the habitat classification of the previous nesting season, no sand transfers shall take place between March 15 and August 31 in those areas.

iii. If a particular beach area is not identified on the updated list as described in (b)6i above, but is subsequently found to contain a nest or unflighted chick of a threatened or endangered beach nesting shorebird, the Department shall notify the permittee and no sand transfers shall take place between March 15 and August 31 in those areas.

iv. The restrictions contained in (b)6 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

7. In areas documented by the Department as supporting known occurrences of Federally-listed endangered or threatened plant species, or known occurrences of State-listed endangered plant species, no sand transfers shall take place between May 15 and November 30.

i. The Department, in cooperation with the USFWS, shall develop a list of present and documented habitat areas where this restriction shall apply, based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. If a particular beach area is not identified on the updated list as described at (b)7i above but is subsequently found to contain an occurrence of a Federally listed endangered or threatened plant species, or an occurrence of a State listed endangered plant species, the Department shall notify the permittee and no sand transfer on the beach shall take place between May 15 and November 30 in those areas.

iii. The restrictions contained in (b)7 above may be waived if the Department determines that the identified areas do not support occurrences of a Federally listed endangered or threatened plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

8. Sand transfers to or from wetland areas that may exist on a beach are not authorized by this permit.

9. Records of all sand transfer activities shall be maintained by the property owner, beach association, governmental agency or other authority conducting the activities, and shall be available for inspection by the Department, upon request. These records shall include, but not be limited to, dates of transfer, borrow area limits, fill area limits, estimates of the amount of sand transferred, the name of the person(s) supervising the transfer activities, and the engineering certification required (if appropriate) for all sand transfer activities.

(c) Rationale: Beach maintenance activities are sometimes necessary to reestablish the width and contours of the beach and dune system, and to repair structures that facilitate public access to and enjoyment of the shore. Maintenance of beaches is essential to New Jersey's shore tourism and to protecting people and property from storms and wave action. These rules address actions by municipal or county agencies on property owned by that governing body, as well as actions on privately owned property and State owned property. While these actions are necessary, they must minimize impacts to threatened and endangered wildlife and plant species that rely on beaches for habitat, and must not undermine the protective qualities of the beach and dune system.

The Department's Division of Fish and Wildlife, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the Army Corps of Engineers have determined that beach raking and other mechanical manipulation of beaches has the potential to adversely affect threatened or endangered beach nesting shorebirds and their habitat. These adverse impacts can occur in several ways. First, mechanical vehicles (such as beach rakes and tractors) crush the eggs, as well as chicks and adult birds. Second, these vehicles create ruts in the beach/berm, which restrict the ability of juvenile birds to move between the upper berm nest areas to the feeding habitats along the wrack line. Third, the mechanical sifting of beach sand removes the birds' natural wrack line feeding habitat, which is the primary food source for these beach nesters. Requiring activities to only take place within certain timeframes in areas documented as habitat for threatened or endangered nesting shorebirds or areas documented as habitat for endangered or threatened plant species will minimize impacts to such species by restricting beach maintenance activities to times of year where the species are not likely to be utilizing the beach area. These timeframes are consistent with USFWS recommendations and accommodate piping plovers, least terns, black skimmers, and other migrating shorebirds. The Division of Fish and Wildlife publishes an annually updated list of areas in which these timing restrictions apply. If a particular area is not listed but is subsequently found to contain such a species, the activities must halt until the restricted time period has passed. Restricting beach raking and sand transfers to active recreation beach areas in locations not documented as threatened or endangered species habitat enables permittees to mechanically clean heavily used recreational beach areas while preserving shorebird feeding habitat.

In the wake of Superstorm Sandy, the Department determined that provisions to allow for the maintenance of engineered beaches and dunes to the design template, allow for the removal of sand from beneath a boardwalk, and allow for the placement of temporary sand fencing during winter months are necessary to facilitate the maintenance of engineered beach and dune systems. Barone, McKenna, and Farrell in their paper "Hurricane Sandy: Beach-dune performance at New Jersey Beach Profile Network Sites" (2014) concluded that Federally designed shore protection projects that included engineered dunes protected landward structures. In the face of future storms, these provisions will allow communities to maintain protective beach and dune systems.

7:7-10.3 Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceeding a five-year storm event. Emergency post-storm beach restoration projects not specifically identified in this section may be authorized by the Department through an emergency authorization pursuant to N.J.A.C. 7:7-21 if the Department determines that there is an imminent threat to lives or property.

(b) Beach restoration activities, as part of an emergency post-storm recovery, include: the placement of clean fill material with grain size compatible with (or larger than) the existing beach material; the bulldozing of sand from the lower beach profile to the upper beach profile;

the alongshore transfer of sand on a beach; the placement of concrete, rubble or rock; and the placement of sand filled geotextile bags or tubes.

(c) The emergency post-storm beach restoration activities in (b) above should be designed and implemented as a means to restore the beaches to the pre-storm condition, or to restore the beaches to a level sufficient to provide protection from a storm event with a minimum recurrence interval of five years (five-year storm protection). For the purpose of this section, five-year storm protection equates to a minimum 30-foot wide berm at elevation +8 Mean Sea Level (NAD, 1983). Restoration beyond the pre-storm beach condition is encouraged by the Department, but will not be considered “emergency post-storm beach restoration,” pursuant to this section.

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. Bulldozing is limited to the beach area landward of the low water line. Removal of material from below the low water line is considered dredging, and is not authorized pursuant to this section; and
2. The beach face cannot be graded to a slope steeper than one vertical to three horizontal.

(e) The alongshore transfer of sand from one beach area to another, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. No disturbance to existing dune areas is permitted;
2. Sand borrow areas shall not be bulldozed to a depth which exceeds one foot;
3. The borrow areas may not be rescarped until full sand volume recovery has occurred; and
4. An adequate supply of sand is available at the borrow area site, so that the relocation of this material will not decrease the level of protection adjacent to the borrow area.

(f) The placement of sand filled geotextile bags or geotubes, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. In areas where dunes are present, the geotextile bags or geotubes shall be placed along the toe of any scarped dune, or seaward of the dune toe, and not on the dune itself;
2. In areas where dunes are not present, the geotextile bags or geotubes shall be placed at the landward limit of the beach and in no case be placed below the mean high water line;
3. The geotextile bags or geotubes shall be tapered at the end of the project area, to minimize the impact to adjacent areas which are not protected by the geotextile bags or geotubes;
4. The crest and seaward side of the geotubes shall be buried to achieve a gradual, uniform slope from the upper beach to the crest of the geotextile bag or geotube;
5. The length of shoreline along which the geotextile bags or geotubes are installed shall not exceed a cumulative length of 500 feet;
6. Fill material for the geotextile bags or geotubes shall be from an upland source excluding the beach and dune or from suitable dredged material;

7. The geotextile bag or geotube shall be installed parallel to the shoreline; and
8. The geotextile bag or geotube shall be installed with the manufacturer's recommended scour apron.

(g) The placement of sand, gravel, rubble, concrete, rock or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. All material shall be non-toxic sand, gravel, concrete, rubble, rock, or other inert material;
2. The placement of concrete, rubble, or rock shall be temporary in nature, and is not to be used as permanent protection, unless it is part of a Department-approved, engineered design for permanent shore protection;
3. All concrete, rubble, or rock placed on the beach shall be removed within 90 calendar days, unless an application is filed within 90 calendar days of the placement of the material for Department approval of an engineered design for permanent shore protection. If a permit application is filed within this period, the material may remain on the beach until a determination is made on the application; and
4. The use of automobiles, tires, wood debris, asphalt, appliances or other solid waste is prohibited.

(h) Rationale: Damage to beach and dune systems during storm events has the potential to leave communities vulnerable to subsequent storms. The above standards are intended to facilitate emergency beach restoration activities to stabilize beaches eroded by storm damage. The best method depends upon the extent of damage, the urgency of the situation, and the likely permanent solution. Different materials are appropriate for different locations. This rule promotes the Department's longstanding policy of the beneficial reuse of dredged material by allowing dredged material to be used as fill material in appropriate circumstances.

7:7-10.4 Standards applicable to dune creation and maintenance

(a) Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

(b) All dune creation and maintenance activities should be conducted in accordance with the specifications found in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985), and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (Soil Conservation Service, 1992). The Department will provide site specific technical assistance for dune creation and maintenance projects, upon request.

(c) All proposed dune vegetation shall be native to New Jersey and should be limited to the following coastal species, to the maximum extent practicable: American Beachgrass

(*Ammophila breviligulata*), Coastal Panicgrass (*Panicum amarulum*), Bayberry (*Myrica pensylvanica*), Beach Plum (*Prunus maritima*), Seaside Goldenrod (*Solidago sempervirens*), Beach Pea (*Lathyrus japonicus*), Bitter Panicgrass (*Panicum amarum*), Switchgrass (*Panicum virgatum*), Partridge Pea (*Chamaecrista fasciculata*), Eastern red cedar (*Juniperus virginiana*), Groundsel tree (*Baccharis halimifolia*), and Saltmeadow cordgrass (*Spartina patens*).

1. American beachgrass is the preferred species for the stabilization of newly established dunes, and for stabilization of the primary frontal dune. Woody plant species are suitable for back dune and secondary dune environments. Herbaceous plant species are preferred as supplemental plantings for all dune areas.

2. Dune vegetation should be diversified to the maximum extent practicable, in an effort to provide continuous stabilization in the event that pathogens reduce or eliminate the effectiveness of one species. A complex of associated grasses, herbaceous species and woody species is preferred to the planting of one species.

3. A landscape plan is required as part of any dune creation activity. The landscape plan shall depict the proposed vegetative community on the dune and include:

- i. Species and quantity to be planted;
- ii. Spacing of all plantings;
- iii. Stock type (plugs, potted, seed); and
- iv. Source of the plant material.

(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at municipal street-ends and other heavily used beach access points is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the DEP and Florida Sea Grant reports are available from the Department at the address set forth at N.J.A.C. 7:7-1.6.

(e) The construction of at-grade dune walkovers ~~[is acceptable only]~~ at single-family homes and duplexes ~~[residential dwellings, subject to the following conditions]~~ **shall comply with the following:**

1. Only one walkover per ~~[residential building]~~ **site** is allowed;
2. The width of the walkover ~~[must]~~ **does** not exceed four feet;
3. The walkover ~~[shall be]~~ **is** fenced on both sides through the use of sand fencing, **split rail fencing, or open handrails, unless prohibited by the municipality; and**
- ~~[4. The use of unrolled sand fencing as a base for the walkover is preferred to the use of planks and boards. Sand fence based walkovers allow for easier seasonal removal and placement, and allow for greater growth of beachgrass, while still providing an adequate base for pedestrian traffic; and~~
- ~~5. Solid boardwalk type walkovers shall be elevated at least one foot above the dune, to allow for movement of sand and vegetative growth under the boardwalk structure.]~~

4. Any grading or excavation associated with the installation of the walkover does not result in the lowering of the beach or dune below design specifications.

(f) The construction of at-grade dune walkovers at developments other than a single-family home and duplex shall comply with the following:

1. Only one walkover per site, unless:

i. The New Jersey 2012 High Resolution Orthophotography available for download http://nigin.state.nj.us/NJ_NJGINExplorer/DataDownloads.jsp, reflects that more than one walkover was present on the site on the date depicted in the image. In such case, the maximum number of walkovers that may be installed shall be equal to the number of walkovers reflected on the 2012 photo-imagery; or

ii. It is demonstrated that more than one walkover is necessary to adequately provide access from the development. In determining whether more than one walkover is necessary, factors considered by the Department will include the following:

(1) The number of persons to be served by the development during normal and peak usage times;

(2) The length of the dune/beach frontage on the site;

(3) The distribution of the development on the site (for example, for a site with 1,000 feet of dune/beach frontage, is there one centrally located structure with a central entrance from which residents/patrons will be accessing the walkover, or are there several buildings spread along the beach frontage with multiple entrances on the beach side of the structures); and

(4) The proximity of the nearest alternative public access to the beach;

2. For non-commercial properties, the width of the at-grade walkover structure does not exceed six feet and the total width of the at-grade walkover, fencing, and/or edging not to exceed eight feet;

3. For commercial properties, the width of the at-grade walkover structure does not exceed 10 feet and the total width of the at-grade walkover, fencing, and/or edging not to exceed 12 feet;

4. Any grading or excavation associated with the installation of the walkover does not result in the lowering of the beach or dune below design specifications; and

5. The walkover is fenced on both sides through the use of sand fencing, split rail fencing, or open handrails, unless prohibited by the municipality.

~~((f))~~(g) The controlled use of discarded natural Christmas trees for the purpose of dune stabilization is generally discouraged, but may be acceptable, in accordance with the standards set forth below. Discarded Christmas trees serve the same function as sand fencing, by trapping wind blown sand and facilitating sand deposition and dune formation. However, uncontrolled or inappropriate placement of trees will hinder the development of dunes and may present a fire hazard.

1. Only natural, coniferous trees are suitable for use in dune stabilization. The use of tree limbs, clippings, artificial trees, and other dead vegetation is prohibited;

2. Trees should be placed at least 100 feet landward of the high water line, in areas which are generally not subject to spring tidal inundation and wave swash action;

3. The placement of trees should be oriented against the prevailing winds, in either a straight line or zig-zag formation;

4. The trees should be installed by overlapping the stump end of one tree with the pointed end of another, and then anchoring the connection point with a sufficient amount of sand to hold the trees in place;

5. Newly placed trees should be monitored to ensure that the trees remain anchored and do not become dislodged. Additional quantities of sand or wooden anchor stakes may be used to hold the trees in place until they become stabilized; and

6. All newly deposited sand should be stabilized through the planting of beachgrass, during the appropriate planting season.

(h) Rationale: Barone, McKenna, and Farrell in their paper Hurricane Sandy: Beach-dune performance at New Jersey Beach Profile Network sites (2014) concluded that the presence of maintained Federally designed beach nourishment projects including engineered dunes played a significant role in protecting landward structures and infrastructure as the projects absorbed the impacts of the storm waters. This rule is intended to facilitate the creation and maintenance of dunes for shore protection and ecological benefit. This rule is intended to facilitate the creation and maintenance of dunes for shore protection and ecological benefit, while continuing to allow and encourage appropriate public access to the State's beaches. To achieve these goals, the rule provides predictable, science-based standards for dune creation and maintenance, as well as dune walkover design. The rule also identifies appropriate dune vegetation; planting dunes with a diversity of native vegetation increases stability, reduces dune erosion, and provides high-quality habitat for wildlife. While the use of natural Christmas trees for dune stabilization is discouraged, in order to provide appropriate flexibility in dune creation and maintenance activities, the rule allows their use in certain circumstances provided stringent standards are met.

Dune walkovers create designated areas for people to cross over dunes to reach the beach and ocean. Their presence helps prevent degradation of dunes that could otherwise occur if people routinely walked across the dunes at random locations and also promotes public access to the shore. However, these walkovers must be properly designed and constructed to minimize any impact to the dunes themselves. The number of walkovers in any given area must also be limited to preserve the integrity of the vegetated dune system.

7:7-10.5 Standards applicable to the construction of boardwalks

(a) The construction of oceanfront or bayfront boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. All timber support piles shall be a minimum of eight inches in diameter;
2. Support piles should be driven to a depth of at least 10 feet (mean sea level), for all V zone locations. In A zones, the depth of penetration should be at least five feet (mean sea level);
3. The method for insertion of piles should be a pile driver or drop hammer;
4. All support joists and timber connections should be anchored through the use of hurricane clips or metal plates; and

5. All metal fasteners, including but not limited to bolts, screws, plates, clips, anchors and connectors, shall be hot dipped galvanized.

(b) Rationale: Boardwalks are an important feature of New Jersey's coastal landscape and provide the public with opportunities to visually access the waterfront. The rule conditionally allows boardwalks to be constructed if such construction meets specific requirements to ensure the structure can withstand the conditions of the site on which it is constructed.

SUBCHAPTER 11. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN
ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT
AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION

7:7-11.1 Purpose and scope

(a) This subchapter sets forth the standards for conducting an endangered or threatened wildlife or plant species habitat impact assessment and for conducting an endangered or threatened wildlife species habitat evaluation. One or both must be employed by an applicant seeking to demonstrate compliance with or inapplicability of N.J.A.C. 7:7-9.36 when the site contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps. This subchapter also sets forth the standards for reporting the results of an endangered or threatened wildlife or plant species habitat impact assessment and an endangered or threatened wildlife species habitat evaluation.

(b) An endangered or threatened wildlife or plant species habitat impact assessment is required to demonstrate that endangered or threatened wildlife or plant species habitat as defined at N.J.A.C. 7:7-9.36(a) would not, directly or through secondary impacts on the relevant site or in the surrounding area, be adversely affected by the proposed development. The standards for conducting an impact assessment pursuant to N.J.A.C. 7:7-9.36(b), (d), and (e) are found at N.J.A.C. 7:7-11.2.

(c) Pursuant to N.J.A.C. 7:7-9.36(c), an endangered or threatened wildlife species habitat evaluation is required to demonstrate that a site does not contain suitable endangered or threatened wildlife or plant species habitat, as defined at N.J.A.C. 7:7-9.36(a). The standards for conducting an evaluation are found at N.J.A.C. 7:7-11.3.

(d) The reporting requirements for habitat evaluations and impact assessments are found at N.J.A.C. 7:7-11.4.

(e) Rationale: Endangered and threatened wildlife and plant species habitat is considered a special area under N.J.A.C. 7:7-9.36. Applicants, therefore, must demonstrate compliance with the standards in N.J.A.C. 7:7-9.36 through the preparation of an impact assessment and/or a habitat evaluation to ensure essential habitat for endangered and threatened wildlife and plant species is not negatively impacted by a proposed regulated activity.

7:7-11.2 Standards for conducting endangered or threatened wildlife or plant species habitat impact assessment

(a) Applicants who choose not to dispute the Department designation of the site as endangered or threatened wildlife species habitat shall demonstrate compliance with N.J.A.C. 7:7-9.36(b) by providing information required at this section and N.J.A.C. 7:7-11.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7-9.36(a) and/or (d).

(b) If an endangered or threatened plant species has been documented to be on the site or a portion of the site or an area abutting the site, applicants shall demonstrate compliance with N.J.A.C. 7:7-9.36(b) by providing information required at this section and N.J.A.C. 7:7-11.4. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened plant species documented to be on the site or a portion of the site or on an area abutting the site.

(c) Impact assessments shall be conducted for each endangered or threatened wildlife or plant species described in (a) and/or (b) above. The impact assessment shall consider the likely effects of the proposed development on the local populations of the particular species on or abutting the site. The impacts shall be assessed using accepted ecological principles and scientific literature on each species and both direct and indirect impacts of the proposed development shall be considered. This assessment shall be based on habitat requirements and life history of each species, and the manner in which the proposed development may alter habitat, including, but not limited to, vegetation, soils, substrate, bathymetry, salinity, hydrology, wildlife movement corridors, human disturbance, and effects on competitor, parasite, or predator species.

(d) Rationale: When an applicant proposes a regulated activity on a site that contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps, or in an area that otherwise meets the definition of endangered or threatened wildlife or plant species habitat as set forth in N.J.A.C. 7:7-9.26(a), the applicant must demonstrate that the proposed activity will comply with N.J.A.C. 7:7-9.36, Endangered or threatened wildlife or plant species habitat. An impact assessment is prepared in cases where the applicant does not dispute the Department's designation of the site as endangered or threatened wildlife or plant species habitat. Scientific evidence must be provided to demonstrate that the proposed development would not negatively impact the population(s) of each endangered or threatened wildlife and/or plant species documented on the site. Direct and indirect impacts must be considered in order to ensure compliance with N.J.A.C. 7:7-9.36.

7:7-11.3 Standards for conducting endangered or threatened wildlife species habitat evaluation

(a) Applicants who dispute the Department designation of the site as endangered or threatened wildlife species habitat, or dispute the boundary of that habitat shall provide information that demonstrates that the habitat is not suitable for each of the endangered or threatened wildlife species that resulted in identification of the site, a portion of the site, or an

area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7-9.36(a) and/or (d).

(b) Habitat evaluations for endangered or threatened wildlife species pursuant to N.J.A.C. 7:7-9.36(c) shall be conducted for each wildlife species described in (a) above. This habitat evaluation shall:

1. Use scientific methodology appropriate for each species or species group;
2. Examine specific attributes and characteristics of the site that limit or eliminate its suitability as habitat, including, but not limited to, an examination of vegetative cover, soils, hydrology, existing land use and any other factors that are used to determine suitability of a site for the species. The site's vegetative analysis shall include an on-site investigation and evaluation; and
3. Include an examination of the area surrounding the site using aerial photographs and/or appropriate cover maps.

(c) A survey for the endangered or threatened wildlife species that resulted in identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. 7:7-9.36(a) and/or (d), will only be considered in the context of supplementing information on habitat suitability. If such a survey is conducted, it shall be conducted consistent with techniques established in the scientific literature.

(d) Rationale: While the Landscape Maps and other Department tools used to designate endangered or threatened wildlife or plant species habitat are backed by sound science, in certain cases the Department's designation of an area as habitat for an endangered or threatened wildlife or plant species is erroneous. For example, site conditions may have changed in a way that can no longer support the species in question. Thus, the Department permits applicants who dispute the Department's designation of a site as threatened or endangered species habitat to submit a habitat evaluation supporting that assertion. Requiring a rigorous habitat evaluation allows the Department to reconsider its designation of the site using the most up-to-date information.

7:7-11.4 Standards for reporting the results of impact assessments and habitat evaluations

(a) All habitat evaluations and impact assessments submitted to the Department shall include:

1. An introduction describing the goals of the habitat evaluation and/or impact assessment;
2. A copy of the USGS quad map(s) showing the location of the site, with the State plane coordinates of the site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear sites, 2,000 feet in length and longer, additional coordinates shall be provided at each 1,000 foot interval;
3. The lot, block, municipality and county in which the site is located;
4. For wildlife habitat evaluations and impacts assessments only, a map identifying the site, and the areas mapped as endangered or threatened wildlife species habitat on the Landscape

Maps onsite and abutting the site, along with a list of the endangered or threatened species that resulted in the mapping of endangered or threatened species habitat;

5. For impact assessments for plant species only, a map identifying the location of the species habitat on the site or abutting the site along with a list of the potential plant species from the Department's Natural Heritage Database;

6. A description of the habitat requirements for each of these species identified at (a)4 and/or 5 above, including appropriate literature citations; and

7. The names and qualifications of all investigators who performed habitat evaluations, species surveys, and/or impact assessments.

(b) Wildlife habitat evaluations shall include a narrative with supporting documentation, including maps, photographs, and field logs, which contains the following:

1. A description, for each species, of the findings of the habitat evaluation performed in accordance with N.J.A.C. 7:7-11.3;

2. If a survey was conducted in accordance with N.J.A.C. 7:7-11.3(c), literature citations for the methodology used and a description of how the methodology was applied to the survey, giving the following information: surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications. This information shall be provided for each species surveyed; and

3. A comparison of the findings of the habitat evaluation with the known habitat requirements for each species, as provided at (a)6 above, and a description of the specific attributes and characteristics of the site that limit or eliminate the site's suitability as habitat.

(c) Impact assessments shall include a narrative-with supporting documentation, such as maps and photographs, which contains the following:

1. A description for each species, of how the proposed development will alter habitat, including vegetation, soils, hydrology, human disturbance, and effects on competitor, parasite, or predator species. The impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species on or abutting the site and why the development would not directly or through secondary impacts adversely affect each endangered or threatened species habitat; and

2. Literature citations used to reach the conclusions in (c)1 above.

(d) Rationale: Standard reporting requirements ensure that the Department can accurately determine whether a proposed activity would impact threatened or endangered wildlife or plant species and allow the Department to determine if an area regulated as threatened or endangered wildlife or plant species habitat should continue to be regulated as such. Certain specific requirements apply depending on whether the species in question is an animal or plant species because endangered and threatened wildlife species habitat is identified on Landscape Maps while endangered or threatened plant species habitat is identified using the Natural Heritage Database. Requiring the names and qualifications of all investigators involved ensures that only information from qualified professionals will be considered by the Department.

SUBCHAPTER 12. GENERAL WATER AREAS

7:7-12.5 Recreational docks and piers

(a) Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreational fishing or for the mooring of boats or jet skis used for recreation or fishing, except for commercial fishing, and house boats.

(b) Recreational docks and piers, including jet ski ramps, and mooring piles, are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. The construction minimizes adverse environmental impact to the maximum extent feasible;
3. The docks and piers and their associated mooring piles are located so as to not conflict with overhead transmission lines;
4. There is minimum feasible interruption of natural water flow patterns;
5. If the dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway, the dock, pier, or boat mooring shall be located on the man-made lagoon, unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with this section or any other provisions of this chapter;
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. The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide (measured from the bottom of the stringers), except for floating docks whose width shall not exceed eight feet. Under typical circumstances, the maximum width of the structure shall be eight feet over water and six feet over wetlands and intertidal flats, except as noted at (b)7iii below. For the purposes of this section, an intertidal flat is a low lying strip of land along a shoreline located between spring high and spring low tides. The height of the structure over wetlands shall be a minimum of four feet regardless of width;
 - i. A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet;
 - ii. Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline; and
 - iii. In man-made lagoons only, the maximum width of the structure shall be eight feet over water and six feet over wetlands; The height of the structure over wetlands shall be a minimum of four feet;

8. In man-made lagoons only, the structure extends no more than 20 percent of the width of the lagoon from bank to bank; ~~and~~

9. The proposed structure and associated mooring piles do not hinder navigation or access to adjacent water areas. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers~~[-];~~ **and**

10. Photocell lights and reflectors shall be placed along the dock and on mooring piles starting from a point that is 50 feet offshore of the mean high water line to the end of the dock at 10-foot intervals. The lights shall be installed and operational within 72 hours of completion of construction.

(c) The construction of recreational docks and piers within areas designated by the Department as shellfish habitat shall comply with the standards specified under the shellfish habitat rule, N.J.A.C. 7:7-9.2.

(d) The construction of recreational docks and piers within submerged vegetation areas shall comply with the standards specified under the submerged vegetation rule, N.J.A.C. 7:7-9.6.

(e) For sites which have existing dock or pier structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by relocating or increasing the number or size of docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats. All structures proposed as part of an expansion must comply with all of the applicable rules of this chapter.

(f) The construction of covered or enclosed structures such as gazebos or sheds located on or above the decking of recreational docks and piers is prohibited except on public piers owned and controlled by a public agency.

(g) Rationale: Docks and piers constructed through filling would permanently destroy most ecological value of the area filled and are consequently discouraged. Docks and piers constructed in water with insufficient water depth causes increased turbidity resulting in an adverse impact to special areas and water quality. Docks and piers that maximize sunlight penetration into the water and onto the bottom~~[-]~~ allow the continuation of photosynthesis by plants underneath the structure. Spaced planking helps protect loosening of boards during high water levels and wave slap from underneath. In cases where it is demonstrated that the width of the dock must exceed eight feet (for example, fishing piers), the dock or pier shall be sized so as to accommodate anticipated use, while minimizing impacts to special areas by reducing the width of the structure over intertidal and subtidal shallows and wetlands, and by increasing the height of the structure over these special areas consistent with the requirements for public safety.

Docks and piers built on pilings will undergo ice heaving, frequently leading to structural damage, during thick ice conditions in areas with significant tidal action. Normal length pilings

need to be resunk annually due to ice raising unless some type of water circulation system is installed or ice is broken up daily. Floating docks need to be removed before winter and bottom floatation needs to be serviced annually. Cantilevered docks at a height above winter ice and tidal action levels do not have these problems but have limits in load bearing capacity and must be fastened to a bulkhead.

Jet skis have been gaining popularity among New Jersey's boating public. Jet ski ramps which can accommodate the "dry" docking of these vehicles can be designed to satisfy the needs of the public while minimizing adverse impacts to the environment.

7:7-12.9 Dredged material disposal

(a) Dredged material disposal is the discharge of sediments removed during dredging operations in water areas. Dredged material disposal does not include the beneficial use of dredged material for the purposes of habitat creation, restoration, or enhancement, artificial reef construction, or the establishment of living shorelines.

(b) The standards relevant to dredged material disposal in water areas are as follows:

1. Dredged material disposal is prohibited in tidal guts, man-made harbors, medium rivers, as described at N.J.A.C. 7:7-12.1(b)5, creeks and streams, and lakes, ponds, and reservoirs. Dredged material disposal is discouraged in open bays, and semi-enclosed and backbays, where the water depth is less than six feet;

2. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that there is no feasible beneficial use or upland placement site available and the disposal complies with the following, incorporated herein by reference, as appropriate to the proposed disposal site:

i. The USEPA and U.S. Army Corps of Engineers Guidelines (40 CFR parts 220-228 and 230-232 and 33 CFR parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act. These documents are available on the web at www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr136_main_02.tpl and www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title33/33tab_02.tpl;

ii. The U.S. Environmental Protection Agency and Department of the Army - U.S. Army Corps of Engineers, 1998. Evaluation of Dredged Material Proposed for discharge in Waters of the U.S.-Testing Manual (Inland Testing Manual). EPA 823-B-98-004, February 1998. This document is available on the web at www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/testing.cfm;

iii. The U.S. Environmental Protection Agency and Department of the Army - U.S. Army Corps of Engineers, 1991. Evaluation of Dredged Material Proposed for Ocean Disposal - Testing Manual, EPA-503/8-91/0001, February 1991. This document is available on the web at www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/gbook.pdf;

iv. The U.S. Army Corps of Engineers-New York District and U.S. Environmental Protection Agency, Region II, 1992. Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal, Draft 18 December 1992. This document is available on the web at www.epa.gov/region02/water/dredge/testing.htm; and

v. Appendix G;

3. Dredged material disposal in water areas shall conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B;

4. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites in existing anoxic dredge holes[?] shall comply with the following:

i. Data on water quality, benthic productivity and seasonal finfish use demonstrate that the unconfined disposal site has limited biological value;

ii. All subaqueous dredged material disposal shall utilize best management techniques such as submerged elbows or underwater diffusers and may be limited to a particular tidal cycle to further minimize impacts; and

iii. The hole shall not be filled higher than the depth of the surrounding waters.

5. Overboard disposal of sediments consisting of less than 90 percent sand shall be conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to a dredged material management area. Such disposal shall comply with the following:

i. Shellfish habitats, as defined in N.J.A.C. 7:7-9.2, are not within 1,000 meters;

ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources, as in N.J.A.C. 7:7-9.2;

iii. Sediment characteristics of the dredged material and disposal site are similar; and

6. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

(c) The standards for dredged material placement on land are found at N.J.A.C. 7:7-15.12.

(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 be controlled with silt curtains. Due to these impacts, upland placement and beneficial uses of dredged material are preferred methods of dredged material management.

7:7-12.15 Submerged pipelines

(a) Submerged pipelines (pipelines) are underwater pipelines which transmit liquids or gas, including crude oil, natural gas, water petroleum products or sewerage.

(b) Submerged pipelines are conditionally acceptable provided:

1. The pipelines are not sited within special areas, as defined at N.J.A.C. 7:7-9, unless no prudent and feasible alternate route exists;

2. Directional drilling is used unless it is demonstrated that the use of directional drilling is not feasible;
 3. The pipeline is buried to a sufficient depth to avoid exposure or hazard;
 4. All trenches are backfilled to preconstruction depth with naturally occurring sediment;
- and
5. The proposed development has been designed to minimize impacts to the water area.

(c) Rationale: The installation of submerged pipelines has the potential to disrupt the ecosystem in which ~~it is~~ **they are** 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.

7:7-12.16 Overhead transmission lines

(a) Overhead transmission lines are wires hung between supporting pylons for transmission from the site of origin to the site of consumption. Overhead transmission lines include electrical, telecommunication and cable television lines.

(b) Overhead transmission lines are prohibited over open bays, semi-enclosed and back bays, lakes, ponds, and reservoirs as defined at N.J.A.C. 7:7-12.1. Overhead transmission lines are discouraged over large rivers as defined at N.J.A.C. 7:7-12.1.

(c) Overhead transmission lines are conditionally acceptable over rivers, streams, creeks, and tidal guts as defined at N.J.A.C. 7:7-12.1, provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;
2. There is no feasible alternative route that avoids crossing water bodies;
3. The transmission line provides adequate vertical clearance for masts; and
4. Visual impacts are minimized to the maximum extent practicable.

(d) Rationale: Overhead transmission lines produce a negative environmental impact because they are aesthetically unattractive. They are prohibited or discouraged because the visual impact is so great that it counters the scenic resources and design rule at N.J.A.C. 7:7-16.10. The use of underground transmission lines, however, minimizes the visual impacts. Siting overhead transmission lines over such narrow water bodies as rivers, streams, creeks, and tidal guts[,] is conditionally acceptable where there is no alternative to crossing the water body because the aesthetic impacts would not be as severe as the impacts of siting transmission lines over wider water bodies.

7:7-12.20 Vertical wake or wave attenuation structures

(a) Vertical wake or wave attenuation structures are structures designed to protect boat moorings, including those at marinas, by intercepting wakes or waves and reducing the wake or wave energy which would normally impact the adjacent boat mooring areas. Typically, timber, metal, or vinyl wake or wave attenuation structures are designed and utilized to protect boat moorings. For the purposes of this section, a vertical wake or wave attenuation structure does not include a breakwater constructed of concrete or rubble mound. Breakwaters designed to protect shoreline areas shall comply with the filling rule, N.J.A.C. 7:7-12.11, and the coastal engineering rule at N.J.A.C. 7:7-15.11.

(b) Construction of a vertical wake or wave attenuation structure is conditionally acceptable. The porosity of a wake or wave attenuation structure, including spacing of planking and the distance between the structure and the bottom of the water body, shall be determined on a case-by-case basis, taking into consideration vessel traffic, water depth, and tidal flow.

(c) A vertical wake or wave attenuation structure may be designed as follows.

1. High wake or wave energy areas: Boat mooring areas in or near deep water that are exposed to port, harbor, and/or ferry traffic, such as the Hudson River between New Jersey and New York, are subject to high wake or wave energy. In this case, the structure may be designed to have no spacing between planking and extend to a depth of between 30 and 40 feet, or to the bottom of the water body, whichever is less, to intercept almost all wave energy. The distance between the structure and the bottom of the waterbody will be dependent upon the water depth of the area in which the structure will be located.

2. Medium wake or wave energy areas: Boat mooring areas adjacent to or near navigation channels, such as boat moorings located in Cape May Harbor, are subject to medium wake or wave energy. In this case, the structure may be designed to provide approximately one inch spacing between planking, and extend to the bottom of the water body.

3. Minor wake or wave energy areas: Boat mooring areas that do not meet the criteria of (b)1 or 2 above, such as boat moorings located in the Upper Manasquan River, are subject to minor wake or wave energy. In this case, the structure may be designed to provide approximately three inch spacing between planks to ensure flushing, and the distance between the structure and bottom of the water body shall be determined on a case-by-case basis taking into account the potential wake or wave energy at that mooring location. In areas of low tidal flow, that is, where the tidal range is less than two feet, the distance between the structure and the bottom of the water body shall be at least 18 inches.

(d) Detached vertical wake or wave attenuation structures which are not fixed directly to a dock or pier structure shall be marked with photocell lights and/or reflectors.

(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.

7:7-12.21 Submerged cables

(a) Submerged cables (cables) are underwater telecommunication cables, and shall include all associated structures in the water such as repeaters.

(b) Submerged cables, or portions thereof, which are not located in the Atlantic Ocean shall meet the following conditions:

1. The cable shall not be sited within special areas, unless no prudent and feasible alternate route exists;
2. Directional drilling for the installation of cables is encouraged over the use of trenching;
3. The cable route minimizes areas where anchors are likely to foul the cable; and
4. The alignment of the cable route is marked at the landfall. This provision does not apply to cables that are directionally drilled.

(c) Submerged cables, or portions thereof, which are sited in the Atlantic Ocean shall meet the following conditions:

1. Siting a cable in the Atlantic Ocean is discouraged unless the cable complies with the following:
 - i. If the cable is either sited within surf clam areas, N.J.A.C. 7:7-9.3, or sited within areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear, no prudent and feasible land-based alternate route exists and the cable follows the shortest route to waters beyond the surf clam areas and areas where marine fish are commercially harvested using mobile bottom-tending gear; and
 - ii. If the cable is sited within prime fishing areas, N.J.A.C. 7:7-9.4, shipwreck and artificial reef habitats, N.J.A.C. 7:7-9.13, or historic and archaeological resources, N.J.A.C. 7:7-9.34, no prudent and feasible alternate route exists outside of these special areas and the cable follows the route with the least disturbance to these special areas;
2. The submerged cable, shall be buried to a depth of at least 1.2 meters both in surf clam areas, N.J.A.C. 7:7-9.3, and in areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear except where it is demonstrated that it is not practicable to bury the cable to 1.2 meters due to geologic or topographic features or crossing of existing in-service cables. Where it is demonstrated that achieving the depth of 1.2 meters is not practicable, the cable shall be buried as close as practicable to the above standard;
3. Where a submerged cable will cross an existing in-service cable either within surf clam areas, N.J.A.C. 7:7-9.3, or within areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:
 - i. The cable shall be buried to the depth of the existing cable or as close thereto as practicable at the crossing;
 - ii. The number of cable crossings shall be minimized;

iii. The location of the cable route shall be adjusted after consultation with the fishing interest groups identified in N.J.A.C. 7:7-24.3(f) in order to reduce the impact of cable crossings on commercial fishing, to the maximum extent practicable; and

iv. The permittee shall, to the maximum extent practicable, share information and otherwise cooperate with those responsible for any cables being crossed and with installers of subsequent cables crossing the subject cable so as to reduce the impacts of cable crossings on commercial fishing.

4. Where a submerged cable will cross an existing out-of service cable either within surf clam areas, N.J.A.C. 7:7-9.3, or within areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

i. Where the out-of-service cable is buried less than 0.6 meter, the out-of-service cable shall be cut, and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. For surface laid out-of-service cables, the ends of the remaining out-of-service cable shall be re-laid flat on the seabed to minimize problems for other seabed users. For buried out-of-service cables, the ends of the remaining out-of-service cable shall be re-buried to the original depth;

ii. Where the out-of-service cable is buried between 0.6 and 1.2 meters, the out-of-service cable shall, if practicable, be cut and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. The ends of the remaining out-of-service cable shall be re-buried as close as practicable to the original depth, and in no case to a depth of less than 0.6 meters. If the out-of-service cable cannot be cut and recovered, the cable crossing shall comply with (c)3 above; and

iii. Where the out-of-service cable is buried more than 1.2 meters, the cable shall be laid over the out-of-service cable at the depth prescribed in (c)2 above;

5. Directional drilling for the submerged cable landing is encouraged over the use of trenching to minimize impacts to beaches, dunes, and shallow water areas;

6. The submerged cable route minimizes areas where anchors are likely to foul the submerged cable;

7. Prior to installation of the cable, the permittee shall obtain a financial assurance from a lender or insurer regulated and authorized by the New Jersey Department of Banking and Insurance to transact business in New Jersey. The financial assurance shall be in an amount sufficient for the Department to hire an independent contractor to remove the inactive cable should the permittee fail to do so. Letters of credit, surety bonds and insurance assuring that the Department could hire an independent contractor to remove an inactive cable shall be acceptable to satisfy the financial assurance requirement. The financial assurance shall be released upon the permittee's removal of the cable or upon the Department's determination that the cable may remain in place in accordance with (c)11 below;

8. After the submerged cable has been installed, a long-term inspection and maintenance plan, approved by the Department, shall be implemented both within surf clam areas, N.J.A.C. 7:7-9.3, and within areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom tending gear, to ~~[insure]~~ensure that the cable remains at the authorized depth and location. The plan shall provide for the following:

- i. An inspection immediately following cable installation;
- ii. An inspection two years after cable installation;
- iii. An inspection every five years after the inspection required at (c)8ii above;
- iv. An investigation within six months after the Department reports to the permittee that it has received information suggesting that the cable has been uncovered. If appropriate, such investigation shall include an inspection of the cable. The Department may require an inspection after reviewing the report submitted pursuant to (c)9 below; and
- v. Reburial of the cable within 90 days, if practicable, and in no case later than six months after the permittee discovers that the cable has been uncovered. Reburial shall be to the depth prescribed in (c)2 above to the maximum extent practicable;

9. A report containing the results of the initial inspection required in (c)8i above shall be submitted by the permittee to the Department within six months following the inspection. The report shall identify all areas where inactive cable has been cut and all areas where the cable is not buried to a depth of 1.2 meters, and indicate the actual depth in those areas. The report shall also provide the installed route of the cable. All locations shall be reported using latitude and longitude coordinate pairs, in the WGS 84 (World Geodetic System 1984) datum, that were arrived at using the global positioning system (GPS). To reduce the impacts of fishing on cables by notifying the commercial fishing industry of the locations of areas where the cable is buried less than 1.2 meters deep, a copy of the report shall be submitted to the fishing interest groups identified in N.J.A.C. 7:7-24.3(f);

10. A report containing the results of inspection and maintenance of the submerged cable required in (c)8 above, if applicable in the reporting year, a discussion of storm events which could have affected the cable, and reported hits of the cable for the previous year shall be submitted by the permittee to the Department in January of each year. The report shall also indicate if and when the cable becomes out-of-service;

11. Within two years of taking the cable out of service pursuant to Federal Communications Commission regulations, the submerged cable shall be removed both from surf clam areas, N.J.A.C. 7:7-9.3, and from areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear. The Department may allow all or portions of the cable to remain in place if leaving the cable in place would not result in a long term adverse impact to the ocean and/or ocean resources, and the cable would not unreasonably interfere with fishing or other uses of the seabed. A permittee who seeks to leave an inactive cable in place shall submit a request, including the reasons and justification for leaving the cable in place. The Department shall solicit public input on the request, including input from the fishing interest groups identified in N.J.A.C. 7:7-24.3(f); and

12. If portions of the cable located either within surf clam areas, N.J.A.C. 7:7-9.3, or within areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear, are not buried to a depth of 0.6 meters, the permittee shall provide a one-time monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The amount of each mitigation contribution provided under this section shall be based on the length of cable that is not buried to a depth of 0.6 meters, based on the inspection required in (c)8i above. The contribution will be calculated at the rate of \$100.00 per meter of cable which is buried to a depth of less than 0.6 meters. Monies in the Department's dedicated account for shellfish habitat mitigation are to be administered by the

Department's Bureau of Shellfisheries and utilized for shellfish habitat restoration, enhancement, and related research projects.

(d) Rationale: Historically, the installation of surface laid submerged cables in the ocean has made certain areas effectively off limits to certain elements of the fishing industry, due to the possibility of snagging a cable. In estuarine areas, the installation of submerged cables may disrupt the ecosystem in which a submerged cable is placed. Therefore, the installation of submerged cables is discouraged in estuarine special areas unless no prudent and feasible alternate route exists. In the ocean, cable routes may encounter the surf clam and historic and archaeological resources special areas, as well as areas where marine fish are commercially harvested using mobile bottom-tending gear. Trans-Atlantic submerged cables have no alternative to crossing the ocean, but cables extending from one United States landing to another United States landing may have alternatives available. Therefore, the installation of such cables is discouraged in areas where marine fish, as defined at N.J.A.C. 7:7-16.2, are commercially harvested using mobile bottom-tending gear and in surf clam areas, unless no prudent and feasible alternate land-based route exists. To minimize conflict between cables and marine fisheries, including surf clamming, a cable for which there is no alternative location must take the shortest route to waters beyond Surf clam areas and areas where which marine fish are harvested using mobile bottom-tending gear. These standards governing installation and long-term maintenance of ocean cables have been developed taking into account current fishing technology, fishing practices, and burial technology in order to minimize the conflict between the cable and fishing industries.

SUBCHAPTER 14. GENERAL LOCATION RULES

7:7-14.1 Rule on location of linear development

(a) A linear development shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules (for example, the proposed alignment does not result in the linear development impacting the least possible area), that alignment may nonetheless be acceptable, provided the following conditions are met:

1. There is no prudent or feasible alternative alignment which would have less impact on sensitive areas and marine fish or fisheries, as defined at N.J.A.C. 7:7-16.2;
2. There will be no permanent or long-term loss of unique or irreplaceable areas;
3. Appropriate measures will be used to mitigate adverse environmental impacts to the maximum extent feasible, such as restoration of disturbed vegetation, habitats, and land and water features; and
4. The alignment is located on or in existing transportation corridors and alignments, to the maximum extent practicable.

(b) Rationale: Linear development, including public roads and utilities, serve a public need. Appropriate flexibility is afforded to such development in strictly circumscribed cases. This flexibility ensures that appropriate linear development projects can proceed in cases where the project does not meet all requirements of a specific location rule but nonetheless

has no alternative design, does not permanently destroy unique or irreplaceable areas, includes appropriate mitigation of adverse environmental impacts, and is collocated with existing transportation corridors and alignments as much as possible. This common sense approach appropriately balances linear development needs with the protection of the coastal environment.

7:7-14.2 Basic location rule

(a) A location may be acceptable for development under N.J.A.C. 7:7-9, 12, 13, and 14, but the Department may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. Promote the public health, safety, and welfare;
2. Protect public and private property, wildlife and marine fisheries; and
3. Preserve, protect and enhance the natural environment.

(b) Rationale: This rule is intended to afford appropriate discretion to the Department to reject or conditionally approve projects that otherwise meet the applicable rules but may pose a threat to the public, natural resources, property, or the environment. This common sense approach recognizes that unusual circumstances may result in a project meeting the letter of the rules but not their intent and provides necessary parameters for the Department's review of such projects.

SUBCHAPTER 15. USE RULES

7:7-15.2 Housing

(a) "Housing" includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments.

(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in water areas. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water, or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean-up program, the equivalent pier area may be replaced in the same or another location.

i. Structurally sound existing pilings may be reconfigured provided that the total area of water coverage is not increased and fisheries resources are not adversely impacted.

ii. Expansion of the total area of water coverage is discouraged, except where it can be shown that extensions are functionally necessary for water dependent uses.

iii. New housing acceptable under this rule shall be consistent with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the filled water's edge rule, N.J.A.C. 7:7-9.23, lands and waters subject to

public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9. The residential development shall comply with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7-13, except on bay islands where the requirements of the bay islands rule, 7:7-9.21, shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading, or other means is conditionally acceptable provided that the conditions of the existing lagoon edge rule, N.J.A.C. 7:7-9.24, and the filling rule, N.J.A.C. 7:7-12.11, are satisfied.

5. On sites with existing shore protection structures, the residential structure shall be set back a minimum of 25 feet from the oceanfront shore protection structures, and a minimum of 15 feet from shore protection structures elsewhere. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the seaward side of the revetment.

6. Water area and water's edge housing shall include a provision for boat ramps wherever feasible unless an accessible boat ramp is nearby.

~~[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.]~~

(c) Standards relevant to floating homes are as follows:

1. Floating homes are prohibited in the coastal zone. Those floating homes registered with the New Jersey Department of Motor Vehicles prior to June 1, 1984 are not subject to this paragraph.

~~[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) Standards relevant to cluster development are as follows:

1. Housing developments are encouraged to cluster dwelling units on the areas of sites most suitable for development. "Clustering" is defined as an increase of net density realized by reducing the size of private lots and retaining or increasing the gross density of a project.

~~[2. Rationale: The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is limited. When such areas are present on site, the acceptable gross density may have to be reduced, unless the net density can be increased by clustering. Where municipal zoning requires minimum lot sizes that preclude clustering, applicants are encouraged to seek local approval, through new ordinances and/or variances, to maintain the permissible gross density by clustering. The Department will aid this endeavor by providing a rationale and~~

testimony, as appropriate, especially for the protection of sensitive areas. Cluster developments lessen the impact of construction by preserving valued soil, open space, vegetation, and aquifer recharge resources. Some cluster developments also increase insulation and reduce energy consumption due to shared walls between units.]

(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]~~ **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. Development shall comply with N.J.A.C. 7:7-9.22, Beaches, 7:7-9.27, Wetlands, 7:7-9.28, Wetland buffers, and 7:7-9.36, Endangered or threatened wildlife or vegetation species habitats;

2. Development within riparian zones, as defined in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-1.2 and in this chapter at N.J.A.C. 7:7-9.26, shall comply with the following: i. No disturbance is located within 25 feet of any top of bank, unless the project lies adjacent to a lawfully existing bulkhead, retaining wall, or revetment along a tidal water or impounded fluvial water; ii. Within a 50-foot riparian zone, no more than 3,500 square feet of riparian zone vegetation is cleared, cut, and/or removed; and iii. Within a 150-foot or 300-foot riparian zone, no more than 7,000 square feet of riparian zone vegetation is cleared, cut, and/or removed.

~~[[2-]3.]~~ On filled water's edge sites that have included a water dependent use at any time since July of 1977, development shall comply with the filled water's edge rule, N.J.A.C. 7:7-9.23.

~~[[3-]4.]~~ Development shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under ~~[(e)3i]~~ **(e)4i** or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at ~~[(e)3i(2)]~~ **(e)4i(2)** below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purposes of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in

the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; or

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the V zone boundary on the ~~[FIRM]~~**applicable FEMA flood mapping**;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A zone, B zone, or C zone on the ~~[FIRM]~~**applicable FEMA flood mapping**;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure;

~~[4-]~~**5.** Development shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at ~~((e)12i)~~**(e)13i** below, unless the development meets either ~~((e)4i)~~**(e)5i** or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)4i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

~~[5-]~~**6.** Development shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and ~~[N.J.A.C. 7:7-]~~**9.19**, Erosion hazard areas, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, or erosion hazard areas rule at N.J.A.C. 7:7-9.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

~~[6-]~~**7.** Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7-16.9.

~~[7-]~~**8.** The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

~~[8-]~~**9.** Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

~~[9-]~~**10.** For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the ~~[single-family]~~**single-family** home or duplex and the area necessary for driveway, septic, and utility line installations;

~~[10-]~~**11.** The development shall comply with the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25;

~~[11-]~~**12.** For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

~~[12-]~~**13.** Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the single family home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;

iii. On a non-oceanfront site with existing or proposed shore protection structures, the ~~[single-family]~~**single-family** home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with ~~[(e)12i]~~**(e)13i** above~~;~~**and**

13. The standards for the expansion or reconstruction (with or without expansion) of a ~~[single-family]~~**single-family** home or duplex are found at ~~[N.J.A.C. 7:7-15.2(f);]~~**(f) below.**

~~[14. Rationale: Single-family homes and duplexes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. However, in view of the extensive~~

development that has occurred along the coast and the minimal impacts associated with the development of one or two single family homes or duplexes, construction of these developments on dunes and coastal bluffs, and within coastal high hazard areas and erosion hazard areas, is acceptable in certain situations.

Development of one or two single family homes or duplexes on a dune may be acceptable in cases where the development is proposed on the landward slope of a secondary or tertiary dune or the dune is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead. One or two single family homes or duplexes may be constructed on the landward slope of the secondary or tertiary dune where the intervening dune is of sufficient volume to provide protection during a 100-year storm, without the construction having a significant adverse long-term impact on the natural functioning of the beach and dune system. Similarly, the development of one or two single family homes or duplexes on a dune that is isolated from a beach and dune system by an existing paved public road, public seawall, or public bulkhead that is of a sufficient size to eliminate the protective functioning of the isolated dune is acceptable, since the development will not have a significant adverse impact on the natural functioning of the beach and dune system. 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 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 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 one or two single family homes or duplexes is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the construction of single family homes or duplexes is allowed 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.]

(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. Development shall comply with N.J.A.C. 7:7-9.22, Beaches, **9.26, Riparian zones**, [7:7-]9.27, Wetlands, [7:7-]9.28, Wetland buffers, and [7:7-]9.36, Endangered or threatened wildlife or vegetation species habitats

2. Development shall comply with N.J.A.C. 7:7-9.16, Dunes, except as provided under (f)2i [through], **ii, and** iii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The area of the site proposed to be developed is located greater than 500 feet landward of the mean high water line of the adjacent water body;

(2) The cross-sectional volume per linear foot of the primary frontal dune waterward of the proposed single family home or duplex as measured above the 100-year stillwater elevation and waterward of the primary frontal dune crest, is greater than 1,100 square feet. For the purpose of this section, primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep waterward and landward slopes immediately landward of and adjacent to the beach, and subject to erosion and overtopping from high tides and waves during major coastal storms. Secondary and tertiary dunes means the second and third dune mound or ridge, respectively, landward from and adjacent to the primary frontal dune;

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. 7:7-9.19, Erosion hazard areas, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures;

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. 7:7-9.16, if the site and the development meet all of the following criteria:

(1) The road, seawall, or bulkhead is of sufficient size to be designated as the V zone boundary on the ~~[FIRM]~~**applicable FEMA flood mapping**;

(2) The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;

(3) The road, seawall or bulkhead is functional and is currently maintained by a public entity;

(4) The area of proposed construction is designated as an A zone, B zone or C zone on the ~~[FIRM]~~**applicable FEMA flood mapping**;

(5) The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to expand or reconstruct the single family home or duplex and/or accessory structures; and

(6) The proposed development does not include the construction of a shore protection structure.

iii. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

(1) The single family home or duplex legally existed on July 19, 1993;

(2) The development constructed after July 19, 1993 does not exceed a cumulative surface area of 750 square feet on the dune, excluding the area of reconstruction within the existing footprint of development and the area of development authorized under (f)iv below above;

(3) The development is located within the footprint of development of the existing single family home or duplex and/or on the landward side of the existing footprint of development

and within the area between lines extended landward and perpendicular to the mean high water line from the widest shore parallel points of the existing footprint of development, except as provided at (f)2iii(4) below;

(4) For every 10 feet the footprint of development of the single family home or duplex is set back landward on the lot from the existing footprint of development of the single family home or duplex, the total area of development may be increased by 200 square feet in addition to that authorized in (f)2iii(2), provided the additional square footage is constructed on the non-waterward side of the single family home or duplex;

(5) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest dune crest elevation at the site; and

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6; and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single-family home or duplex and/or accessory development that complies with N.J.A.C. 7:7-18 is recorded.

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the dunes rule, N.J.A.C. 7:7-9.16, if the development meets the following criteria:

(1) The development is the enclosure of a deck, patio, or porch;

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single-family home or duplex;

(3) The deck, patio, or porch legally existed on July 19, 1993;

(4) The deck, patio, or porch abuts the dwelling;

(5) The enclosure does not extend beyond the limit of the existing deck, patio, or porch as it existed on July 19, 1993;

(6) The footprint of development of the deck, patio, or porch enclosure does not exceed 400 square feet;

(7) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) Sand fill shall be placed as necessary to establish a uniform dune crest elevation matching the highest existing dune crest elevation at the site; and

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6; and

(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development that complies with N.J.A.C. 7:7-18 is recorded.

3. Development shall comply with N.J.A.C. 7:7-9.29, Coastal bluffs, if the site is located on

the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. 7:7-9.29(a). If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)11i below, unless the development meets either (f)3i or ii below:

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

4. Development shall comply with N.J.A.C. 7:7-9.18, Coastal high hazard areas, and N.J.A.C. 7:7-9.19, Erosion hazard areas, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the coastal high hazard areas rule, N.J.A.C. 7:7-9.18, or erosion hazard areas rule at N.J.A.C. 7:7-9.19 if:

(1) The lot was shown as a subdivided lot prior to July 19, 1993;

(2) The lot is served by a municipal sewer system; and

(3) A house or commercial building is located within 100 feet of each of the lot lines that run roughly perpendicular to the mean high water line. The 100 feet shall be measured outward from each lot line, along a line generally parallel to the mean high water line;

5. Public access shall be provided in accordance with the public access rule, N.J.A.C. 7:7-16.9;

6. The use of plastic under landscaped or gravel areas is prohibited. All sub-gravel liners shall be made of filter cloth or other permeable material;

7. Any driveway shall be covered with a permeable material or else shall be pitched to drain all runoff onto permeable areas of the site;

8. For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of the single family home or duplex and the area necessary for driveway, septic, and utility line installations;

9. The development shall comply with the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25;

10. For a site adjacent to or including surface water bodies or wetlands, a silt fence with a 10-foot landward return shall be erected at the limit of disturbance along the waterward and wetland sides of the development before construction begins. This fence shall be maintained and remain in place until all construction and landscaping is completed;

11. Development shall comply with the following setbacks:

i. On a site with coastal bluffs that is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay, the ~~[single family]~~ **single-family** home or duplex and/or accessory structures shall be set back a minimum of 10 feet from the crest of the bluff provided that the development will not result in a loss of stability of the bluff or vegetation on the bluff face. Any structure that requires excavation shall be set back one foot beyond the 10 foot setback for every foot of excavation below existing grade;

ii. On an oceanfront site with existing or proposed shore protection structures, the ~~[single family]~~ single-family home or duplex and/or accessory structures (except decks) shall be set back at least 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of the revetment. This setback shall not apply to below grade structures;and

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)11i above;and

12. The standards for the development of one or two single-family homes or duplexes are found at N.J.A.C. 7:7-15.2(e)~~[i]~~.

~~[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 cannot be located on the waterward side of the dwelling. Further, the rule requires that the dune waterward of the existing 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. The development of housing at locations and densities that contribute to the feasibility of public transportation is encouraged.

2. Residential developments are encouraged to include bicycle paths to activity centers and bicycle storage facilities.

3. Residential developments are encouraged to provide pedestrian amenities which include lighted walkways with benches, lighted sidewalks with curb ramps and intersections, shade trees, and pedestrian controlled traffic lights.

[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.]

(h) Rationale: Housing is not dependent on water access, and does not generally qualify for exemption to the rule of restricting non-water dependent development along the 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.

Housing provided by a floating home is no different than land-based housing. Floating homes, therefore, are not water dependent, and should not be permitted to preempt limited land's edge locations from water dependent uses such as boating. Boats that are used for navigation and serve a secondary function as houses are not considered floating homes and are not prohibited, as their main purpose is dependent on access to the water. Their main purpose is to provide transportation on the water and they are, therefore, water dependent; they are considered vessels and not housing for the purposes of this rule. 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. Floating homes conflict with water dependent and recreational uses, can impact localized sedimentation patterns, and can have an adverse effect on nearshore fish, aquatic, and avian habitats. Therefore, floating homes are prohibited.

In cases where housing development is conditionally acceptable, clustering is encouraged. The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is limited. When such areas are present on site, the acceptable gross density may have to be reduced, unless the net density can be increased by clustering. Where municipal zoning requires minimum lot sizes that preclude clustering, applicants are encouraged to seek local approval, through new ordinances and/or variances, to maintain the permissible gross density by clustering. The Department will aid this endeavor by providing a rationale and testimony, as appropriate, especially for the protection of sensitive areas. Cluster developments lessen the impact of construction by preserving valued soil, open space, vegetation, and aquifer recharge resources. Some cluster developments also increase insulation and reduce energy consumption due to shared walls between units.

While planned cluster developments are often preferred, single-family homes and duplexes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety

of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. However, in view of the extensive development that has occurred along the coast and the minimal impacts associated with the development of one or two single-family homes or duplexes, construction of these developments on dunes and coastal bluffs, and within coastal high hazard areas and erosion hazard areas, is acceptable in certain situations.

Development of one or two single-family homes or duplexes on a dune may be acceptable in cases where the development is proposed on the landward slope of a secondary or tertiary dune or the dune is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead. One or two single-family homes or duplexes may be constructed on the landward slope of the secondary or tertiary dune where the intervening dune is of sufficient volume to provide protection during a 100-year storm, without the construction having a significant adverse long-term impact on the natural functioning of the beach and dune system. Similarly, the development of one or two single-family homes or duplexes on a dune that is isolated from a beach and dune system by an existing paved public road, public seawall, or public bulkhead that is of a sufficient size to eliminate the protective functioning of the isolated dune is acceptable, since the development will not have a significant adverse impact on the natural functioning of the beach and dune system. 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 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 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 one or two single-family homes or duplexes is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the construction of single-family homes or duplexes is allowed 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.

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 cannot be located on the waterward side of the dwelling. Further, the rule requires that the dune waterward of the existing dwelling be enhanced through the placement of sand and the planting of native dune vegetation thus improving the functioning of the existing dune.

Development that is conducive to use of public transportation and has features that promote bicycling and walking as modes of transportation are encouraged. 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

(a) Resort/recreation uses include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging.

(b) Standards relevant to recreation priority are as follows:

1. Each waterfront municipality should contain at least one waterfront park on each body of water within the municipality. Municipalities that do not currently provide, or have active plans to provide, access to the water will not be eligible for Green Acres or Shore Protection Bond Funding.

2. Resort/recreation uses and commercial fisheries uses shall have priority over all other uses in Monmouth, Ocean, Atlantic, and Cape May counties with highest priority reserved for those uses that serve a greater rather than a lesser number of people, and those uses that provide facilities for people of all ages and for people with physical handicaps.

~~[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) Standards relevant to recreation areas within developments are as follows:

1. "Recreation areas" include a variety of types and sizes of open space adequate to accommodate appropriate recreational activities or facilities.

2. Appropriate recreation areas shall be incorporated in the design of all residential, industrial and commercial development to the maximum extent practicable, as necessary to ensure that needed on-site recreation opportunities will not be precluded by a lack of suitable open space. The "maximum extent practicable" will be determined based on guidelines of the Green Acres Program (N.J.S.A. 13:8A-1 et seq.) which consider the recreation resource supply and demand, the natural characteristics of the site, and the ability to identify a public agency or other organization willing to manage, maintain and develop the open space as a recreational resource. What is necessary will be determined by consideration of recreation resource supply and demand and municipal and county open space and recreation master plans.

~~[3. Rationale: The Rationale statement for this subsection is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~

(d) Standards relevant to marinas are as follows:

1. Marina means 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 to five or more vessels.

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. The marina posts prominent signs indicating discharges shall not be allowed within the basin and provides restrooms and marine septic disposal facilities for wastewater disposal from boats. For marinas with dockage for 25 or more vessels or any on vessel with live-aboard arrangement, adequate and conveniently located pumpout facilities shall be provided.

ii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout facility or restroom facility for this use; and

(1) Discharge to a municipal or regional treatment plant where practicable;

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:7-9.2 and N.J.A.C. 7:7-16.14; or

(3) Discharge to a holding tank with waste being removed by a licensed septage hauler. A marina employing this method shall maintain a record of waste removal; and

iii. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and public access rule, N.J.A.C. 7:7-16.9.

3. New marinas or boat launching facilities that provide primarily for sail, oar or rental boating are encouraged.

4. Expansions of existing marinas shall be encouraged by limiting non-water dependent land uses that preclude support facilities for boating.

5. Publicly funded marinas shall be designed to be part of multiple use parks, to the maximum extent practicable.

6. New marinas are encouraged to locate on filled water's edge sites, where minimal dredging is required.

7. Except for the marinas satisfying the requirements specified at N.J.A.C. 7:7-9.2, the construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the shellfish habitat rule, N.J.A.C. 7:7-9.2 and submerged vegetation rule, N.J.A.C. 7:7-9.6.

8. The construction of a restaurant at a new or existing marina facility is acceptable provided:

i. The marina facility supports 25 or more dockage units consisting of either dry dock storage or wet slips;

ii. In the case of an existing marina facility, the existing upland marina support facilities (including boat rack systems and marina support buildings providing services such as showrooms, maintenance and repair, marine supplies, bait and tackle sales, boat sales, and the dock master's office buildings) shall be preserved to the maximum extent practicable such that the marina use on the site is not compromised. The 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;

iii. In the case of a new marina facility, the facility 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, marine supplies, bait and tackle sales, boat sales, and the dock master's office;

iv. The restaurant is located landward of the mean high water line;

v. The restaurant shall be set back a minimum of 15 feet from a shore protection structure and 25 feet from the mean high water line where no shore protection structure is present;

vi. The marina facility provides onsite pumpout facilities and restrooms for marina and restaurant patrons; and

vii. Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. 7:7-9.48, and public access rule, N.J.A.C. 7:7-16.9.

9. In addition to complying with all other applicable portions of these rules, all new, expanded, and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River, or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)[8]9i through iii below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings, and bulkheads, and dredging. The conditions are:

i. A pumpout facility shall be constructed and maintained at those facilities at which boats over 24 feet in length or those with on-board septic facilities (heads) shall be docked. All other facilities shall construct and maintain on site marine septic disposal facilities;

ii. Bulkhead sheathing and planking, and dock planking, shall be of a nonpolluting material. Pilings are not subject to this requirement. In addition, this requirement does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the ~~[property owner]~~ **property owner**. Results of the monitoring shall be provided to the Department and the ~~[property owner]~~ **property owner** in writing by the laboratory within 10 calendar days after the date of sampling.

(1) The State-certified laboratory shall determine the pre-construction median level of fecal coliform in the water at each of the Department selected test sites at the applicant's expense, and advise the Department and the applicant in writing of these results within 10 calendar days after the date of sampling. If any post-construction test at any single site yields fecal coliform levels which exceed the pre-construction reading at that site by 100 percent, the property owner shall allow Department personnel access to the property during ~~[day-light]~~ **daylight** hours to assess whether the operation of the project is causing or contributing to the elevated reading.

(2) In the event the Department determines in writing that the elevated readings of fecal coliform are caused, in whole or in part, by the operation of the project, the property owner shall, as a condition of the permit, cease such uses and practices as described in writing by the

Department and shall implement such practices as determined by the Department in writing to be minimally necessary to reduce the levels of fecal coliform emanating from the project.

(3) In the event the Department determines that the laboratory has twice or more failed to sample in the correct location, failed to comply with commonly accepted sampling techniques and laboratory methods or has divulged the date of sampling to the applicant and/or property-owner in advance of sampling, the property owner shall immediately discontinue use of such laboratory upon receipt of written notice to this effect from the Department and shall arrange for all future sampling to be conducted by another State-certified laboratory. For every month in which sampling does not occur as a result of a change in laboratory, an extra month of sampling shall be required from the property owner during the next season of operation.

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-27.8.

~~[10. Rationale: Marinas are located on land at the water's edge which exists only in limited supply and which, in its natural state, is indispensable to many land and water-related activities. The rules are intended to ensure that the area devoted to marinas is efficiently utilized to keep the size of the area required to a minimum to maintain the environmental integrity of the water and water's edge areas and to preserve the scenic and natural characteristics of the area. Facilities for sail and oar boating are encouraged because such boats consume less energy, are less disturbing to wildlife and pollute less than motor boats. Facilities offering rental boats and rental slips are encouraged because they reduce the need for construction of additional mooring facilities, serve a greater number of people, and afford the casual boater access to water-related recreation. Marina development which is permissible under these rules is encouraged to take place on filled water's edge lands because they are of low environmental sensitivity.~~

~~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. 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. To preserve existing marinas and the services they provide, while minimizing their impacts to coastal resources, the expansion of existing marinas or construction of new marinas in limited situations in shellfish habitat is conditionally acceptable.~~

~~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. Restaurants located along tidal waterways allow the public to enjoy this resource and provide the community with an economic benefit. 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 to be provided.

The Navesink River, Shrewsbury River, and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are particularly important shellfish habitats. The Navesink and Shrewsbury Rivers are unique in that they are the only two estuaries within the State which have soft clams in commercially viable densities. St. George's Thorofare contains high densities of hard clams according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife, containing approximately 6.2 million hard clams in a 107-acre area. The high abundance of hard clams, together with the fact that this water body is poorly flushed, makes St. George's Thorofare critical to the shellfish industry and extremely sensitive to any potential pollution-producing activity.

Federal, State, and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs such as the Navesink River Shellfish Protection Program have been implemented to protect and enhance water quality. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department of Environmental Protection and Energy, the New Jersey Department of Agriculture and the United States Department of Agriculture and the USEPA. The memorandum serves to "...formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls on the Navesink from 1987-1993 have shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river from "special restricted" to "seasonally approved."

The Shrewsbury River has been included in the "Navesink River Shellfish Protection Program" since it is hydrologically connected to the Navesink River and is one of only two estuaries in New Jersey with commercially viable densities of soft clams. Concern over deterioration of the water quality in the Manasquan River and its effects upon shellfish compelled Monmouth and Ocean Counties, together with the Department, to form the "Monmouth/Ocean Alliance to Enhance the Manasquan River." This Alliance seeks to identify causes of shellfish water degradation and plan uses which would protect and enhance water quality in the Manasquan by requiring water quality monitoring at project sites located on the above listed waterways. The Department is honoring its commitment to maintain and eventually upgrade the water quality of these rivers. Monitoring affords the Department the opportunity for early intervention and thorough investigations should the water quality be adversely affected by the operation of projects permitted under this rule.]

(e) Standards relevant to amusement piers, parks, and boardwalks are as follows:

1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks, and boardwalk areas are discouraged unless the proposed development meets the following conditions:

- i. The amusement pier, park, or boardwalk does not reasonably conflict with aesthetic values, ocean views, or other beach uses and wildlife functions;
- ii. The proposed pier expansion will not eliminate or affect the existing direct public access to the beach, unless another access point is provided immediately adjacent to the expanded pier, for each access point eliminated;
- iii. The surrounding community can adequately handle the activity and uses to be generated by the proposed development;
- iv. The pier expansion is constructed on pilings at the same elevation as the existing pier;
- v. The pier expansion includes a provision for public seating and viewing at the terminal end of the expansion; and
- vi. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48;

2. The expansion of a pier qualifying for general permit 1 for amusement pier expansion, N.J.A.C. 7:7-6.1 is acceptable.

~~[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 parks are not a water dependent use; these facilities may be located inland on less sensitive land and water features.]~~

(f) 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.

Recreation is increasingly being considered vital to a person's mental and physical well-being. The 2013-2017 New Jersey Statewide Comprehensive Outdoor Recreation Plan (SCORP), published September 2014, recognizes the success of State and Federal agencies, local governments, and nonprofit conservation organizations in preserving open space in the State. As of July 1, 2013, there were 1,323,374 acres of land Statewide being used for public conservation and recreation purposes. However, the SCORP also recognizes the increasing population and urbanization of New Jersey, and anticipates the State's population to exceed nine million people by 2020. The continually increasing population will create further demand for recreational opportunities.

Development, especially residential development, increases the local demand for close to home recreation opportunities yet consumes open space necessary for such opportunities. In the absence of adequate existing or planned recreation resources, suitable on-site open space needs to be incorporated in the design and development to assure that sufficient opportunities will be available to the future residents or workforce, as addressed by the standards for recreational areas within developments in this rule.

Water-dependent recreation, such as boating, is an integral part of New Jersey's economy and culture. Marinas are located on land at the water's edge, which exists only in

limited supply and which, in its natural state, is indispensable to many land and water-related activities. The rules are intended to ensure that the area devoted to marinas is efficiently utilized to keep the size of the area required to a minimum to maintain the environmental integrity of the water and water's edge areas and to preserve the scenic and natural characteristics of the area. Facilities for sail and oar boating are encouraged because such boats consume less energy, are less disturbing to wildlife, and pollute less than motor boats. Facilities offering rental boats and rental slips are encouraged because they reduce the need for construction of additional mooring facilities, serve a greater number of people, and afford the casual boater access to water-related recreation. Marina development that is permissible under these rules is encouraged to take place on filled water's edge lands because they are of low environmental sensitivity.

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. 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. To preserve existing marinas and the services they provide, while minimizing their impacts to coastal resources, the expansion of existing marinas or construction of new marinas in limited situations in shellfish habitat is conditionally acceptable. Specific requirements apply to boat mooring facilities of with five or more slips in the Navesink River, Shrewsbury River, or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare in recognition of importance of these waters to shellfish populations. For more information, see N.J.A.C. 7:7-9.2(m).

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. Restaurants located along tidal waterways allow the public to enjoy this resource and provide the community with an economic benefit. 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 to be provided.

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 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) Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy

facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development.

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in special areas as defined at N.J.A.C. 7:7-9.1 through 9.40, 9.42, and 9.44, and marine fish and fisheries areas defined at N.J.A.C. 7:7-16.2, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

i. The CAFRA area; and

ii. The Western Ocean, Southern, Mullica Southern Ocean, Great Egg Harbor River, and Delaware Estuary regions, as defined at N.J.A.C. 7:7-13.6(d);

3. Notwithstanding (b)2 above, wind and solar energy facilities, including blades, towers and site disturbance shall be sited at least 50 feet inland of the mean high water line of tidal waters, excluding manmade lagoons and manmade ditches, in the areas identified at (b)2i and ii above, except for the following:

i. A wind energy facility that meets N.J.A.C. 7:7-9.47(c)5;

ii. A wind energy facility that meets (b)3ii(1) and (2) below. The Department shall limit approvals under this subparagraph to ensure that the cumulative number of wind turbines approved does not exceed five, each with a power rating as determined by the manufacturer of five megawatts or less, or six, each with a power rating as determined by the manufacturer of four megawatts or less. The wind energy facility shall be:

(1) Located in the Atlantic Ocean within State waters between latitude 39 degrees 55 minutes 56 seconds N (offshore of Seaside Park) and latitude 39 degrees 01 minute 58 seconds N (offshore of Stone Harbor); and

(2) No closer than 2.5 nautical miles to the mean high water line; or

iii. A wind energy facility located on a pier provided the facility is an accessory use to the other uses of, or purposes for, the pier;

4. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9; and

5. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. 7:7-16.10.

6. Rationale: New energy facility construction has the potential to cause significant impacts to coastal ecosystems, natural resources, public access, and scenic and visual qualities in coastal areas. The standards for energy facility siting and requirements for specific types of energy facilities are intended to steer non-water dependent development away from the coast and to preserve coastal values. Wind and solar energy are renewable resources that do not involve the refining or burning of fossil fuels. These types of energy facilities often result in fewer adverse impacts and, thus, have less stringent setback requirements.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. Coastal energy facility construction and operation which results in loss of 200 or more person-years of employment in jobs in New Jersey directly or indirectly related to the State's coastal tourism industry in any single year is prohibited.

2. Rationale: Coastal energy facilities provide social and economic benefits to New Jersey and the nation by contributing to provision of energy, by purchasing materials and equipment, and by providing employment through facility construction and operation. However, energy facilities also can have an impact on the environment. Certain facility related environmental changes are perceived by travelers as reduced recreational resources. When travelers respond to loss of recreational resources by leaving the New Jersey shorefront for alternative recreational opportunities, their expenditures are lost from the New Jersey economy. The Coastal Zone Management Rules are intended to assure that the net employment and economic impact for New Jersey of coastal energy facility development will not be negative and that energy facilities will be located such that impacts on the local tourism industry will not be excessive.

(d) Standards relevant to Outer Continental Shelf (OCS) oil and gas exploration and development are as follows:

1. Exploration of the Mid-Atlantic, North Atlantic, and other offshore areas with potential reserves of oil and natural gas is discouraged, as long as there are other viable alternatives with less or no environmental threats to the coastal environment, including energy conservation, which have not been fully explored. Should exploration occur and commercially recoverable amounts of oil or natural gas be found, development and production of offshore hydrocarbons shall be carried out according to the specific energy facility policies of this section.

2. Rationale: The Rationale statement for this subsection is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including, but not limited to, facilities for work boats, crew boats and helicopters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in the Urban Area, Delaware River and Northern Waterfront regions and discouraged in the CAFRA area.

i. Preferable locations for water-dependent onshore support bases include urban waterfront areas, where onshore adverse physical, economic, and institutional impacts will be less than the impacts likely to be placed on less industrially developed areas which are more dependent upon tourism and the resort industry.

ii. Small facilities for storing oil spill containment and cleanup equipment for offshore operations, and emergency crew transport facilities, including crew boat operations, will, however, be acceptable along the Atlantic Ocean or Delaware Bay where such a location would facilitate and expedite offshore emergency operations.

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. Platform fabrication yards and module construction are encouraged in the Urban Area, Delaware River and Northern Waterfront regions, which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

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 OCS development in frontier areas of the Atlantic Coast and the 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. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Urban Area, Delaware River, and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area, but not on a continual, long-term basis.

2. Rationale: Ship repair yards presently exist in the developed coastal areas and should be utilized by OCS 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 OCS vessel draft requirements and because of possible conflicts with recreational vessels.

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged in the CAFRA area and encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia.

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. Crude oil and natural gas pipelines to bring hydrocarbons from offshore of the New Jersey coast to existing refineries, oil and gas transmission and distribution systems, and other new oil and natural gas pipelines are conditionally acceptable, provided:

- i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by interested Federal, State and local agencies, affected industries, and the general public;
- ii. The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rightsofway, to the maximum extent practicable;
- iii. Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries, will be evaluated in terms of the entire pipeline corridor through the State of New Jersey and its coastal waters;
- iv. Pipeline corridors through the State coastal waters shall, to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats;
- v. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations;
2. New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines, not specifically identified in this section, are discouraged in the CAFRA area and coastal waters;
3. Oil and gas pipeline related facilities shall provide adequate visual, sound, and vegetative buffers; and
4. Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.
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 OCS 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. For the purposes of this subsection, the following terms have the following meanings:
 - i. "Separation" means the removal of free liquids from a gas stream. Free liquids may be either hydrocarbon liquids (which may be processed into fuels such as ethane, butane (and propane) or free water.
 - ii. "Dehydration" means the removal of water vapor from the gas stream after separation of the liquid from the gas.
2. Separation and dehydration facilities are discouraged in the CAFRA area and coastal waters.
3. Separation and dehydration facilities shall:
 - i. Provide adequate visual, sound, and vegetative buffers; and

ii. Be reviewed as part of the overall proposed gas transportation system.

4. Rationale: It is anticipated that natural gas extracted from the Mid-Atlantic OCS 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 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. "Compressor stations" are facilities located along natural gas pipelines which raise the pressure of the gas in order to transport the resource more efficiently and economically.

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged in the CAFRA area and coastal waters.

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 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. A "pig" is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an onshore location called a "pigging facility."

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the CAFRA area. The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

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. A "gas processing plant" is designed to recover liquifiable hydrocarbons from a gas stream before it enters a commercial transmission line. A gas processing facility may include treatment, recovery and

fractionation equipment to separate the recovered liquid hydrocarbon stream into its various components including, for example, ethane, butane and propane.

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the CAFRA area and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system.

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 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. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the CAFRA area if adequate visual, sound, and vegetative buffer areas are provided.

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. New oil refineries and petrochemical facilities are conditionally acceptable outside of the CAFRA area provided they are consistent with all applicable location and resource rules.

2. New oil refineries and petrochemical facilities outside the CAFRA area are encouraged to locate in established industrial areas accessible to their potential labor force and existing infrastructure.

3. New oil refineries and petrochemical facilities are prohibited in the CAFRA area.

4. Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the CAFRA area, will be acceptable if such expansion does not violate applicable State air and water quality standards.

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]~~ **Northern Waterfront Area**.

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the CAFRA area.

2. The storage of crude oil, gases and other potentially hazardous liquid substances is conditionally acceptable in the Urban Area, Northern Waterfront and Delaware River regions if it is compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

4. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable along the water's edge unless the storage facility is supplied by ship, in which case it is acceptable on the filled water's edge provided the storage facility complies with (p)1, 2 and 3 above.

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. New or expanded tanker facilities are acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multi-company use of existing and new tanker terminals is encouraged in the Port of New York and New Jersey and the Port of Camden and Philadelphia, where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

2. New tanker terminals are discouraged in areas not identified in (q)1 above.

3. Offshore tanker terminals and deepwater ports are discouraged.

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 CAFRA 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. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable provided:

i. The proposed location and site design of the electric generating facility is the alternative which has the least practicable impacts to the coastal zone, based on a comparative evaluation of alternative sites within the coastal zone and inland.

ii. Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes.

iii. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, the nuclear generating facility shall be located in an area where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

iv. The construction and operation of a nuclear generating station shall not be approved unless the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:1911) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App. Div., certif. den., 75 N.J. 538 (1977)) and Federal law.

v. The cogeneration of electricity and process steam for industrial, community and commercial use is encouraged.

vi. The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is conditionally acceptable provided that such facilities do not significantly detract from scenic or recreational values, and for wind energy facilities, comply with (r)1vii and viii below.

vii. In order to minimize adverse effects on birds and bats, wind energy facilities located on land shall:

(1) For a wind turbine(s) 200 feet in height or taller or having a cumulative rotor swept area greater than 4,000 square feet on a site, be sited such that no portion of the wind turbine(s), including blades, towers and site disturbance shall be located in the areas identified on the Department's Large Scale Wind Turbine Siting Map, dated August 8, 2009, incorporated by reference into this chapter. This map is available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>. The Department may revise the Large Scale Wind Turbine Siting Map in accordance with (r)3 below. The rotor swept area is the area of a circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;

(2) Have no light(s) placed on or directed at the wind turbine(s), except for lighting required by the Federal Aviation Administration. Shielded ground security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

(3) Use a freestanding monopole tower if the wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position. Guy wires or lattice towers are prohibited for a wind turbine more than 120 feet in height;

(4) Perform pre and/or post construction monitoring in order to establish the flight patterns and distribution of avian species and bats and impacts of the operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior, and flight pattern heights, as well as collisions associated with wind turbine construction and/or operation. Pre and/or post construction monitoring is dependent upon the scope of the facility including the number, height and rotor swept area of the turbines. Pre and

post-construction monitoring may include visual, radar and acoustic surveys. Post construction monitoring shall also include carcass searches as well as removal and efficiency trials. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse; and

(5) Curtail operations of wind turbines, as directed by the Department pursuant to (r)1vii(5)(A) below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse.

viii. In order to minimize adverse effects on birds, bats, and marine organisms, wind energy facilities located in tidal waters shall:

(1) Have no light(s) placed on the wind turbine(s), except for lighting required by the Federal Aviation Administration and the United States Coast Guard. Shielded ground security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light;

(2) Use a monopole tower or other tower design that does not provide perching or roosting opportunities or other obstructions to birds or bats;

(3) Perform a habitat evaluation, including species surveys, an impact assessment and post-construction monitoring in order to establish the movement corridors and distribution of avian species, bats, and marine organisms and impacts of the construction and/or operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior and, for avian species and bats, flight pattern heights, as well as collisions and behavioral changes associated with wind turbine construction and/or operation. The habitat evaluation, impact assessment and post construction monitoring are dependent upon the scope of the facility including the number, height and rotor swept area of the turbines.

Habitat evaluations may include visual, radar and acoustic surveys. Post construction monitoring may include visual surveys and other collision detection systems. Habitat evaluations, impact assessments and post-construction monitoring and reporting requirements will be coordinated with the Department, U.S. Fish and Wildlife Service, and National Marine Fisheries Service. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on habitat evaluations and assessments, monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse; and

(4) Curtail operations of wind turbines, as directed by the Department pursuant to (r)1viii(4)(A) below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine. Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse.

2. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest is conditionally acceptable provided it meets applicable State and Federal laws and standards.

3. The Large Scale Wind Turbine Siting Map identifies areas where large scale wind turbines cannot be constructed in accordance with (r)1vii(1) and N.J.A.C. 7:7-6.26 in order to minimize adverse effects on birds and bats. The Department may revise the Large Scale Wind Turbine Siting Map based on new information on species occurrence, new information on appropriate buffers, or new information on impacts developed from ongoing monitoring or from published and unpublished studies or data, as follows:

i. The Department shall publish notice of its intent to revise the Large Scale Wind Turbine Siting Map in the New Jersey Register, as well as in a newspaper of general circulation in each affected county and post the proposed revision of the map on the Department's interactive mapping website at www.nj.gov/dep/gis. The notice shall include:

- (1) A description of the proposed revision;
- (2) An explanation of why it is being proposed; and
- (3) An invitation for interested parties to submit written comments for a period of 30 days.

ii. Upon consideration of the available information and public comments, if the Department concludes that revising the Large Scale Wind Turbine Siting Map is appropriate based on the potential risk to birds and bats associated with the operation of large scale wind turbines, the Department shall:

- (1) Revise the map as the Department deems necessary;
- (2) Publish a description of the revision in the New Jersey Register, including a response to any public comments;
- (3) Publish a public notice describing the revision in a newspaper of general circulation in each affected county; and
- (4) Post the revised map on the Department's interactive mapping website at www.nj.gov/dep/gis.

4. Rationale: The siting of an electric generating station is an extraordinary event with far-reaching impacts, **especially** 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 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]~~**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]~~**extensively developed** 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]~~**State's** progress in attaining 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. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:1910f; and such facilities comply with the Coastal Zone Management rules.

i. LNG facilities shall be sited and operated in accordance with the standards set forth in the Natural Gas Act of 1938, 15 U.S.C. §§ 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.

ii. In determining the acceptability of proposed LNG facilities the Department will consider siting criteria including, but not limited to:

- (1) The risks inherent in tankering LNG along New Jersey's waterways;
- (2) The risks inherent in transferring LNG onshore; and
- (3) The compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. New LNG facilities that liquefy, store and vaporize LNG to serve demand during peak periods shall be located in generally remote, rural, and low-density areas where land use controls and/or buffer zones are likely to be maintained.

2. Rationale: The ~~[pipeline]~~**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]~~**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 availability of domestic sources of LNG and a demonstrated need that such importation

facilities are in the national interest dictate ~~[considering]~~ the consideration of applications for such facilities on a case by case basis.

The tankering, transfer, and storage of LNG pose significant risks to ~~[Public]~~ 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. New road construction must be consistent with the rule on location of linear development at N.J.A.C. 7:7-14.1, and shall be limited to situations where:

i. A clear need exists, taking into account the alternatives of upgrading existing roads and of using public transportation to meet the need;

ii. Provision is made to include construction of bicycle and foot paths, except where these would not be feasible;

iii. Provision is made to include, where appropriate, catwalks and parking access to nearby waterbodies.

iv. Provision is made for coordinated construction of public transportation rights-of-way and facilities, such as bus lanes, rail lines, and related transit stop or station facilities and parking, except where such construction would not be feasible;

v. Visual and physical access to the coastal waters is maintained, to the maximum extent practicable; and

vi. Induced development in conflict with coastal rules would not be expected to result.

~~[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) Standards relevant to public transportation are as follows:

1. New and improved public transportation facilities, including bus, rail, air, boat travel, people mover systems and related parking facilities, are encouraged.

2. Development of existing rights-of-way which would preclude either their use for public transportation or public recreation trails is discouraged.

~~[3. Rationale: The Rationale statement for this subsection is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~

(c) Standards relevant to bicycle and foot paths are as follows:

1. The construction of internal bicycle paths, foot paths and sidewalks in residential, commercial, and industrial developments is required to the maximum extent practicable.
2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb special areas, excluding flood hazard areas, N.J.A.C. 7:7-9.25, and riparian zones, N.J.A.C. 7:7-9.26, or subject to the user to danger.
3. Existing bicycle and foot paths shall be continued around development when it is not practical to pass through development.
- ~~[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) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:
 - i. Any parking facility of which any part is within the area subject to the Waterfront Development Law, N.J.S.A. 12:5-1 et seq.;
 - ii. Any parking facility and related access, of which any part of the facility or related access is located in the coastal zone; or
2. Parking lots, garages and large paved areas are conditionally acceptable, provided that they will not interfere with existing or planned mass transit services, the extent of paved surfaces is minimized, and landscaping with indigenous species is maximized.
- ~~[3. Rationale: The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~

(e) Rationale: A basic premise of the coastal management program is concentrating the pattern of development, in part to facilitate public transportation. In the more developed parts of the coastal zone, expansion, improvement, and new construction of all forms of public transportation are the most appropriate ways to meet the new transportation needs generated by goods and people. Parking facilities are a necessary part of a transportation system and are encouraged when they are developed as ancillary facilities to these public transportation systems.

Another encouraged type of transportation-related development is bicycles and foot paths. Paths for pedestrians and bicyclists provide active outdoor recreation and may lead to reduced dependency on cars, especially if settlement patterns are made more compact.

The policy on roads is also influenced by the premise of concentrating development and is based on two conclusions: (1) that the coastal zone is for the most part adequately served already by the existing road network; and (2) 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.

7:7-15.6 Public facility

(a) Public facilities include a broad range of public works for production, transfer, transmission, and recovery of water, sewerage and other utilities. The presence of an adequate infrastructure makes possible future development and responds to the needs created by present development.

(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. Solid waste facilities are conditionally acceptable provided:

i. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction are explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable;

ii. The solid waste facility is not located in coastal wetlands as provided at N.J.A.C. 7:7-2.3(b); and

iii. The solid waste facility complies with the solid and hazardous waste rule at N.J.A.C. 7:7-16.14.

~~[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.]~~

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. The wastewater treatment facility, including sewer lines, is consistent with an approved Water Quality Management (208) Plan;

2. The secondary impacts associated with the facility are consistent with this chapter; and

3. The facility shall provide for multiple use of the site, including open space and recreation use, to the maximum extent feasible.

~~[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) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

3. The public facility would not generate significant secondary impacts inconsistent with this chapter.

(e) Rationale: The development of public facilities responds to the needs created by existing development and may make possible future development. Public facilities should serve a current need and should not have secondary impacts, such as increasing sprawl.

Alternatives to developing new public facilities must be considered. For example, solid waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Recovery/recycling are preferred over utilizing precious coastal land area for a landfill. 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.

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.

7:7-15.7 Industry

(a) Industry uses are uses that involve industrial processing, manufacturing, storage, or distribution activities. These uses include, but are not limited to, electric power production, food and food by-product processing, paper production, agrichemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore, subject to the standards of N.J.A.C. 7:7-15.4.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to location rules which reserve the water's edge for water dependent uses (N.J.A.C. 7:7-9.16 and 9.30); to the buffers and compatibility of uses rule, N.J.A.C. 7:7-16.11, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9, which places public access requirements upon the use.

(c) New industrial development is encouraged to locate at or adjacent to existing industrial sites, to the maximum extent practicable.

(d) Industry that is easily accessible to its labor force by foot or public transportation is encouraged.

(e) Marine resource-dependent industry, such as commercial fishing, is encouraged and shall have priority over other waterfront uses, except for recreation.

(f) The cogeneration of electricity with process steam is encouraged.

(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]~~**industry** rules encourage industry to locate in the vacant areas of the cities of the Northern and Delaware waterfronts. 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]~~**industry** rules address the conflicting demands and effects of industrial waterfront development. The rules recognize several factors which must be considered during the ~~[decision-making]~~ **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]~~ **to make** them pleasant and economically viable places to live.

7:7-15.9 Port

(a) Port uses are concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

(b) Port-related development and marine commerce is encouraged in and adjacent to established port areas. Water-dependent development shall not be preempted by non-water dependent development in these areas.

(c) New port uses outside of existing ports as defined at N.J.A.C. 7:7-9.11(a) are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) New or expanded ports must be compatible with surrounding land uses and provide for maximum open space and physical and visual access to the waterfront, provided that this access does not interfere with port operations or endanger public health and safety. New or

expanded ports must also not interfere with national, State, county or municipal parks, recreational areas, or wildlife refuges.

(e) New, expanded or redeveloped port facilities must have direct access to navigation channels of sufficient depth for anticipated vessel access, with minimal dredge and fill requirements, adequate access to road, rail transportation, and adjacent land with sufficient load bearing capacity for structures.

(f) Limited water-dependent, port-related activity, such as commercial fishing, support facilities and emergency oil spill cleanup storage, is acceptable at the small commercial harbors in the coastal zone.

(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 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]~~modern facilities in areas where port facilities would be compatible with existing uses. The policies recognize ~~[modern]~~ 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]~~modern facility which meets the needs of today but could become obsolete tomorrow. For this season, 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]~~rules 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]~~rules require port facilities to provide for the maximum public visual and physical access to the waterfront consistent with 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 facility

(a) Standards relevant to hotels and motels are as follows:

1. Hotels and motels are commercial establishments, known to the public as hotels, motor-hotels, motels, or tourist courts, primarily engaged in providing lodging, or lodging and meals, for the general public. Also included are hotels and motels operated by membership organizations, whether open to the general public or not.

2. New, expanded, or improved hotels and motels are conditionally acceptable provided that the development complies with all location and resource rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.

3. Hotels, motels or restaurants may be water oriented if they take full advantage of a waterfront location.

4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on filled water's edge (N.J.A.C. 7:7-9.23) and special urban areas (N.J.A.C. 7:7-9.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

5. All new hotel or motel development, as well as the expanded portion of an existing hotel or motel, located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet landward from the existing or proposed shore protection structures. Decks attached to the proposed new or expanded existing hotel or motel are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the location of the existing or proposed shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.

~~[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. Retail trade and services is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies; establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rules on filled water's edge (N.J.A.C. 7:7-9.23) and special urban areas (N.J.A.C. 7:7-9.41), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

- i. Complies with all applicable location and resource rules;
- ii. Is compatible in scale, site design, and architecture with surrounding development; and
- iii. Where appropriate, utilizes the water area as the central focus of the development.

4. All new retail trade and service establishments as well as expanded portions of existing retail trade and service establishments located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet landward from the existing or proposed shore protection structures. Decks attached to the proposed new or expanded existing retail trade and service establishments are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the location of the existing or proposed shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.

~~[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. "Convention centers" are facilities designed primarily for holding conventions. "Arenas" are commercial facilities designed primarily for spectator sporting events. Arenas do not include indoor tennis courts, bowling alleys and other facilities primarily designed for participant sports, nor arenas affiliated with schools and colleges.

2. New convention centers and arenas are encouraged in special urban areas, and conditionally acceptable in Development regions, provided that the development is compatible in scale, site design, and architecture with surrounding development, and is accessible by public transportation. New convention centers and arenas are discouraged in Barrier Island, Extension and Limited Growth regions.

3. All new convention centers or arenas, as well as expanded portion of an existing convention center or arena, located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet from such shore protection structures. Decks attached to the proposed new or expanded convention centers or arenas are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction

of a shore protection structure shall be within 18 inches of the existing shore protection structure.

~~[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. 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.]~~

(d) Rationale: Hotels and motels, retail trade and service establishments, and convention centers and arenas are commercial facilities. The economic benefits of these different types of commercial facilities should be balanced with the potential environmental impacts posed by new or expanded commercial facilities.

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 that attract people to the coast.

Retail and services 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.

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. However, they can also generate traffic and induce additional development. They must, therefore, be located so that such impacts can be easily absorbed.

While commercial development, including hotels and motels, retail trade and service establishments, and convention centers and arenas, serves an important function in coastal areas, all forms of commercial development must be located so that it does not harm or threaten the resources which attract people to the coast.

7:7-15.11 Coastal engineering

(a) Coastal engineering measures include a variety of non-structural, hybrid, and structural shore protection and storm damage reduction measures to manage water areas and protect the shoreline from the effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian crossing of dunes, stabilization of dunes, dune restoration projects, dredged material management, living shorelines, and the construction of retaining structures such as bulkheads, gabions, revetments, and seawalls are all examples of coastal engineering measures.

(b) Nonstructural, hybrid, and structural shore protection and/or storm damage reduction measures shall be used according to the following hierarchy:

1. Non-structural shore protection and/or storm damage reduction measures that allow for the growth of vegetation shall be used unless it is demonstrated that use of non-structural measures is not feasible or practicable. Factors considered in determining whether use of a non-structural measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel, the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site

receives, substrate composition, and presence of shellfish habitat, submerged vegetation and wetlands at the site. For guidance on measures that may be appropriate depending upon factors impacting a site, see Guidance for Appropriate Shoreline Protection and/or Storm Damage Reduction Measures for a Site available from the Division of Land Use Regulation's website at ~~www.state.nj.us/dep/landuse/~~ www.nj.gov/dep/landuse/guidance.html. This guidance follows N.J.S.A 52:14B-3a and does not impose any new or added requirements nor can it be used for enforcement purposes.

2. Where the use of non-structural shore protection and/or storm damage reduction measures under (b)1 above is demonstrated to be not feasible or practicable, then hybrid shore protection and/or storm damage reduction measures that allow for the growth of vegetation, such as stone, rip-rap, sloped concrete articulated blocks or similar structures, or gabion revetments, shall be used. Factors considered in determining whether use of a non-structural measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel, the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site receives, substrate composition, and presence of shellfish habitat.

3. Where the use of hybrid shore protection and/or storm damage reduction measures under (b)2 above is demonstrated to be not feasible or practicable, then structural shore protection and/or storm damage reduction measures such as bulkheads, revetments, sea walls, or other retaining structures shall be used. Factors considered in determining whether use of a hybrid shore protection measure is feasible include the type of waterway on which the site is located, the distance to the navigation channel, the width of waterway, water depth at the toe of bank, the bank orientation, shoreline slope, fetch, erosion rate, the amount of sunlight the site receives, substrate composition, and presence of shellfish habitat.

(c) The hierarchy set forth at (b) above does not apply to water dependent uses within existing ports.

(d) The construction, maintenance, or reconstruction of a bulkhead shall comply with the following:

1. A bulkhead that is subject to wave runup forces, specifically, a bulkhead in a V zone as described at N.J.A.C. 7:7-9.18, shall be designed and certified by a professional engineer to withstand the forces of wave runup. The use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis as a means to limit the scour potential;

2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable provided that it meets (d)2i, ii, or iii below. All measurements specified below shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (d)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead that does not meet (d)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (d)2i or ii above. In that case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

(e) Dune restoration, creation, and maintenance projects as non-structural shore protection and/or storm damage reduction measures, are encouraged. These projects, including sand fencing, revegetation, additions of non-toxic appropriately sized material, and measures to control pedestrian and vehicular traffic, shall comply with N.J.A.C. 7:7-10, Standards for Beach and Dune Activities.

(f) Beach nourishment projects as non-structural shore protection and/or storm damage reduction measures are encouraged, provided:

1. The particle size and type of the fill material is compatible with the existing beach material to ensure that the new material will not be removed to a greater extent than the existing material would be by normal tidal fluctuations;
2. The elevation, width, slope, and form of the proposed beach nourishment projects are compatible with the characteristics of the existing beach;
3. The sediment deposition will not cause unacceptable shoaling in downdrift inlets and navigation channels;
4. Public access to the nourished beach is provided in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9.

(g) Structural shore protection and/or storm damage reduction measures that are conducted using monies from the Shore Protection Fund established by N.J.S.A. 13:19-16 and/or any other Department monies shall comply with (g)1 and 2 below.

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material, is acceptable only if the structure meets all of the following conditions:

- i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas threatened by erosion, or the structure, for example, a retained earthen berm, is essential to mitigate the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under this chapter;
- ii. The structure will not cause significant adverse impacts on local shoreline sand supply;
- iii. The structure will not create net adverse shoreline sand movement downdrift, including erosion or shoaling;
- iv. The structure will cause minimum feasible adverse impact to living marine and estuarine resources;

- v. The structure is consistent with the State's Shore Protection Master Plan; and
 - vi. If the proposed project requires filling of a water area, the filling is consistent with the filling rule, N.J.A.C. 7:7-12.11, and all other applicable rules in this chapter; and
2. Public access to the shore protection project shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. 7:7-9.48 and the public access rule, N.J.A.C. 7:7-16.9.

(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.

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~~are, 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) **N.J. 296 (1972)** held that:

“...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.~~ **N.J.** at 308-309).^[2]

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.

SUBCHAPTER 16. RESOURCE RULES

7:7-16.2 Marine fish and fisheries

(a) Marine fish are marine and estuarine animals other than marine mammals and birds.

Marine fisheries means:

1. One or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and
2. The catching, taking or harvesting of marine fish.

(b) Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with (c) below.

(c) The following coastal activities are conditionally acceptable provided that the activity complies with the appropriate general water area rule(s) at N.J.A.C 7:7-12;

1. Construction of submerged cables and pipelines;
2. Sand and gravel mining to obtain material for beach nourishment, provided:
 - i. The beach nourishment project is in the public interest;
 - ii. There are no alternative borrow sites that would result in less impact to marine fish and fisheries;
 - iii. Any alteration of existing bathymetry within prime fishing areas, as defined at N.J.A.C. 7:7-9.4, does not reduce the high fishery productivity of these areas; and
 - iv. Measures are implemented to minimize and compensate for impacts to marine fish and fisheries; and
3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any rules developed and adopted pursuant thereto;
4. The establishment of living shorelines to protect, restore, or enhance a habitat area, in

accordance with N.J.A.C. 7:7-12.23; and

5. Construction of a recreational dock or pier in accordance with N.J.A.C. 7:7-12.5.

(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 (US 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. (US 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 US Department of Commerce statistics (2011). The total ripple effect on the State economy is estimated at \$2.6 billion, with recreational fishing yielding \$1.6 billion and commercial fishing yielding \$1.06 billion. (US Department of Commerce, National Marine Fisheries Service, 2008 and 2011).

Activities ~~[which]~~that 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 pm 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]~~the harvesting of shellfish may not be directly or immediately important to human economics although these areas have been used ~~[as]~~ for 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 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.

7:7-16.3 Water quality

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., Federal, State, and local water quality requirements established under the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., shall be the water resource standards of the coastal management program. These requirements include not only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. In the Delaware River Basin, the requirements include the prevailing "Basin Regulations-Water Quality" adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Environmental Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Environmental Commission's Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. 7:9B), the Ground Water Quality Standards (N.J.A.C. 7:9C), and the New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A).

(b) Coastal development which would violate the Federal Clean Water Act, or State laws, rules and regulations enacted or promulgated pursuant thereto, is prohibited. In accordance with N.J.A.C. 7:15 concerning the Water Quality Management Planning and Implementation process, coastal development that is inconsistent with an approved Water Quality Management (208) Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., is prohibited.

(c) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~ **Most of the natural, commercial, recreational, industrial, and aesthetic resources of the coastal zone affect or are affected by surface and groundwater quality. Specific coastal zone water quality problems include pollution by nutrients, pathogenic**

organisms, toxic and hazardous wastes, thermal discharges, suspended sediments, oxygen demanding wastes, and saline intrusion into freshwater resources. These pollutants can lower water quality sufficiently to prevent desired uses. Pursuant to the Federal Coastal Zone Management Act, Section 307(f), requirements established by a state or local government pursuant to the Federal Clean Air Act and Clean Water Act “shall be incorporated” into any program developed pursuant to the CZMA. This rule incorporates State water quality requirements by making clear that development which would violate New Jersey's water quality related statutes and regulations adopted pursuant to the Federal Clean Water Act is not allowed.

7:7-16.5 Groundwater use

(a) Groundwater is all water within the soil and subsurface strata that is not at the surface of the land. It includes water that is within the earth that supplies wells and springs.

(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with 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, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. Coastal development shall conform with all applicable Department and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(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[7]; altered groundwater flow patterns[7]; changed groundwater recharge/discharge relationships, which may in [turn] **turn** result in increasing salt water intrusion into the groundwater[s, ~~damaging~~]; **damaged** the base flow conditions of streams[7]; and **caused** well closing due to contamination.

7:7-16.6 Stormwater management

(a) If a project or activity meets the definition of “major development” at N.J.A.C. 7:8-1.2, then the project or activity shall comply with the Stormwater Management rules at N.J.A.C. 7:8.

(b) Rationale: The Stormwater Management Rules (N.J.A.C. 7:8) specify standards for State, municipal, and regional stormwater management. These rules provide minimum Statewide runoff techniques, as well as special protection measures for environmentally

sensitive water and land areas. Because development and land use activities contribute greatly to the types and amount of pollutants that are found in stormwater runoff, it is appropriate for major development projects in the coastal zone to comply with the Stormwater Management Rules' standards.

7:7-16.7 Vegetation

(a) Vegetation is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate coastal species, native to New Jersey to the maximum extent practicable.

(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]~~**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.

(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.

7:7-16.8 Air quality

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and the attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(b) Coastal development shall conform to all applicable State and Federal regulations, standards and guidelines and be consistent with the strategies of New Jersey's State Implementation Plan (SIP). See N.J.A.C. 7:27 and New Jersey SIP for ozone, particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, lead, and visibility.

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportational services, in accordance with the traffic rule, N.J.A.C. 7:7-16.12.

(d) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~ **Air quality is adversely affected by the contaminants emitted into the atmosphere as by-products of human activities, especially fuel-burning. Air contaminants not only cause discomfort, damage to materials and vegetation, soiling of surfaces, and deterioration of visibility, but can also adversely affect human health.**

Historically, the extent of air pollution has increased with industrialization and urbanization. The Northern Waterfront Area has a long history of air contaminants from these sources. Thus, in most cases, abatement practices are required to restore healthful air quality.

The Federal Coastal Zone Management Act, Section 307(f), requires that the air resource standards of the Coastal Management Program be the local, State, and Federal policies established in fulfillment of the Clean Air Act and its amendments. The Department's Air Quality Regulation Group administers the State's air quality program to meet the requirements of the New Jersey Air Pollution Control Act and the Federal Clean Air Act and determines compliance with coastal policy on air quality.

7:7-16.10 Scenic resources and design

(a) Scenic resources include the views of the natural and/or built landscape.

(b) Large-scale elements of building and site design are defined as the elements that compose the developed landscape such as size, geometry, massing, height and bulk structures.

(c) New coastal development that is visually compatible with its surroundings in terms of building and site design, and enhances scenic resources is encouraged. New coastal development that is not visually compatible with existing scenic resources in terms of large-scale elements of building and site design is discouraged.

(d) In all areas, except the Northern Waterfront Region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront,

beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall comply with the following, unless it meets the requirements at (e) or (f) below:

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and
2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure, except for the following:
 - i. Infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area; and
 - ii. Wind turbines.

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune, or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development.

1. The development preserves the historic structure; and
2. The development will not detract from, damage, or destroy the value of the historic structure.

(f) Federal, State, county, or municipal development projects which are located adjacent to a bay or ocean or bayfront or oceanfront, beach, dune, or boardwalk, and are greater than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with the setback requirements in (d)2 above provided that the development contains design elements that enhance physical or visual public access to the waterfront beyond that which would be afforded by strict compliance with (d)2 above and the development, as proposed, would remain in compliance with N.J.A.C. 7:7-9.48.

(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. 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.

7:7-16.12 Traffic

- (a) Traffic is the movement of vehicles, pedestrians or ships along a route.

(b) Coastal development shall be designed, located and operated in a manner to cause the least possible disturbance to traffic systems.

1. Alternative means of transportation, that is, public and private mass transportation facilities and services, shall be considered and, wherever feasible, incorporated into the design and management of a proposed development, to reduce the number of individual vehicle trips generated as a result of the facility. Examples of alternative means of transportation include: van pooling, staggered working hours and installation of ancillary public transportation facilities such as bus shelters.

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, to the satisfaction of the New Jersey Department of Transportation and/or any regional agencies, as applicable.

(d) Any development that causes a location on a roadway to operate in excess of capacity Level D is discouraged. A developer shall undertake mitigation or other corrective measures as may be necessary so that the traffic levels at any affected intersection remain at capacity Level D or better. A developer may, by incorporating design modification or by contributing to the cost of traffic improvements, be able to address traffic problems resulting from the development, in which case development would be conditionally acceptable. Determinations of traffic levels which will be generated will be made by the New Jersey Department of Transportation.

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e)1 and 3 below, shall satisfy the requirements for parking specified in this subsection. Coastal development subject to this subsection shall provide sufficient on-site and/or off-site parking for its own use. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7-15.5(d), the parking facility rule, where applicable.

1. The non-oceanfront portions of the following municipalities which border the Atlantic Ocean are excluded from the parking requirement at (e) above:

i. Neptune Township, Monmouth County: Those portions of this municipality which are west of State Highway 71;

ii. Brick, Toms River and Berkeley Townships, Ocean County: Those portions of these municipalities which are not located between Barnegat Bay and the Atlantic Ocean;

iii. Upper Township, Cape May County: Those portions of this municipality which are not located between Whale Creek and the Atlantic Ocean and/or Strathmere Bay and the Atlantic Ocean; and

iv. Lower Township, Cape May County: Those portions of this municipality which are not between Lower Thorofare and the Atlantic Ocean and/or Jarvis Sound and the Atlantic Ocean;

2. Except as provided in (e)2i through iii below, residential development located within one-half mile of an oceanfront beach or dune shall provide on-site and/or off-site parking at a ratio of two parking spaces per unit for each dwelling unit.

i. The Department shall reduce the parking requirement for developments restricted to senior citizen housing that is, restricted to persons at least 62 years of age or those persons meeting the definition of "senior citizen tenant" pursuant to the Senior Citizens and Disabled Protected Tenancy Act, N.J.S.A. 2A:18-61, upon documentation that the parking needs of the development are less than two spaces per unit;

ii. The Department shall reduce the parking requirement for development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, provided the proposed development complies with (e)2ii(1) through (5) below. The reduced parking requirement does not apply to any new development located outside of the existing footprint of development.

(1) The development preserves the historic structure;

(2) The development will not detract from, damage, or destroy the value of the historic structure;

(3) The development is located within the footprint of development of the historic structure;

(4) The development provides on-site and/or off-site parking for any new units created through the addition of new floors within the footprint of development at a ratio of one space per new residential unit; and

(5) All existing parking spaces associated with the historic structure are retained;

iii. On-site and/or off-site parking shall be provided at a ratio of one parking space per unit for each dwelling unit that is 650 square feet or smaller; and

3. Nursing homes and assisted living facilities are excluded from the parking requirements of this subsection.

(f) Rationale: ~~[The Rationale statement for this section is not reproduced in the Code. The Rationale statement may be reviewed by contacting the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.]~~ **The improper location of a development or the lack of adequate parking provision at a development may exacerbate existing traffic problems or produce new difficulties for both visitors to and residents of the coastal area.**

7:7-16.13 Subsurface sewage disposal systems

(a) Subsurface sewage disposal system means a system for disposal of sanitary sewage into the ground which is designed and constructed to treat sanitary sewage in a manner that will retain most of the settleable solids in a septic tank and to discharge the liquid effluent to a disposal field.

(b) Acceptability conditions for subsurface sewage disposal systems are as follows:

1. Construction of the subsurface sewage disposal system is acceptable provided it meets all the provisions of the standards for Individual Subsurface Sewage Disposal Systems (N.J.A.C. 7:9A) and receives approval from the appropriate administrative authority;

2. For areas subject to tidal flooding, the bottom elevation of the disposal bed must be at or above the 10 year flood elevation as determined by the Federal Emergency Management Agency Flood Insurance Study Reports;

3. Construction of subsurface sewage disposal systems must comply with the requirements of the flood hazard areas rule at N.J.A.C. 7:7-9.25.

(c) Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation, and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety, ~~and~~ the environment, and potable water supplies, and to safeguard fish and aquatic life while preserving their ecological values. In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas (V zones) is prohibited in accordance with the National Flood Insurance Program Regulations.

SUBCHAPTER 17. MITIGATION

7:7-17.5 Property suitable for mitigation

(a) Mitigation under this subchapter may be carried out on private or public property.

(b) Except as provided in (c) below, 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 this chapter.

(c) The Department shall approve mitigation on public property if:

1. The public entity gives written permission to allow the mitigation to be conducted on the property;

2. The public entity is willing to allow a conservation restriction to be placed on the area of the mitigation project, in accordance with N.J.A.C. 7:7-18, or can demonstrate that an existing conservation restriction will protect the mitigation project area in perpetuity; and

3. If the land was acquired using Green Acres funding or is encumbered with Green Acres restrictions, as defined at N.J.A.C. 7:36-2.1, the use of the area for mitigation purposes is approved by the Green Acres Program.

(d) The following shall not constitute mitigation under this subchapter:

1. The installation of, or improvement to, an existing public facility intended for human use, such as a ball field, nature trail, or boardwalk; or

2. A stormwater management facility, such as a basin.

(e) The Department shall not approve creation, enhancement, or restoration of a wetland in an area that the Department has determined is currently of high ecological value.

- (f) The Department shall not approve mitigation or a mitigation bank that would:
1. Destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; or
 2. In any way jeopardize the continued existence of any local population of a threatened or endangered species.

(g) The Department shall not approve mitigation or a mitigation bank in an area where the proposed mitigation poses an ecological risk. For purposes of this section, ecological risk means that the mitigation or mitigation bank activities have the potential to result in the reintroduction of contamination to ecological communities, the exposure of humans to contamination, or the contamination of the mitigation site by subsequent exposure to new areas of contamination requiring remediation. The proposed mitigation site shall be properly characterized to determine ecological risk. The mitigator shall prepare this characterization and assessment in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9.

1. If the Department determines based on the characterization and assessment that the mitigation activities at the proposed site do not pose an ecological risk, the mitigator shall proceed with the mitigation project.

2. If the Department determines based on the characterization and assessment that the proposed mitigation activities at the proposed site do pose an ecological risk, the mitigator shall remediate the site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8, 5.1, and 5.2. The mitigator shall proceed with the mitigation project only after it demonstrates that the remediation and/or mitigation activities will fully address the ecological risk.

(h) Properties where a substantial amount of soil must be removed in order to achieve suitable wetland hydrology are not acceptable mitigation sites.

7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation

(a) This section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.15 or 12.11(f) for the filling of intertidal and subtidal shallows or tidal waters, respectively.

(b) Mitigation for the filling of intertidal and subtidal shallows or tidal waters shall be performed through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters on the site where the filling occurred.

(c) If the onsite mitigation for the filling of intertidal and subtidal shallows described at (b) above is not feasible, mitigation shall be performed as follows:

1. At a single-family home or duplex property that is not part of a larger development, mitigation for the filling of intertidal and subtidal shallows 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 and subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single-family home or duplex, mitigation for the filling of intertidal and subtidal shallows shall be performed in accordance with the hierarchy at (d) through (g) below.

(d) If mitigation for the filling of intertidal and subtidal shallows as described at (b) above at a property other than a single-family home or duplex is not feasible onsite, or if mitigation for the filling of tidal waters as described at (b) above is not feasible onsite, then mitigation shall be performed offsite through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters within the same estuary as the site of the filling or through the purchase of in-kind credits from a mitigation bank with a service area that includes the site of the filling.

(e) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (d) above is not feasible, then mitigation shall be in the form of restoration, creation, or enhancement of a wetland within the same estuary as the site of the filling in accordance with N.J.A.C. 7:7-17.13 or through the purchase of out-of-kind credits from a mitigation bank with a service area that includes the site of the filling.

(f) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (e) above is not feasible, then mitigation shall be in the form of one or both of the following, as determined in consultation with the Department:

1. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-~~15.9~~11.13; or
2. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.

(g) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (f) above is not feasible, then mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-~~15.19~~11.15.

(h) Within 60 calendar days after the construction of an intertidal and subtidal shallows or tidal waters mitigation site is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different time frame for the submittal of the construction completion report if it determines doing so would better facilitate assessing the progress and success of the mitigation. The construction completion report shall include:

1. An as-built plan of the completed mitigation area, showing grading and any structures included in the approved mitigation proposal;
2. Photographs of the completed mitigation; and
3. An explanation for any deviation from the approved mitigation proposal.

(i) In addition to the construction completion report required under (h) above, the mitigator shall submit a post construction monitoring report to the Department. Compliance with the standards listed at (k)1 through 4 below shall be demonstrated for each intertidal and subtidal shallows or tidal waters mitigation site for one lunar month after completion of construction of the mitigation site. A lunar month is the period between two successive full

moons. If one or more of the standards listed at (k)1 through 4 below are not met, the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards are met. Failure to meet the standards at (k)1 through 4 below for a given lunar month shall result in corrective action. Corrective action may include regrading or relocation of the mitigation site.

(j) The post-construction monitoring report, required under (i) above, shall be submitted by December 31 of each year and shall include:

1. An executive summary;
2. The requirements and goals of the approved mitigation proposal;
3. A detailed explanation of the ways in which the mitigation has or has not achieved progress towards those goals. If the mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented as determined pursuant to (k) below and a timeline for completion;
4. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;
5. Photographs of the mitigation site, with a location map indicating the location and direction of each photograph;
6. An assessment of the hydrology of the mitigation site, including relevant tidal data, photographs, and field observation notes collected throughout the monitoring period; and
7. A field delineation and plan showing the extent and location (using global positioning system data points) of the intertidal and subtidal shallows or tidal waters at the site.

(k) The standards by which a mitigation site where intertidal and subtidal shallows or tidal waters were created shall be determined successful are set forth at (k)1 through 4 below. In accordance with (i) above, the mitigator shall submit a post-construction monitoring report demonstrating that these standards have been met. The standards are:

1. The goals of the approved mitigation proposal have been achieved;
2. The mitigation site is an intertidal and subtidal shallows as defined at N.J.A.C. 7:7-9.15 or a tidal water. The documentation shall include, tidal data, topography for the spring high tide, photographs, and field observation notes collected throughout the monitoring period;
3. The mitigation meets all applicable requirements of this subchapter; and
4. The mitigator has executed and recorded a conservation restriction that meets the requirements of N.J.A.C. 7:7-18.

(l) If the mitigation performed under (e) above is the restoration, creation, or enhancement of a wetland, the mitigator shall demonstrate that the post-construction monitoring standards for a wetland mitigation site at N.J.A.C. 7:7-17.13(d) through (g) are met.

7:7-17.14 Wetlands mitigation hierarchy

(a) This section applies to wetlands mitigation projects and governs the mitigation alternative required and the location of mitigation in relation to the impacts to wetlands.

(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 offsite in the same drainage area or estuary as the impacts or 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. Size. Generally, the larger a mitigation area is, the greater is its potential environmental benefit. A mitigation area that is associated with a large existing wetland complex is more likely to be environmentally beneficial;
2. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;
3. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial;
4. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream; and
5. Availability of parcels for offsite mitigation that meet the requirements of (e) below.

(c) If mitigation as described at (b) above is not feasible, then mitigation shall be required in the form of one or more of the following, as determined in consultation with the Department:

1. Monetary contribution in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-~~[15-18]~~11.16;
2. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-~~[15-9]~~11.13; or
3. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.

(d) If mitigation as described at (c) above is not feasible, mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-~~[15-19]~~11.15.

(e) In order to demonstrate that offsite mitigation under (b) above is not feasible, an applicant shall provide to the Department a list of at least six sites within the same drainage area or estuary to accommodate the required mitigation. With respect to each site on the list, the applicant shall explain why:

1. The site is not located at a practical elevation suitable for wetlands;
2. The site lacks an adequate water supply;
3. The site is not available for purchase; and
4. The site does not meet the requirements of N.J.A.C. 7:7-17.5(g) regarding ecological risk.

SUBCHAPTER 19. RELAXATION OF PROCEDURES; RECONSIDERATION OF APPLICATION OF RULES

7:7-19.2 Reconsideration of the application of a rule(s) in this chapter

(a) The Department may reconsider the application of one or more of the rules in this chapter, provided:

1. The Department has rendered a decision on a permit application under the rules in this chapter as strictly applied;
2. All administrative and judicial appeals of the permit decision have been concluded; and
3. Any of the following requirements is met:
 - i. A court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the property owner thereupon submits a request for a reconsideration of the application of a rule(s) in this chapter;
 - ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the Department initiates the reconsideration; or
 - iii. The issuance, modification, or denial of a coastal permit is for a single-family home or duplex and the Department initiates the reconsideration prior to the filing of a takings complaint.

(b) In making the determination to reconsider an application of a rule in this chapter under (a) above, the Department shall prepare a written analysis that evaluates three factors:

1. The investments the property owner made in the property that is the subject of the coastal permit application and whether the investments were reasonable and reflected reasonable expectations, in accordance with (c) below;
2. The minimum beneficial economically viable use of the property, in accordance with (d) below; and
3. The environmental impacts of the minimum beneficial economically viable use for the property, and their consistency with the goals of CAFRA, the Waterfront Development Law, N.J.S.A 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (e) below.

(c) In determining whether the property owner's investments in the property as a whole were reasonable and reflected reasonable expectations, the Department shall evaluate the following information:

1. Conditions at the time of the investment. That is, the investment shall have been made in pursuit of development that would likely have been legally and practically possible on the property, considering all constraints existing and reasonably ascertainable at the time of the investment. For example, if a property owner bought land containing a dune that is regulated under this chapter, it would not be reasonable to expect that the property could be developed without constraints. In determining conditions at the time of the investment, the Department shall consider, at a minimum, the following:
 - i. Existing zoning and other regulatory requirements and conditions;
 - ii. Historic landmarks or other historic or cultural resources;
 - iii. The likelihood of obtaining other necessary approvals such as wastewater treatment approvals or approvals from other local, State or Federal agencies;
 - iv. Terrain and other site conditions, and/or environmental constraints, which could affect the potential uses of the property as a whole;

v. The existence of, or likelihood of obtaining, services to the property such as sewers or electricity; and

vi. Land uses on adjacent properties and in the area where the property is located;

2. Costs actually incurred in pursuit of development of the property as a whole;

3. Costs incurred in furtherance of a lawful action. For example, if the property owner began the project without the necessary permits, the cost of defending against an enforcement action for this violation would not constitute a reasonable investment that reflects reasonable expectations;

4. Costs relating only to the specific property as a whole that is the subject of the coastal permit application, and not including costs related to other properties; and

5. Any other factor affecting the property or the property owner, which is related to the reasonableness of the investments, the expectations, and/or the proposed use of the property.

(d) In determining the minimum beneficial economically viable use of the property, the Department shall consider existing legal precedent at the time of the determination. A use shall not be excluded from consideration as a minimum beneficial economically viable use merely because it diminishes the value of the property as a whole, does not result in a profit, reduces the marketability of the property as a whole, or does not allow the property owner to recoup all reasonable investments identified under (c) above.

(e) In determining the environmental impacts of any minimum beneficial economically viable uses of the property and the consistency of those impacts with the goals of CAFRA, the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with (b) above, the Department shall evaluate whether the minimum beneficial economically viable use would:

1. Adversely affect the special areas described at N.J.A.C. 7:7-9;

2. Result in irreversible losses of values and functions provided by coastal resources and whether such losses could be mitigated; and

3. Adversely affect public health, safety and welfare, and wildlife and marine fisheries.

(f) The Department shall not approve a minimum beneficial economically viable use as a result of the reconsideration of the application of a rule(s) in this chapter under this section if that use would cause any one of the following:

1. Irreversible losses of values and functions of the coastal resources that provide essential breeding, spawning, nesting, feeding, resting, or wintering habitats for marine fish and wildlife, including migratory birds, endangered species, and commercially and recreationally important wildlife. For the purposes of this section, "irreversible losses" means an alteration to the coastal resource that would eliminate one or more of the essential characteristics which provides the breeding, spawning, nesting, feeding, resting or wintering habitat for the species in question that could not be mitigated;

2. Irreversible losses in water quality, resulting in degradation of ground or surface waters, in violation of the Federal, State or local water quality standards; or

3. Irreversible losses of wetlands and/or State open waters, providing essential flood and storm damage protection by absorption, the storage of water during high runoff periods and the reduction of flood crests, resulting in creation of a public nuisance.

(g) A property owner may request a reconsideration of the application of a rule(s) in this chapter only after:

1. The conclusion of any administrative and/or judicial appeal of the permit decision; and
2. A court has determined that the issuance, modification, or denial of a coastal permit without reconsideration would result in a taking of property without just compensation.

(h) A complete request for the reconsideration of a rule(s) in this chapter under this section shall include the following items:

1. A completed application form, as described at N.J.A.C. 7:7-23.4 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6, indicating a request for reconsideration and the type of permit being requested;

2. Documentation in accordance with N.J.A.C. 7:7-24.6 that public notice of the request was provided in accordance with the requirements at N.J.A.C. 7:7-24.3. The public notice shall follow the form provided by the Department, and shall state that a request for reconsideration has been submitted to the Department, that the request can be reviewed at the municipal clerk's office or at the Department, and that comments may be submitted to the Department within 15 calendar days of receipt of the notice. This notice may be combined with the offer to sell the property required under (h)8 below;

3. An environmental impact statement or compliance statement, providing the information necessary for the Department to evaluate the environmental impacts of the proposed minimum beneficial economically viable use in accordance with (e) and (f) above;

4. Site plans showing the project that is proposed in order to provide a minimum beneficial economically viable use;

5. Document(s) showing when the property as a whole was acquired, the purchase price of the property as a whole, and the instrument which documents the applicant's real property interest;

6. Document(s) showing the amount and nature and date of any investments made to maintain and/or develop the property as a whole, other than the purchase price;

7. The language of a proposed conservation restriction that meets the requirements of (l)2 below;

8. Documentation that the property has been offered for sale, in a letter following the form provided by the Department, to all owners of property, including easements as shown on the tax duplicate within 200 feet of the property as a whole, and to the land conservancies, environmental organizations, and governmental agencies on a list supplied by the Department. This documentation shall include the following:

- i. A copy of each letter that the property owner sends under this subsection;
- ii. All responses the property owner receives to the letters sent under this subsection. Each response shall be submitted to the Department within 15 calendar days after the property owner's receipt of the response; and

iii. A list, certified by the municipality, of all owners of real property within 200 feet of the property as a whole, including owners of easements as shown on the tax duplicate. The list of property owners certified by the municipality shall be no more than one year old;

9. The written offer of sale required under (h)8 above shall be sent by certified mail and shall:

i. Indicate that the offer is open for a period of at least 90 calendar days;

ii. Include a copy of a fair market value appraisal, performed by a State-licensed appraiser, that assumes that a minimum beneficial economically viable use of the property would be allowed;

iii. Include full disclosure of the location on the property and of any of the special areas described at N.J.A.C. 7:7-9; and

iv. Indicate that a reconsideration of a rule(s) in this chapter to allow development of the property has been requested under this section;

10. A copy of a court determination that the Department's issuance, modification, or denial of a coastal permit would constitute a taking of property without just compensation; and

11. Documents showing that the property owner has concluded all administrative and judicial appeals of the Department's decision on the application for a coastal permit. Such documentation shall include the last of the following (submitted after the appeal period for the applicable decision has expired):

i. A Department decision on the coastal permit application, made in accordance with the rules as strictly applied;

ii. A final decision issued by the Commissioner regarding the Department's decision on the coastal permit application if the property owner contested the permit decision; or

iii. Documentation that all appeals of any final decision issued by the Commissioner under (h)11ii above have been concluded.

(i) In the case where the Department initiates the reconsideration of the application of a rule(s) in this chapter under (a) above, the Department shall, upon initiation of the reconsideration process follow all steps described in (i)1 through 3 below. In the case where the property owner is requesting a reconsideration of the application of a rule(s), the Department shall, upon initiation of the reconsideration process, follow the steps described in (i)1i, 1iii, 2, and 3 below:

1. Provide the following notifications:

i. Publication in the DEP Bulletin;

ii. In accordance with the requirements at N.J.A.C. 7:7-24.2 and 24.3; and

iii. To those who provided comments on the previous application that is the subject of the reconsideration;

2. Include in the notice the applicant's name; project name, if applicable; project number; county and municipality of the project; and an executive summary describing the development that is the subject of the reconsideration; and

3. Provide a ~~[15-day]~~ **15-calendar day** comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(j) If the Department determines to approve a development upon reconsideration of the application of a rule(s) in this chapter, the Department shall provide notice of the development that the Department proposes to allow under the reconsideration following the same procedure as described in (i)1i above except that the Department shall provide a ~~[30-day]~~**30-calendar-day** comment period, commencing from the date of publication of the notice in the DEP Bulletin.

(k) The Department shall complete the written analysis required under (b) above, which shall incorporate its decision on the request for reconsideration of the application of a rule(s) in this chapter as follows:

1. For a request for reconsideration under (a) and (g) above, no later than 180 calendar days after receiving a complete request that meets all requirements at (h) above; or
2. For a reconsideration initiated by the Department under (a) above, no later than 180 calendar days from the publication of notice in the DEP Bulletin under ~~[(h)]~~ **(i)** above.

(l) If the Department approves a development upon reconsideration of the application of a rule(s) in this chapter under this section, the approval shall, at a minimum:

1. Be the minimum relief necessary to enable the property owner to realize a minimum beneficial economically viable use of the property as a whole, consistent with constitutional standards; and
2. Ensure that any part of the property as a whole that the Department does not allow to be developed upon reconsideration of the application of a rule(s) in this chapter under this section will be protected from future development by a recorded conservation restriction.

(m) The property owner or any other person with a particularized property interest who is aggrieved by the Department's determination on a reconsideration of the application of a rule(s) in this chapter may request an adjudicatory hearing on the reconsideration determination pursuant to the procedures set forth at N.J.A.C. 7:7-28.1.

SUBCHAPTER 20. PROVISIONAL PERMITS

7:7-20.1 Provisional permits

(a) The Department may issue a provisional permit if it finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

(b) The issuance of a provisional permit shall not exempt the permittee from any of the requirements of this chapter. A permit application must be submitted before a provisional permit can be issued, and all permit review procedures shall be complied with following issuance of the provisional permit.

SUBCHAPTER 22. PRE-APPLICATION CONFERENCES

7:7-22.2 Request for a pre-application conference; scheduling; information required

(a) Except as provided at (b) and (d) below, a request for a pre-application conference shall be directed by electronic mail to LURTechSupport@dep.state.nj.us, or by writing to the address

set forth at N.J.A.C. 7:7-1.6 to the attention of "Supervisor, (county in which the proposed project is located)."

(b) A request for a pre-application conference for a dredging or dredged material management project shall be directed to **the address set forth at N.J.A.C. 7:7-1.6 to the attention of "Supervisor, Office of Dredging and Sediment Technology,"** ~~[Site Remediation Program, NJ Department of Environmental Protection, P.O. Box 420, Mail Code 401-06C, 401 East State Street, 6th Floor, Trenton, NJ 08625 (Telephone: (609) 633-6801)]~~.

(c) A request for a pre-application conference for any project shall include the following:

1. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;
2. Site plans or conceptual designs depicting the proposed development, if available;
3. The street address, lot, block, municipality, and county of the property upon which the regulated activity is proposed; and
4. A copy of any letter of interpretation pursuant to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, or any flood hazard area verification pursuant to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, which the Department has issued for the site. If neither a letter of interpretation nor a flood hazard area verification has been issued, the prospective applicant shall provide the general location of freshwater wetlands, freshwater wetland transition areas, State open waters, and special areas, as described at N.J.A.C. 7:7-9.

(d) A pre-application conference for a project that involves the installation of submarine cables in the Atlantic Ocean shall be requested early in the design process and shall be directed to Manager, NJDEP Bureau of Coastal Regulation, Mail Code 501-02A, PO Box 420, Trenton, New Jersey, 08625-0420. In addition to information required to be submitted under (c) above, the prospective applicant shall provide:

1. A written description of the proposed project, along with a NOAA nautical chart depicting potential cable routes in relationship to existing cable routes; and
2. Documentation that written notice of the pre-application conference was provided at least 15 calendar days prior to date of the pre-application conference to the entities at (d)2i through vi below. The notice shall state the date, time and location of the pre-application conference, and shall include a copy of the applicable NOAA nautical chart depicting the proposed cable route.
 - i. Garden State Seafood Association;
 - ii. National Fisheries Institute;
 - iii. North Atlantic Clam Association;
 - iv. Rutgers Cooperative Extension;
 - v. New Jersey Shellfisheries Council; and
 - vi. New Jersey Marine Fisheries Council.

(e) Within 10 calendar days of receipt of the material submitted in accordance with (c) above, the Department shall:

1. Determine that a pre-application conference is necessary and contact the prospective applicant to schedule a pre-application conference; or
2. Determine that a pre-application conference is not necessary and that the prospective applicant's questions can be addressed in writing or by telephone. Where the Department makes such a determination, the Department shall address the questions within 20 calendar days of receipt of the material submitted in accordance with (c) above.

SUBCHAPTER 23. APPLICATION REQUIREMENTS

7:7-23.2 General application requirements

(a) The Department provides a checklist for each type of application submitted under this subchapter. The checklist identifies 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. For example, 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, and the number and orientation of photographs of the location of the proposed development. The checklist will also indicate that the plan should be folded or prepared in a certain manner to facilitate processing. Checklists can be downloaded from the Department's website at www.state.nj.us/dep/landuse or obtained by contacting the Department at the address set forth at N.J.A.C. 7:7-1.6.

(b) The level of detail and documentation required for an application shall be commensurate with the size and impact of the proposed activity, its proximity to any of the special areas described at N.J.A.C. 7:7-9, and its potential for environmental impacts. The Department shall, upon request, provide an applicant with guidance regarding the appropriate level of detail for an application based on the activity the applicant proposes to undertake.

(c) The following persons may submit an application under this subchapter:

1. The owner(s) of a site on which an activity is proposed or conducted;
2. An agent designated by the owner(s) of a site to obtain or operate under a permit on behalf of the owner(s); ~~or~~
3. A public entity proposing an activity within a right-of-way or easement that is held or controlled by that entity or that will be appropriated by that entity under the power of eminent domain~~[-];~~ or

4. A person that has the legal authority to perform the activities proposed in the application on the site and to carry out all requirements of this chapter.

(d) An application shall be certified as set forth in (j) below by the following individual(s), or by a duly authorized representative, as described at (e) below:

1. If the applicant is a corporation, a principal executive officer of at least the level of vice president;
2. If the applicant is a partnership or sole proprietorship, a general partner or the proprietor, respectively;

3. If the applicant is a municipality, or a State, Federal, or other public entity, either a principal executive officer or ranking elected official; or
4. If the applicant is an entity not covered at (d)1 through 3 above, all individual owners of record of the property upon which the activities will occur.

(e) An individual is a duly authorized representative of the applicant under (d) above only if the authorization is:

1. Made in writing by an individual required to certify under (d) above and is provided to the Department as part of the application; and
2. Specifies that the authorized representative is either:
 - i. The individual who has overall responsibility to operate, construct or complete the activity, such as a contractor, construction site supervisor, or other individual of equivalent responsibility; or
 - ii. A position of responsibility equivalent to that of the individual in (e)2i above. In this case, the individual holding the specified position is the duly authorized representative for purposes of (d) above.

(f) If the written authorization provided to the Department under (e) above is no longer accurate because a different individual or position has overall responsibility to operate, construct, or complete the activity, a new authorization satisfying the requirements of (e) above shall be submitted to the Department prior to or concurrent with any reports, information, or applications requiring the applicant's certification.

(g) If an application includes activities within a right-of-way or easement, the application shall include written consent for the activity from the holder(s) of the right-of-way or easement.

1. For a gas pipeline located within a municipally owned right-of-way, written consent shall consist of one of the following:

i. Written consent from the municipality in the form of a resolution of the governing body or an ordinance;

ii. A municipal designation of the route pursuant to N.J.S.A. 48:9-25.4; or

iii. A Board of Public Utilities designation of route pursuant to N.J.S.A. 48:9-25.4.

(h) Any site plan submitted as part of an application shall be signed and sealed by a New Jersey licensed professional engineer, surveyor, or architect, as appropriate, unless both (h)1 and 2 below apply, in which case the applicant may elect to prepare his or her own site plan:

1. The applicant proposes an activity in a man-made lagoon, or the applicant proposes the construction of a single-family home or duplex or an accessory development located landward of the mean high water line, such as a patio, garage, or shed on his or her own property for his or her own use; and
2. The proposed activity or construction is one for which no survey, topography, or calculations are necessary to demonstrate the requirements of this chapter are met.

(i) Any professional report, survey, calculation, environmental impact statement, or other document prepared by a consultant, engineer, architect, surveyor, attorney, scientist, or other

professional and submitted as part of an application shall be certified in accordance with (j) below. This certification is separate from the certification of the application by the applicant.

(j) The certification required by (d) and (i) above is as follows:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.”

(k) Failure to provide complete and accurate information of which the applicant or its agents are aware, or reasonably should have been aware, may result in denial of an application or termination of the authorization under the general permit-by-certification or general permit, or the individual permit under N.J.A.C. 7:7-27.8, and may subject the applicant or its agents to enforcement action under N.J.A.C. 7:7-29.

(l) When a proposed development or project requires more than one coastal permit under this subchapter, or requires, in addition, an approval under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and/or the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, an applicant may submit a single application for all of the approvals, except for an authorization under a general permit-by-certification, provided that the application meets all application requirements of each such approval included.

7:7-23.6 Additional requirements specific to an application for an individual permit

(a) In addition to meeting the requirements at N.J.A.C. 7:7-23.2 and 23.4, an application for an individual permit shall meet the requirements of this section.

(b) An application for an individual permit shall include an Environmental Impact Statement (EIS). The EIS shall:

1. Describe in a narrative form:
 - i. The proposed development or activity;
 - ii. The characteristics of the site and the surrounding region; and
 - iii. The location of all proposed regulated activities, potential impacts from the construction process, and, as applicable, the operation of the development after completion;
2. Discuss the applicability of this chapter to the proposed development, including a detailed statement of compliance with each rule applicable to the type of development proposed;
 - i. Where the applicant believes a rule otherwise applicable to the type of development proposed does not apply, the applicant shall explain the reasons why the rule does not apply to the applicant's development;

3. Demonstrate, for an application for a CAFRA individual permit, that the findings set forth in CAFRA at N.J.S.A. 13:19-10, and at N.J.A.C. 7:7-1.4, which must be addressed in order for the Department to issue the approval, can be made for the proposed development; and

4. As necessary based on project-specific and site-specific circumstances, provide support by relevant experts for the assessments, discussions, and statements made in the EIS; include the qualifications of the persons who prepared each part of the EIS; and provide references and citations to all information, reports, or treatises that are mentioned in the EIS but not contained in the EIS.

(c) An application for an individual permit for development in an area under the ~~jurisdiction of the Pinelands Commission~~ **Pinelands Area as designated under the Pinelands Protection Act at N.J.S.A. 13:18A-11.a**, shall also include a Certificate of Filing, ~~[a Notice of Filing,]~~ a Certificate of Completeness, or a resolution approving an application for public development, issued by the Pinelands Commission.

(d) If an activity for which an individual permit is sought requires mitigation in accordance with this chapter, the applicant may submit a mitigation proposal as part of the application for the individual permit. If the applicant does not submit a mitigation proposal with the application, the applicant shall submit the mitigation proposal at least 90 calendar days before the start of activities authorized by the permit, in accordance with N.J.A.C. 7:7-17.

(e) An application for an individual permit for the construction of wind turbines for which, in accordance with the energy facility use rule at N.J.A.C. 7:7-15.4, pre- and/or post-construction monitoring is required, shall include the proposed monitoring methodology.

(f) An application for an individual permit under the Waterfront Development Law or the Wetlands Act of 1970 that proposes the discharge of dredged or fill material into waters of the United States shall also constitute an application for a water quality certificate.

SUBCHAPTER 24. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

7:7-24.1 Purpose and scope

(a) An applicant shall provide public notice in accordance with this subchapter for the following:

1. An application for an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7-3 and 5;
2. An application for an authorization under a general permit pursuant to N.J.A.C. 7:7-3 and 6;
3. An application for an individual permit pursuant to N.J.A.C. 7:7-8;
4. A mitigation proposal pursuant to N.J.A.C. 7:7-17, which is not submitted as part of an application for an individual permit; and
5. An application for a major technical modification pursuant to N.J.A.C. 7:7-27.5(e).

(b) A person who requests a reconsideration of the application of any of the rules in this chapter under N.J.A.C. 7:7-19 shall provide public notice in accordance with N.J.A.C. 7:7-19.2(i)1ii.

(c) An applicant is not required to provide public notice for the following:

1. A request for an exemption letter pursuant to N.J.A.C. 7:7-2.2(f) and 2.4(f);
2. A request for an applicability determination pursuant to N.J.A.C. 7:7-2.5;
3. Conducting an activity under a permit-by-rule pursuant to N.J.A.C. 7:7-3 and 4;
4. An application for an emergency authorization pursuant to N.J.A.C. 7:7-21;
5. An application for an extension of the term of a permit pursuant to N.J.A.C. 7:7-27.3;
6. The transfer of a permit pursuant to N.J.A.C. 7:7-27.4; and
7. An application for an administrative or minor technical modification pursuant to N.J.A.C. 7:7-27.5(c) or (d), respectively.

(d) When a proposed development or project requires more than one coastal permit under this chapter, or requires, in addition, an approval under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and/or the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, an applicant may provide combined public notice for all applications submitted, provided the combined notice meets all of the notice requirements applicable to each application.

(e) Failure to provide public notice as required under this subchapter shall be cause for the Department to cancel an application under N.J.A.C. 7:7-26.7.

7:7-24.3 Contents and recipients of public notice of an application

(a) For any of the applications listed in N.J.A.C. 7:7-24.1(a), the applicant shall provide a copy of the entire application, as submitted to the Department, to the municipal clerk in each municipality in which the site is located.

(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 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. The construction official of each municipality in which the site is located;
2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the site is located;
3. The planning board of each municipality in which the site is located;
4. The planning board of each county in which the site is located;
5. The local Soil Conservation District if the project will disturb 5,000 square feet or more of land;
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) If the permit application is for a development listed at (c)1 through [4]5 below, the applicant shall provide the notice required at (b)6 above by publishing newspaper notice and, in addition, sending the notice at (d) below, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development, such as a pumping station, treatment plant, groin, bulkhead, revetment or gabion, or dune walkover:

1. A linear project of one-half mile or longer;
2. A shore protection development, including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or longer;
3. A public development on a site of 50 acres or more; ~~[or]~~
4. An industrial or commercial development on a site of 100 acres or more~~[-];~~or
- 5. Maintenance dredging of a State navigation channel of one-half mile or longer.**

(d) The public notice required at (b) and (c) above, other than newspaper notice, shall:

1. Include all of the following:
 - i. A brief description of the proposed project;
 - ii. A site plan, showing the location and boundaries of the project site and depicting the proposed development in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the project in relation to the property boundary is clearly shown; and
 - iii. A copy of the form notice letter, available from the Department's website as set forth at N.J.A.C. 7:7-1.6. The form notice letter explains that: an application will be submitted to the Department for the specific development depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; and comments or information on the proposed development and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6 within 15 calendar days of receipt of the letter; and
2. Be sent by certified mail or by delivery whereby the signature of the person to whom the notice is delivered is obtained, except that an applicant may obtain written permission from the specific municipal or county entity to submit notice to it electronically.

(e) An applicant for an authorization under a general permit, individual permit, or major technical modification for a project in the Pinelands ~~[Preservation] Area[-]~~ **as designated under the Pinelands Protection [Area, or the Pinelands National Reserve] Act at N.J.S.A. 13:18A-11(a),** shall provide a copy of the entire application, as submitted to the Department, to the New Jersey Pinelands Commission.

(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:

1. Garden State Seafood Association;
2. National Fisheries Institute;
3. North Atlantic Clam Association;
4. Rutgers Cooperative Extension;
5. New Jersey Shellfisheries Council; and
6. New Jersey Marine Fisheries Council.

7:7-24.4 Additional requirements for public notice of an application for a CAFRA individual permit

(a) An applicant for a CAFRA individual permit shall publish newspaper notice, pursuant to N.J.A.C. 7:7-24.5, of the application in the time frame set forth at N.J.A.C. 7:7-24.2(b).

(b) An applicant for a CAFRA individual permit shall provide notice of the public comment period on the application when the Department schedules the public comment period in accordance with N.J.A.C. 7:7-26.4. The notice shall include the information listed in (d)1 below and shall be sent to all of the following:

1. The municipal clerk in each municipality in which the project is located;
2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the project is located;
3. The planning board of each municipality in which the project is located; and
4. 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-12.b, 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 (d) 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.

(c) An applicant for a CAFRA individual permit for a development listed at (c)1 through [4]5 below shall provide the notice required at (b)4 above by publishing newspaper notice and, in addition, sending the notice described at (d) below, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development, such as a pumping station, treatment plant, groin, bulkhead, revetment or gabion, or dune walkover:

1. A linear project of one-half mile or longer;

2. A shore protection development, including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or longer;
3. A public development on a site of 50 acres or more; ~~or~~
4. An industrial or commercial development on a site of 100 acres or more~~[-];~~or
- 5. Maintenance dredging of a State navigation channel of one-half mile or longer.**

(d) The public notice required at (b) and (c) above, other than newspaper notice, shall include all of the following:

1. A brief description of the proposed project;
2. The DEP file number;
3. A site plan, showing the location and boundaries of the project site and depicting the proposed development in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the project in relation to the property boundary is clearly shown; and
4. A copy of the form notice letter, available from the Department's website as set forth at N.J.A.C. 7:7-1.6. The form notice letter explains that: an application will be submitted to the Department for the specific development depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; and comments or information on the proposed development and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6 within 15 calendar days of receipt of the letter.

(e) An applicant for a CAFRA individual permit shall provide notice of the public hearing on the application when the Department determines, in accordance with N.J.A.C. 7:7-26.5, that a public hearing is necessary. The notice shall be provided in the same manner as the notice of a public comment period under (b) through (d) above, and shall include the date, place, and time of the hearing as set by the Department pursuant to N.J.A.C. 7:7-26.5(b).

SUBCHAPTER 26. APPLICATION REVIEW

7:7-26.5 CAFRA individual permit application – public hearing

(a) The Department shall hold a fact-finding public hearing on a CAFRA individual permit application if the Department determines that, based on public comment received in response to the newspaper notice that the applicant must provide pursuant to N.J.A.C. 7:7-24.4(a) and/or a review of the project's 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 public hearing.

(b) The Department shall set the date, place, and time of a public hearing within 15 calendar days after the date that the Department declares a CAFRA individual permit application is complete for public hearing under N.J.A.C. 7:7-26.3(b) or (c), and shall so notify the applicant.

1. The date of the public hearing shall be no more than 60 calendar days after the application is declared complete for public hearing.
2. The public hearing shall be held in the municipality in which the development is proposed, if possible.

3. The Department shall accept written comments for 15 calendar days after the public hearing.

4. The Department shall publish notice of the public hearing in the DEP bulletin.

5. The applicant shall give notice of the public hearing as required by N.J.A.C. 7:7-24.4(e).

6. The applicant shall provide a court reporter and bear all costs of the public hearing, including, but not limited to, court reporter fees, transcript costs, and hearing room rental, and shall provide the Department with an electronic copy of the transcript.

7. The presiding official at the public hearing shall have broad discretion to place reasonable limits on oral and written presentations to allow every person the opportunity to speak and ~~[insure]~~ensure the maintenance of an orderly forum. At the conclusion of the statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.

(c) Within 15 calendar days after a public hearing is held on a CAFRA individual permit application, the Department shall take one of the following actions:

1. Determine the application is complete for review and issue notification to the applicant in writing that the application is complete for review, effective as of the date the public hearing was held; or

2. Determine the application is not complete for review because, based on issues raised during the public hearing and/or comment period, additional information is required and issue notification to the applicant in writing that the application is not complete for review and that additional information is required. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall determine the application complete for review, effective as of the date that the Department received the additional information.

(d) An applicant shall submit all additional information requested under (c)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7-26.7, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.

(e) Once an application for a CAFRA individual permit for which a public hearing was held is complete for review, the Department shall make a decision to approve or deny the application by the applicable deadline established under N.J.A.C. 7:7-26.6.

SUBCHAPTER 27. PERMIT CONDITIONS; MODIFICATION, TRANSFER, SUSPENSION, AND TERMINATION OF AUTHORIZATIONS AND PERMITS

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) A permittee may request one five-year extension of an authorization under a general permit the duration of which is governed by N.J.A.C. 7:7-3.7, or one five-year extension of an

individual permit for activities waterward of the mean high water line the duration of which is governed by N.J.A.C. 7:7-8.2(a).

(b) The Department shall issue an extension only if:

1. The permittee submits a request for extension that meets the requirements of (c) below and that is received by the Department prior to the expiration of the authorization or individual permit. The Department shall not accept a request for extension received more than one year prior to the expiration of an authorization or individual permit;

2. The permittee demonstrates that there has been no significant change in the overall condition of the site, including special areas;

3. The permittee demonstrates that regulated activities approved under any authorization or individual permit for which an extension is sought have not been revised or 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.

(c) A request for an extension of an authorization under a general permit or of an individual permit shall include:

1. A completed application form as 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;

2. The appropriate application fee as set forth at N.J.A.C. 7:7-25; and

3. A narrative demonstrating that the requirements of (b) above are met.

(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 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. Determine the request meets the requirements of this section and issue an extension in accordance with (g) below; or

2. Determine the request meets the criteria for denial at (e) below and deny the extension request.

(e) The Department shall deny a request for an extension for any of the following reasons:

1. The authorization or individual permit for which the extension is sought is not one specified in (a) above;

2. The Department receives the request more than one year prior to the expiration date of the authorization or individual permit for which the extension is sought;

3. The Department receives the request after the expiration date of the authorization or individual permit for which the extension is sought;

4. The term of the authorization or individual permit for which the extension is sought has been extended before;

5. The applicant does not demonstrate that all of the requirements at (b) above are met;

6. The request does not include all of the information required to be submitted under (c) above; or

7. The authorization or individual permit for which the extension is sought has been terminated in accordance with N.J.A.C. 7:7-27.8.

(f) If the Department denies a request for an extension under (e) above:

1. The authorization or individual permit shall expire on its original expiration date or on the date of receipt of the denial by the permittee, whichever is later, unless already terminated in accordance with N.J.A.C. 7:7-27.8; and

2. All regulated activities authorized under the authorization or individual permit shall cease on the expiration date of the authorization or individual permit specified in (f)1 above, and shall not commence again unless and until a new permit is obtained in accordance with N.J.A.C. 7:7-23.

(g) If the Department determines that the requirements of this section have been met, the Department shall issue an extension of the authorization or individual permit for one five-year period, beginning on the original expiration date of the authorization or individual permit. The extension shall be in writing, and shall include any conditions the Department determines are necessary to ensure the requirements of this chapter are met.

APPENDIX D
COASTAL WETLANDS MAPS
(Incorporated by reference at N.J.A.C. 7:7-2.3(c))

1. Middlesex County

574-2082	588-2106	602-2070
574-2088	588-2112	602-2076
581-2082	588-2118	602-2082
581-2088	595-2070	602-2088
581-2100	595-2076	602-2094
581-2106	595-2082	602-2100
581-2112	595-2088	602-2106
581-2118	595-2094	609-2094
588-2076	595-2106	609-2100
588-2082	602-2064	609-2106

2. Monmouth County

455-2160	539-2184	574-2160
455-2166	539-2190	574-2166

462-2160	546-2154	574-2172
462-2166	546-2160	574-2178
462-2172	546-2172	574-2184
462-2154	546-2178	574-2190
469-2160	546-2184	581-2112
469-2172	546-2190	581-2118
469-2178	553-2160	581-2124
476-2166	553-2166	581-2130
476-2172	553-2172	581-2136
476-2178	553-2178	581-2142
483-2172	553-2184	581-2148
490-2166	553-2190	581-2154
490-2172	560-2166	581-2160
490-2178	560-2172	581-2166
497-2166	560-2178	581-2184
497-2172	560-2184	588-2118
518-2184	560-2190	588-2124
532-2178	567-2172	588-2130
539-2154	567-2178	588-2136
539-2160	567-2184	588-2142
539-2166	567-2190	588-2184
539-2172	574-2118	595-2178
539-2178	574-2124	595-2184

3. Ocean County

245-2088	294-2130	378-2142
245-2094	294-2136	378-2148
245-2100	301-2112	378-2160
245-2106	301-2118	385-2142
252-2076	301-2124	385-2148
252-2088	301-2130	385-2160
252-2094	301-2136	392-2136
252-2100	301-2142	392-2142
252-2106	308-2118	392-2148
252-2112	308-2124	392-2154
259-2070	308-2130	392-2160
259-2076	308-2136	399-2124
259-2082	308-2142	399-2130
259-2088	315-2124	399-2136
259-2094	315-2130	399-2142
259-2100	315-2136	399-2148
259-2106	315-2142	399-2154
259-2112	315-2148	399-2160

259-2118	322-2124	406-2118
266-2070	322-2130	406-2124
266-2076	322-2136	406-2130
266-2082	322-2142	406-2148
266-2088	322-2148	406-2154
266-2094	329-2124	406-2160
266-2100	329-2130	413-2118
266-2106	329-2136	413-2148
266-2112	329-2142	413-2154
266-2118	329-2148	413-2160
273-2076	329-2154	420-2142
273-2088	336-2124	420-2148
273-2094	336-2130	420-2154
273-2100	336-2142	420-2160
273-2112	336-2148	420-2166
273-2118	336-2154	427-2142
273-2124	343-2130	427-2148
280-2088	343-2148	427-2154
280-2094	343-2154	427-2160
280-2100	343-2160	434-2148
280-2106	350-2130	434-2154
280-2112	350-2136	434-2160
280-2118	350-2148	434-2166
287-2094	350-2154	441-2148
287-2100	357-2124	441-2154
287-2106	357-2130	441-2160
280-2124	357-2136	441-2166
280-2130	357-2142	441-2172
287-2094	357-2154	448-2142
287-2100	357-2160	448-2148
287-2106	359-2160	448-2154
287-2112	364-2130	448-2160
287-2124	364-2136	448-2166
287-2130	364-2142	448-2172
294-2100	364-2160	455-2154
294-2106	371-2136	462-2166
294-2112	371-2142	462-2154
294-2118	371-2148	462-2172
294-2124	371-2160	469-2154

4. Burlington County

252-2064	273-2076	420-1944
259-2046	280-2004	427-1926

259-2052	280-2010	427-1932
259-2058	280-2016	427-1938
259-2064	280-2022	434-1908
259-2070	280-2028	434-1914
266-2034	280-2040	434-1920
266-2040	280-2046	434-1926
266-2046	280-2052	434-1932
266-2052	280-2058	448-1944
266-2058	287-2004	448-1950
266-2064	287-2010	448-1956
266-2070	287-2016	462-1968
273-2022	287-2040	469-1974
273-2028	287-2046	476-1980
273-2034	294-2040	476-1986
273-2040	413-1896	483-1986
273-2046	413-1902	483-1992
273-2052	420-1890	490-1986
273-2058	420-1896	490-1992
273-2064	420-1932	
273-2070	420-1938	

5. Atlantic County

161-1980	189-2052	224-2088
161-1992	189-2058	224-2094
161-1986	196-1974	231-2058
161-2004	196-1980	231-2064
168-1956	196-1986	231-2070
168-1962	196-2034	231-2076
168-1968	196-2040	231-2082
168-1974	196-2046	231-2088
168-1980	196-2052	231-2094
168-1986	196-2058	231-2100
168-1992	196-2064	238-2058
168-1998	196-2070	238-2064
168-2004	203-1980	238-2070
168-2010	203-1986	238-2076
168-2016	203-2040	238-2082
168-2022	203-2046	238-2088
168-2028	203-2052	238-2094
168-2034	203-2058	245-2046
175-1974	203-2064	245-2052
175-1980	203-2070	245-2058
175-1986	203-2076	245-2064

175-1992	210-1974	245-2070
175-1998	210-1980	252-2046
175-2004	210-1986	252-2040
175-2010	210-2040	252-2052
175-2016	210-2046	252-2058
175-2022	210-2052	252-2064
175-2028	210-2058	252-2070
175-2034	210-2064	259-2034
175-2040	210-2070	259-2040
182-1980	210-2076	259-2046
182-1986	210-2082	259-2052
182-1992	210-2088	259-2058
182-1998	217-1974	259-2064
182-2004	217-1980	259-2070
182-2010	217-1986	266-2022
182-2016	217-2040	266-2028
182-2022	217-2046	266-2034
182-2028	217-2052	266-2040
182-2034	217-2058	273-2016
182-2040	217-2064	273-2026
182-2046	217-2070	273-2022
182-2052	217-2076	273-2028
189-1974	217-2082	273-2034
189-1980	217-2088	280-2004
189-1986	217-2094	280-2010
189-1992	224-1980	280-2016
189-1998	224-2052	280-2022
189-2022	224-2058	287-1998
189-2028	224-2064	287-2004
189-2034	224-2070	287-2010
189-2040	224-2076	287-2040
189-2046	224-2082	

6. Cape May County

035-1914	091-1974	126-1956
035-1920	091-1980	126-1980
035-1926	098-1932	126-1986
035-1932	098-1938	126-1992
035-1938	098-1944	126-1998
042-1914	098-1950	133-1926
042-1920	098-1962	133-1932
042-1926	098-1968	133-1986
042-1932	098-1974	133-1992

042-1938	098-1980	133-1998
042-1944	098-1986	133-2004
049-1914	105-1932	140-1926
049-1926	105-1938	140-1932
049-1932	105-1944	140-1974
049-1938	105-1968	140-1980
049-1944	105-1974	140-1992
049-1950	105-1980	140-1998
056-1914	105-1986	140-2004
056-1920	112-1932	140-2010
056-1932	112-1938	147-1980
056-1938	112-1944	147-1986
056-1944	112-1950	147-1992
056-1950	112-1956	147-1998
056-1956	112-1968	147-2004
063-1938	112-1974	147-2010
063-1944	112-1980	154-1980
063-1950	112-1986	154-1986
063-1956	112-1992	154-1992
063-1962	119-1926	154-1998
070-1920	119-1932	154-2004
070-1926	119-1938	154-2010
070-1944	119-1944	154-2016
070-1950	119-1950	161-1962
070-1956	119-1874	161-1968
060-1962	119-1980	161-1974
070-1968	119-1986	161-1980
077-1920	119-1992	161-1986
077-1926	126-1926	168-1992
077-1932	126-1932	161-1992
077-1950	126-1938	161-1998
077-1956	126-1944	161-2004
077-1962	126-1950	161-2010
077-1968	126-1956	161-2016
084-1926	126-1980	161-2022
084-1932	126-1986	168-1956
084-1938	126-1992	168-1962
084-1950	126-1998	168-1968
084-1956	133-1926	168-1974
091-1944	133-1932	168-1980
091-1956	133-1986	168-1986
091-1962	126-1944	
091-1968	126-1950	

7. Cumberland County

119-1926	154-1896	182-1914
126-1860	154-1902	189-1794
126-1866	154-1908	189-1800
126-1896	161-1818	189-1806
126-1902	161-1824	189-1812
126-1908	161-1830	189-1818
126-1914	161-1836	189-1824
126-1920	161-1842	189-1830
126-1926	161-1848	189-1890
133-1854	161-1854	189-1902
133-1860	161-1860	196-1782
133-1866	161-1866	196-1788
133-1872	161-1872	196-1794
133-1878	161-1878	196-1800
133-1884	161-1884	196-1806
133-1890	161-1896	196-1812
133-1896	161-1902	196-1818
133-1902	161-1908	196-1824
133-1908	161-1914	196-1830
133-1914	168-1812	196-1836
133-1920	168-1818	196-1842
133-1926	168-1824	196-1890
140-1854	168-1830	196-1896
140-1860	168-1836	203-1782
140-1866	168-1842	203-1788
140-1872	168-1848	203-1794
140-1878	168-1854	203-1800
140-1884	168-1902	203-1806
140-1890	168-1908	203-1812
140-1896	168-1914	203-1818
140-1902	175-1812	203-1824
140-1908	175-1818	203-1836
140-1914	175-1824	203-1842
140-1926	175-1830	203-1890
147-1848	175-1836	210-1782
147-1854	175-1842	210-1788
147-1860	175-1848	210-1794
147-1866	175-1896	210-1800
147-1872	175-1902	210-1836
147-1878	175-1908	217-1782
147-1884	175-1914	217-1788
147-1890	182-1800	217-1794

147-1896	182-1806	217-1836
147-1902	182-1812	224-1788
147-1908	182-1818	224-1794
154-1836	182-1824	224-1800
154-1842	182-1830	
154-1884	182-1908	

8. Salem County

196-1782	252-1764	287-1770
196-1788	252-1770	287-1776
203-1776	252-1776	287-1782
203-1782	252-1782	287-1788
203-1788	252-1788	294-1746
210-1776	259-1752	294-1752
210-1782	259-1758	294-1764
210-1788	259-1764	294-1770
217-1764	259-1770	294-1776
217-1770	259-1776	294-1782
217-1776	259-1782	294-1788
217-1782	259-1788	294-1794
217-1788	259-1794	301-1764
224-1752	259-1800	301-1770
224-1758	266-1758	301-1776
224-1764	266-1764	301-1782
224-1770	266-1770	301-1788
224-1776	266-1776	301-1794
224-1782	266-1782	308-1770
224-1788	266-1788	308-1776
224-1794	266-1794	308-1782
224-1800	266-1800	315-1764
231-1752	273-1746	315-1770
231-1758	273-1752	315-1776
231-1764	273-1758	315-1800
231-1770	273-1764	315-1806
231-1776	273-1770	322-1770
231-1782	273-1776	322-1788
231-1788	273-1782	322-1794
238-1752	273-1788	322-1800
238-1758	273-1794	329-1770
238-1764	280-1746	329-1776
238-1770	280-1752	329-1782
238-1776	280-1758	329-1788
238-1782	280-1764	329-1794

245-1752	280-1770	329-1800
245-1758	280-1776	336-1770
245-1764	280-1782	336-1776
245-1770	280-1788	336-1788
245-1776	280-1794	336-1794
245-1782	287-1746	343-1782
245-1752	287-1752	343-1788
252-1758	287-1764	343-1794

9. Gloucester County

315-1800	343-1854	357-1848
315-1806	343-1860	357-1854
322-1794	350-1794	357-1878
322-1800	350-1800	364-1806
329-1794	350-1806	364-1812
329-1800	350-1812	364-1818
329-1806	350-1818	364-1824
329-1818	350-1824	364-1830
329-1824	350-1830	364-1836
336-1788	350-1842	364-1842
336-1794	350-1848	364-1848
336-1800	350-1854	364-1854
336-1806	350-1860	364-1860
336-1812	350-1878	364-1872
336-1818	357-1794	364-1878
336-1860	357-1800	371-1848
343-1782	357-1806	371-1854
343-1788	357-1812	371-1860
343-1794	357-1818	371-1872
343-1800	357-1824	371-1878
343-1806	357-1830	378-1866
343-1824	357-1836	
343-1848	357-1842	

10. Camden County

364-1878	378-1866	413-1902
371-1872	378-1872	420-1890
371-1878	413-1896	420-1896

11. Mercer County

476-1980	483-1986	490-1980
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476-1986
483-1980

483-1992
490-1974

490-1986