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ENVIRONMENTAL PROTECTION

LAND USE MANAGEMENT

Coastal Zone Management Rules, 7:7

Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A

Flood Hazard Area Control Act Rules, N.J.A.C. 7:13

Notice of Administrative Corrections

Take notice that the Department of Environmental Protection (Department) is making administrative corrections to its Coastal Zone Management Rules, N.J.A.C. 7:7, Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, and Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, to correct cross-references and citations, correct typographical errors, and update names of Department and State agencies to reflect current organization.

The Department previously adopted comprehensive amendments to the Flood Hazard Area Control Act Rules in 2016 (see 48 N.J.R. 1067(a)), with additional amendments in 2017 (see 49 N.J.R. 2246(a)). The Department additionally adopted comprehensive amendments to the Freshwater Wetlands Protection Act Rules in 2017 (see 49 N.J.R. 3849(a)). Through this notice, the Department is correcting cross-references and citations within each chapter to reflect changes in codification resulting from the recent rulemakings referenced above, deleting incorrect references, and correcting typographical and grammatical errors. In addition, N.J.A.C. 7:13- 22.7(c)4ii incorrectly identifies N.J.A.C. 7:13-28 as the subchapter containing the procedures to request an adjudicatory hearing on a permit suspension. This citation is corrected to refer to N.J.A.C. 7:13-23, which contains the provisions for requesting an adjudicatory hearing.

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In the 2017 amendments to the Freshwater Wetlands Protection Act Rules, the Department sought to remove all references to the definitions section (previously N.J.A.C. 7:7A-1.4, now N.J.A.C. 7:7A-1.3) as unnecessary. Through this notice, the Department is removing remaining references to the prior definitions section that were inadvertently left in the rules.

The 2016 amendments to the Flood Hazard Area Control Act Rules deleted requirements for the Department to issue an individual permit to line or pipe a channel because, as stated in the proposal at 47 N.J.R. 1041(a) "lining or piping a stream can result in serious adverse environmental impacts that should be considered only in emergent situations and under a request for hardship exception." A reference to these standards was erroneously retained at N.J.A.C. 7:13-11.2(i)2 and updated to cite to N.J.A.C. 7:13-12.14(c)4, which does not exist. Through this notice, this reference and citation are deleted.

The Department is also updating the reference to the "Hackensack Meadowlands District Commission" in the Freshwater Wetlands Protection Act Rules to the "New Jersey Sports and Exposition Authority" to reflect the agency currently possessing jurisdiction over activities in the Meadowlands District and is updating the reference to the "Dam Safety Section in the Division of Engineering and Construction" to the "Bureau of Dam Safety" to reflect current Department organization. Finally, the Department is amending the Coastal Zone Management Rules at N.J.A.C. 7:7-13.16(h) and the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-10.2(b)12i to update cross-references in both chapters to the State Planning rules, which were recodified from N.J.A.C. 17:32 to N.J.A.C. 5:85 in 2003 (see 35 N.J.R. 304(a), 35 N.J.R. 1990(a), 35 N.J.R. 3819(a)).

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Full text of the changed rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 7

COASTAL ZONE MANAGEMENT RULES

SUBCHAPTER 13. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; non-mainland coastal centers

(a) – (g) (No change.)

(h) For purposes of this section, a State Planning Commission formally approved new or changed boundary is one that the State Planning Commission has amended in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning rules, [N.J.A.C. 17:32]**N.J.A.C. 5:85**.

(i) – (j) (No change.)

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION ACT RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:7A-1.3 Definitions

. . .

Delegable waters" means all waters of the United States, as defined in this section, within New Jersey, except waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement, as a means to transport interstate or foreign

commerce, shoreward to their ordinary high water mark. This term includes all waters which are subject to the ebb and flow of the tide, shoreward to their mean high water mark, including wetlands that are partially or entirely located within 1000 feet of their ordinary high water mark or mean high tide. Waters that are not delegable waters include, but are not limited to:

1. (No change.)

2. Waters of the United States under the jurisdiction of the [Hackensack Meadowlands Development Commission] **New Jersey Sports and Exposition Authority (formerly the New Jersey Meadowlands Commission)**; and

3. Greenwood Lake.

. . .

SUBCHAPTER 4. LETTERS OF INTERPRETATION

7:7A-4.2 General provisions

(a) – (g) (No change.)

(h) Except for a presence/absence LOI for an entire site under N.J.A.C. 7:7A-4.3(c)1, all LOI applicants shall provide the Department with a survey in accordance with N.J.A.C. 7:7A-[16.3(e)]**16.3(a)4**. If the Department requires adjustments to the delineated wetlands and/or State open waters boundary after the survey is submitted, the applicant shall resurvey the delineated boundary after the adjustments are made and the Department has approved the boundary. The issued LOI will reference the approved and surveyed boundary line.

SUBCHAPTER 7. GENERAL PERMITS

7:7A-7.17 General permit 17–Trails and boardwalks

(a) – (e) (No change.)

(f) An application for authorization under general permit 17 for a project on publicly owned land does not require an application fee under N.J.A.C. 7:7A-[11]**18**.

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7:7A-7.18 General permit 18– Dam repair

(a) – (c) (No change.)

(d) Activities under general permit 18 shall meet all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 and are subject to the following limits:

1. All activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's [Dam Safety Section in the Division of Engineering and Construction] **Bureau of Dam Safety**;

2. – 6. (No change.)

(e) (No change.)

7:7A-7.23. General permit 23–Spring developments

(a) (No change.)

(b) Activities under general permit [24]**23** shall disturb no more than one quarter acre of freshwater wetlands and/or State open waters. Activities under general permit [24]**23** shall not drain, or remove from jurisdiction, any additional or adjacent wetlands other than the one-quarter acre directly impacted by the general permit activities.

(c) (No change.)

7:7A-7.25 General permit 25— Minor channel or stream cleaning for local government agencies

(a) General permit 25 authorizes a county, municipality, or a designated agency thereof to conduct activities in freshwater wetlands and transition areas within their jurisdiction, necessary to desnag a channel or stream and/or remove accumulated sediment, debris, and garbage, which are obstructing flow in a channel or stream, provided all applicable requirements at N.J.A.C. 7:7A-5.7 and 20.3 are met and:

1. – 5. (No change.)

6. If the project involves sediment removal from a channel with a natural bed, the following requirements are satisfied:

i. – iv. (No change.)

v. The stream is not located in an area that has a threatened or endangered species[, as defined at N.J.A.C. 7:7A-1.4,] associated with its wetlands

(b) – (f) (No change.)

SUBCHAPTER 8. TRANSITION AREA WAIVERS

7:7A-8.1 General provisions for transition area waivers

(a) (No change.)

(b) If necessary, the Department shall include in a transition area waiver additional conditions to ensure that an activity does not result in a substantial impact on the adjacent wetlands, and does not impair the purposes and functions of transition areas as set forth in N.J.A.C. 7:7A-3.3. Such conditions may include, but are not limited to, the following:

1.-2. (No change.)

3. The modified transition area shall be permanently marked, in a manner determined appropriate by the Department, so as to clearly delineate its boundary and to prevent people from disturbing the transition area and/or wetland. Examples of appropriate markers include permanent fencing, concrete monuments, and boulders.

i. In determining the appropriate type of marker, the Department will consider such factors as the type of project proposed, wildlife that may be present, and the likelihood for people to disturb the transition area and/or wetland. For example, it may be necessary to mark the boundary of a modified transition area associated with a single-family home or duplex with permanent fencing because in many of these situations the modified transition area is directly adjacent to back yards and, therefore, the likelihood of homeowners disturbing the transition

area is great. However, it may be appropriate to identify a modified transition area associated with a commercial or industrial development with concrete monuments because the likelihood of people disturbing the modified transition **area** is usually less around these types of developments;

ii. (No change.)

4. (No change.)

(c)- (i) (No change.)

7:7A-8.4 Hardship transition area waiver

(a) (No change.)

(b) The Department shall presume that a hardship under (a) above exists and shall issue a hardship transition area waiver that reduces the transition area in an amount determined under (c) below, provided the applicant demonstrates that all of the following criteria are met:

1.-8. (No change.)

9. The form letter offer of sale under (b)7 and 8 above shall be sent by certified mail and shall:

i.-ii. (No change.)

iii. Include a full disclosure that the property is contained within a wetland transition [areas]**area** that restricts its use.

SUBCHAPTER 10. REQUIREMENTS FOR ALL INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS

7:7A-10.2 Standard requirements for all individual permits

(a) (No change.)

(b) The Department shall issue an individual freshwater wetlands or open water fill permit only if the regulated activity:

1. – 2. (No change.)

3. Will not destroy, jeopardize or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of a local population of a threatened or endangered species[, as defined at N.J.A.C. 7:7A-1.4];

4. – 11. (No change.)12. Is in the public interest, as determined by the Department in consideration of the following:

i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development. In determining whether a proposed activity is in the public interest, the Department shall consider, as one source of guidance, the goals, strategies, policy objectives and policies of the New Jersey State Development and Redevelopment Plan, adopted and/or readopted by the State Planning Commission pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning Act rules, [N.J.A.C. 17:32]**N.J.A.C. 5:85**;

ii. – vii. (No change.)

13. – 15. (No change.)

(c) The following shall apply to the Department's consideration of whether an alternative is practicable under (b)1 above:

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes;

i. In considering cost in accordance with (c)1 above, the Department shall consider the acquisition history of the property as a whole[, as defined at N.J.A.C. 7:7A-1.4,] and the amount, nature, and date of investments that the applicant has made in the property as a whole; and

2. (No change.)

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7:7A-10.4 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters

(a) If an applicant proposes a [non water-dependent] **non-water dependent** activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:

1.-2. (No change.)

CHAPTER 13

FLOOD HAZARD AREA CONTROL ACT RULES

SUBCHAPTER 11. AREA-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

7:13-11.2 Requirements for an activity in a riparian zone

(a) – (h) (No change.)

(i) The Department shall issue an individual permit for the restoration to a stable condition of a bank or channel that has become eroded, unstable, ecologically degraded, and/or enclosed within a structure, which results in clearing, cutting, and/or removal of riparian zone vegetation, only if:

1. (No change.)

2. For a project to stabilize a bank and/or channel using revetments, retaining walls, or other armoring in accordance with N.J.A.C. 7:13-12.14(c)3, [or for a project to line or pipe a channel in accordance with N.J.A.C. 7:13-12.14(c)4,] the total area of vegetation cleared, cut, and/or removed within the riparian zone does not exceed the limits set forth in Table 11.2 above, unless the applicant demonstrates that the bank or channel cannot feasibly be stabilized without exceeding these limits. In such a case, the applicant shall provide mitigation, in accordance with N.J.A.C. 7:13-13, for the area of vegetation that is cleared, cut, and/or removed in excess of the limits set forth in Table 11.2; and

3. (No change.)

(j) – (z) (No change.)

7:7A-11.17 Financial assurance for mitigation projects; general provisions

(a) – (c) (No change.)

(d) Financial assurance shall comprise [of] one or more of the instruments identified at (d)1 through 5 below. A template for each of the types of financial assurance identified at (d)1 through 4 is available from the Department at the address set forth at N.J.A.C. 7:7A-1.4.

1. – 5. (No change.)

(e) – (l) (No change.)

SUBCHAPTER 12. ACTIVITY-SPECIFIC REQUIREMENTS FOR INDIVIDUAL PERMITS

7:13-12.1 Requirements that apply to all regulated activities

(a) – (f) (No change.)

(g) The Department shall consider a regulated activity to adversely impact a property not owned by an applicant if the activity meets one or more of the following. For the purpose of determining compliance with (g)4 and 5 below, calculations shall be rounded to the nearest 0.1 feet:

1.-3. (No change.)

4. The applicant proposes to undertake one or more of the following regulated activities:

i. The construction of a new bridge or culvert, which does not meet the offsite flood requirements of N.J.A.C. 7:13-12.7[(e)]**(d)1**;

ii. The reconstruction of an existing bridge or culvert, which does not meet the offsite flood requirements of N.J.A.C. 7:13-12.7[(f)]**(e)1**; or

iii. (No change.)

5. (No change.)

(h) – (i) (No change.)

SUBCHAPTER 19. REQUIREMENTS FOR AN APPLICANT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION

7:13-19.1 Purpose and scope

(a) - An applicant shall provide public notice in accordance with this subchapter for the following:

1. – 5. (No change.)

6. An application for a major technical modification pursuant to N.J.A.C. 7:13-22.5[(d)3]**(e)**.

(b) – (d) (No change.)

7:13-22.7 Suspension of a verification, an authorization under a general permit, an individual permit, or an emergency authorization

(a) - (b) (No change.)

(c) A notice of suspension shall:

1. – 3. (NO change.)

4. Notify the permittee or person to whom the verification was issued of the right to, within 10 calendar days after the permittee or person to whom the verification was issued receives the notice, request:

i. (No change.)

ii. An adjudicatory hearing in accordance with N.J.A.C. [7:13-28]**7:13-23**.

(d) – (f) (No change.)

SUBCHAPTER 21. APPLICATION REVIEW

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7:13-21.4 Department review and decision on an application for an authorization under general permit 1 for channel cleaning under the Stream Cleaning Act

(a) Within 15 calendar days after receiving an administratively and technically complete application for authorization under a general permit 1 for activities that do not include the removal of sediment, or within 60 calendar days after receiving an administratively and technically **complete** application for activities that include the removal of sediment, where day one of the 15- or 60-calendar-day period is the date the application is received, the Department shall take one of the following actions:

1.- 2. (No change.)

(b) – (c) (No change.)