

Environmental Protection  
Land Use Management  
Environmental Regulation  
Division of Land Use Regulation

Coastal Permit Program Rules  
Readoption with Amendments: N.J.A.C. 7:7

Proposed: November 7, 2005 at 37 N.J.R. 4108(a)  
Adopted: , 2006 by Lisa P. Jackson,  
Commissioner, Department of Environmental Protection  
Filed: March , 2006 as R , **with substantive and technical changes**  
not requiring additional public notice and comment (see N.J.A.C. 1:30-  
6.3) **and with portions of the proposal not adopted.**  
Authority: N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq.,  
13:9A-1 et seq., 13:19-1 et seq.

DEP Docket Number: 35-05-09/531

Effective Date: , 2006

Expiration Date: , 2011

The Department of Environmental Protection is readopting the Coastal Permit Program Rules, N.J.A.C. 7:7, with amendments. The Coastal Permit Program Rules establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Waterfront Development Law (N.J.S.A. 12:5-3 et seq.), and the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). Adopted amendments include amendments related to jurisdiction, definitions, and application procedures. In addition, the Department is adopting new general permits as well as amendments to existing general permits. For the reasons indicated in response to comments 26 through 42 below, the Department is not adopting a proposed amendment to create a general permit for three or fewer dwelling units.

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

The Department held two public hearings to provide interested parties the opportunity to present

comments on the proposal. The first hearing was held on Wednesday, December 14, 2005 at the Long Branch City Municipal Building in the Council Chambers located at 344 Broadway in Long Branch, New Jersey. The second hearing was held on Thursday, December 15, 2005 at The Richard Stockton College of New Jersey in the Townsend Residential Life Center located at Jim Leeds Road in Pomona, New Jersey. Patricia A. Cluelow, Rule Manager, Department of Environmental Protection, served as the Hearing Officer at both public hearings. After reviewing the comments presented at the hearings and the written comments received by the Department, the Hearing Officer recommended that the proposed readoption with amendments be adopted with the changes described below in the Summary of Public Comments and Agency Responses. The Department accepts the Hearing Officer's recommendations.

The public hearing records are available for inspection in accordance with the applicable law by contacting:

New Jersey Department of Environmental Protection /Office of Legal Affairs  
Attn: DEP Docket Number 35-05-09/531  
401 East State Street  
P.O. Box 402  
Trenton, NJ 08625-0402

This readoption with amendments document is available from the Department's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse).

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

The following individuals submitted written comments and/or made oral comments at the public hearings:

1. J. Sydney Abascal
2. David G. Abascal

3. Fred Akers, Great Egg Harbor Watershed Association
4. Sandy Batty, Association of New Jersey Environmental Commissions (ANJEC)
5. Marcia Blackwell
6. Thomas Blackwell
7. Tracy Carluccio, Delaware Riverkeeper Network
8. Clifford Day, U.S. Fish and Wildlife Service
9. Junetta N. Dix, Junetta N. Dix Consulting, Inc.
10. Abigail Fair, Association of New Jersey Environmental Commissions (ANJEC)
11. Carla Fiducia
12. N. Fiducia
13. Leann Foster-Sitar, American Littoral Society
14. Ted Friedli, Excel Travel, Inc.
15. Brian Hegerty, Shark River Cleanup Coalition
16. Helen Henderson, Lacey Rail-Trail Environmental Commission
17. Eric Johansson
18. Suzanne Johansson
19. David Krause
20. Mark Krause
21. John Maishman
22. Amanda Maishman
23. Deborah Mans, NY-NJ Baykeeper
24. Alison Mitchell, New Jersey Conservation Foundation
25. Steven C. Morey, Cape May County Chamber of Commerce
26. Dena Mottola, New Jersey PIRG
27. Michael Pisauro, New Jersey Environmental Lobby
28. Nicholas Phillips, Envirotactics
29. David Pringle, New Jersey Environmental Federation
30. Jack Pryor, Aquaterra Environmental Services
31. Joseph Reynolds, Bayshore Regional Watershed Council
32. Jon Rosky, Osprey Recovery Project

33. Mark H. Sandson, Sandson & DeLucry, LLC
34. Howard J. Schlegel, U.S. Department of the Interior, Fish and Wildlife Service
35. Eric Schradling, U.S. Department of the Interior, Fish and Wildlife Service
36. Nicole Simmons, Clean Ocean Action
37. Jeff Tittel, Sierra Club – New Jersey Chapter
38. Nancy Wittenberg, New Jersey Builders Association
39. John Yoder, Horn, Tyson and Yoder, Inc., Consulting Engineers, Surveyors and Planners
40. Cindy Zipf, Clean Ocean Action

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

**General Comments:**

1. COMMENT: A seven-day extension of the public comment period should be provided to allow for a careful and time-consuming review of the readoption and amendments. (36, 40)
  
2. COMMENT: Given the timing of the comment period, a timeframe that included numerous NJDEP actions (including review and comment on the draft NJPDES permit of the Oyster Creek Nuclear Generating Station and the Master General Permit for Beneficial Reuse), and Federal actions, all leading up to the holidays, it is especially difficult to adequately review the proposal before the January 6, 2006 deadline. The delay in the rulemaking process resulting from an extension of the public comment period is not likely to result in an adverse impact to the public health, safety or welfare of the environment. (36, 40)

RESPONSE TO COMMENTS 1 AND 2: The Department provided a 60-day comment period for the proposed readoption of the Coastal Permit Program rules with limited amendments. The Department provided notice of this proposal in the New Jersey Register, by publication in seven newspapers and by posting on the Department's Website. In addition to the opportunity to submit written comments, the Department held two public hearings regarding the Coastal Permit

Program readoption proposal. The Department notes that the requesters were able to file written comments that are addressed below. The Department determined that the commenters' issues of concern were fully detailed in the written submissions and that an extension of the comment period would not be likely to raise issues or provide new information, data or findings that were not previously raised or provided during the initial comment period. The Department believes that adequate opportunity for comment was provided to all commenters on this readoption with amendments without the necessity of an extension of the comment period.

### **N.J.A.C. 7:7-1.3 Comments**

3. COMMENT: The definition of "public development" should be revised to include Confined Disposal Facilities (CDFS) and Dewatering Facilities. By including these facilities, the Department would ensure that such facilities are included within CAFRA. (36)

RESPONSE: The definition found in N.J.A.C. 7:7-1.3 for "public development" is based on the definition of the same term as found in the Coastal Area Facility Review Act at N.J.S.A. 13:19-3. The Act specifies what types of development are regulated as "public development." Confined Disposal Facilities (CDFS) and dewatering facilities are not categorized as "public development" but are always associated with dredging projects which are regulated pursuant to CAFRA and/or the Waterfront Development Law.

4. COMMENT: The Department should add to the definitions, "complete for public hearing" and "complete for public comment" to refer to applications that remain subject to a public hearing or a public comment period but that are otherwise complete for final agency review. In addition, "complete for final agency action" should be added to refer to an application for which the applicant has made all filings and furnished all material information required by the Department. (36)

RESPONSE: The milestones of the coastal permit application review process are identified in N.J.A.C. 7:7-4.4 through 4.8. Rather than define the milestones as terms at N.J.A.C. 7:7-1.3, the

Department believes it is clearer to use and describe the milestones in the context of the permit review procedures. Also, the Department notes that an application that is determined to be complete for public hearing or public comment is not necessarily complete for final agency review. Pursuant to N.J.A.C. 7:7-4.6(a), for CAFRA permit applications, the Department may request additional information from an applicant up to 15 days following the date of the public hearing or the close of the comment period, if no hearing is held. N.J.A.C. 7:7-4.6(c) specifies when an application for a waterfront development or coastal wetland permit is considered “complete for final review.”

The suggested term “complete for final agency action” appears to be the same as the Department’s term “complete for final review” as used at N.J.A.C. 7:7-4.6(b) and (c). Therefore, there is no need for an additional term.

**N.J.A.C. 7:7-1.5 Comments:**

5. COMMENT: The formalization of the process for jurisdictional determination as proposed at N.J.A.C. 7:7-1.5 is helpful. However, this section should establish a time limit for processing the requests. (38)

RESPONSE: The Department acknowledges the comment in support of this rule. Jurisdictional determinations are issued to guide prospective applicants in the planning and development of potential projects. Requesting a jurisdictional determination from the Department is voluntary. These determinations are provided as a courtesy to prospective applicants and are processed in as timely a fashion as possible. The Department has a staff member dedicated to the processing of coastal jurisdictional determinations. The approximate processing time is generally sixty days which may vary depending on the number of jurisdictional requests received. Jurisdictional determinations are not permit authorizations and are not subject to the 90-Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.). In light of the voluntary nature of this determination and the processing time the Department has been able to achieve on these requests while assuring that resources are available to assure processing of permit applications in accordance

with the 90-Day Construction Permit Law, the Department does not believe that specification of a limit for review of this category of request is necessary or appropriate.

~~RESPONSE: The Department acknowledges the comment in support of this rule. Jurisdictional determinations are issued to guide prospective applicants in the planning and development of potential projects. The Department has a staff member dedicated to the processing of coastal jurisdictional determinations. The approximate processing time is generally sixty days which may vary depending on the number of jurisdictional requests received. Jurisdictional determinations are not permit authorizations and are not subject to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.). These determinations are provided as a courtesy to prospective applicants and are processed in as timely a fashion as possible. In light of the voluntary nature of this determination and the processing time the Department has been able to achieve on these requests while assuring that resources are available to assure processing of permit applications in accordance with the 90 Day Construction Permit Law, tThe Department does not believe that specification of a limit for review of this category of request is necessary or appropriate.~~

### **N.J.A.C. 7:7-2.3 Comments:**

6. COMMENT: The proposed amendments to N.J.A.C. 7:7-2.3 should be changed to reflect the language found in the decision of *Long Beach Township Oceanfront Property Owners Association v. NJDEP*, 245 N.J. Super 143 (App. Div. 1990) limiting the applicability of the Waterfront Development Act (N.J.S.A. 12:5-3) to navigable tidal waters only. (38)

RESPONSE: In the case cited by the commenter, the Appellate Division of the New Jersey Superior Court in December 1990 held that Department regulations that defined jurisdiction under the Waterfront Development Act as extending 500 feet from the mean high water line, and as not limited to the first inland property, were invalid because there was no evidence that development within 500 feet of navigable waterways would have a direct impact on navigable waters and on commerce on those waters. The language amended by this adoption was adopted after this decision. The adopted clarifying language does not change the substance of the

language it is replacing. In June 1990, in *Last Chance Development Partnership v. Kean*, 119 N.J. 425 (1990), the New Jersey Supreme Court held that the Department's jurisdiction under the Waterfront Development law was limited to development that would have a direct impact on navigable waterways. The Court stated that it was satisfied that, beyond 500 feet of the mean high waterline, the Department could not regulate under the Waterfront Development law unless that development would have a direct effect on the waterfront and waterways.. Previously, in 1982, in *New Jersey Builders Association v. NJ* (11/30/1982, Docket No. A-984-80T1), the Appellate Division of the Superior Court held that it was permissible under the Waterfront Development law for the Department to assert jurisdiction to a distance of 500 feet from the mean high water line. The adopted rules limit jurisdiction to within 500 feet of the mean high water line and are consistent with the above-cited court cases.

The commenter also appears to be suggesting that there is a distinction between a "tidal water" and a "navigable tidal water." The Department does not make such a distinction since all "tidal waters" are navigable to some extent.

7. COMMENT: N.J.A.C. 7:7-2.3(d)4 should be revised so that, in order to qualify for an exemption from the Waterfront Development Law for the repair, replacement or renovation of a permanent dock, wharf, pier, bulkhead or building, the applicable structure needs to have been existing prior to January 1, 1981, as stated in the Waterfront Development Law (N.J.S.A. 12:5-3(b)1) instead of appearing on the applicable Tidelands Map or Wetlands Map as currently required. (38)

RESPONSE: As indicated in the comment, in order to be exempt from permitting requirements, a structure to be repaired, replaced, renovated or reconstructed under N.J.S.A. 12:5-3(b)1 and N.J.A.C. 7:7-2.3(d)4 and 5 must have existed prior to January 1, 1981. The rules describe the information used by the Department to determine if an application qualifies for this exemption. For review of exemption applications, the Department relies on the 1977/1978 base map photography of the Tidelands Maps adopted by the Tidelands Resource Council, the 1971/1972 Coastal Wetlands Maps promulgated pursuant to the Wetlands Act of 1970, or a Waterfront



Development Permit issued by the Department to determine the size and location of the structure to be repaired, replaced, renovated or reconstructed. The aerial photography is utilized because, in the absence of a permit, it is the most reliable source of information regarding waterfront structures available to Department staff, property owners and potential buyers. In addition to aerial photography, applicants may provide the Department with a waterfront development permit in order to secure the exemption (N.J.A.C. 7:7-2.3(d)4). However, since mapping is not available for the specific date specified in the Act, for the period between the 1978 mapping and the 1981 date in the Act, the Department reviews permits issued during that time to determine if the structure was permitted and was thus legally in place. To clarify that this exemption is based upon the statutory provision referenced by the commenter, the Department is adding the January 1, 1981 date in the rules at N.J.A.C. 7:7-2.3(d)4 and 5.

**N.J.A.C. 7:7 Subchapter 4 Comments:**

8. COMMENT: In application contents at N.J.A.C. 7:7-4.2(a)7ii(2), the Department should specifically state that it requires chemical and physical analyses of the dredge material. (36)

RESPONSE: The Coastal Permit Program rules list the requirements for a complete waterfront development permit application package which includes, at N.J.A.C. 7:7-4.2(a)8ii, the submittal of a Compliance Statement addressing all applicable requirements found in the Coastal Zone Management rules, N.J.A.C. 7:7E. In order to obtain a waterfront development permit authorization for dredging, an applicant must demonstrate compliance with either Maintenance Dredging at N.J.A.C. 7:7E-4.6 or New Dredging at N.J.A.C. 7:7E-4.7. Both of these rules (at N.J.A.C. 7:7E-4.6(b)2 and N.J.A.C. 7:7E-4.7(b)10ii, respectively) state that “Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine

acceptability of the proposed dredged material placement method and site.” The Department evaluates each potential dredging site and requires testing on a case-by-case basis based on site location, pre-existing site uses, and prior permitting activity in the project area. The Department does not agree that it is necessary to require pre-dredging chemical and physical analysis of all sites.

9. COMMENT: In application contents at N.J.A.C. 7:7-4.2(a)7ii(2), the Department should add the following requirement, “To the extent practicable, dredging plans must provide measures to beneficially reuse the dredged material in an environmentally sound manner as a preferred alternative to permanent disposal.” (36)

RESPONSE: As stated in response to comment #8, the Coastal Permit Program rules list the requirements for a waterfront development permit application package which includes the submittal of a compliance statement demonstrating compliance with all applicable requirements found in the Coastal Zone Management rules. In order to obtain a waterfront development permit authorization for dredging, an applicant must demonstrate compliance with Dredged Material Disposal at N.J.A.C. 7:7E-4.8 that provides standards for the environmentally acceptable disposal of dredged sediment. N.J.A.C. 7:7E-4.8(d) references the Department’s technical manual titled “Dredging Activities and Dredged Material” (dated October 1997) as a source of information for best management practices for the disposal of dredged material. Chapter Five of this manual strongly supports “beneficial reuse” as opposed to exclusive reliance on disposal facilities “wherever possible”. The characteristics of the dredge material, particularly grain size and percentage of contamination, will determine when it is possible to use the material for “beneficial reuse”. Therefore, the beneficial reuse of dredge material is already encouraged by the Department.

10. COMMENT: In N.J.A.C. 7:7-4.3(d), the Department should add to the requirements for publication in the DEP Bulletin, “a detailed report of all applications including the applicant’s name, address, project location, and detailed project description.” (36)

RESPONSE: Each application received by the Department pursuant to CAFRA, the Waterfront

Development Law and the Wetlands act of 1970 is reviewed on a site-by-site basis to determine if the described activity qualifies for a permit. Where more than one type of coastal permit is sought for one project site, all applications for that site are reviewed and are taken into account during the review of each of the multiple permit applications. Individual notice is required for each application under the three coastal laws and the notice requirements may differ for each law.

The LURP-1 form is the required application for Waterfront Development, coastal wetlands, and CAFRA permits (N.J.A.C. 7:7-4.2(a)1). All agencies and individuals that are required to be noticed upon application to the Department receive a copy of this form (N.J.A.C. 7:7-4.2(a)4). The public may review the application package, including the LURP-1 form, at the municipal clerk's office, planning board and environmental commission. The LURP-1 form requires the applicant to submit information on the applicant, the applicant's agent, the location of the project site, a project description and the type of permit(s) being requested. Page two of the LURP-1 form requires the applicant to indicate all Federal, State, County and Municipal approvals, denials or certifications that have been received for the project site or that are required for the proposed project.

The Department also makes available its permit tracking system on the internet through "Data Miner" at [www.state.nj.us/dep/opra/online](http://www.state.nj.us/dep/opra/online) which allows interested parties to search not only for a specific project's status but also the status of all projects in a municipality, county or statewide. "Data Miner" provides the name and contact number for the project manager of the application so that he or she may be contacted with specific questions or comments.

The Department believes that the notice of individual applications together with the information provided on the LURP-1 form and the availability of application information on the internet provides sufficient information to allow potential interested parties to know about all permit applications for a site and to determine whether they wish to comment on that application.

11. COMMENT: A CAFRA application should not be published in the DEP Bulletin as

“complete for public comment” or “complete for public hearing” until the applicant has provided all required filings and furnished all substantive information requested by the Department. Publication of the notice in the DEP Bulletin should only occur when the application no longer contains deficiencies. It has been the commenter’s experience that permit applications have been deemed “complete for public hearing/comment” even though the application lacked sufficient, basic information to allow the public to fully evaluate the potential impacts of the project. (36)

RESPONSE: The timetable for the review of a CAFRA application is set forth in the Coastal Area Facilities Review Act at N.J.S.A. 13:19-8 and 9. Under the Department’s permit review process, implementing these statutory provisions, there are two types of deficiencies: administrative and technical. Administrative deficiencies are omissions of required materials from the application package and technical deficiencies result from incomplete or erroneous information. Within the initial 20 working days, the Department determines if all materials necessary for an administratively complete application have been submitted. If items are missing, the Department issues a deficiency letter requesting the omitted material. The Department does not declare a CAFRA application “complete for public hearing” or “complete for public comment”, unless the application is determined to be administratively complete - meaning that all materials as required by N.J.A.C. 7:7-4.2 and any materials addressing written deficiency requests have been submitted to the Department. Notice of this status change is then published in the DEP Bulletin.

As stated in response to comment #10, the LURP-1 form is the required application for all CAFRA permits (N.J.A.C. 7:7-4.2(a)1). All agencies and individuals that are required to be noticed upon application to the Department receive a copy of this form (N.J.A.C. 7:7-4.2(a)4). In addition, an applicant is required to submit an Environmental Impact Statement (EIS) or Compliance Statement, prepared in accordance with N.J.A.C. 7:7-6 and development plans prepared in accordance with N.J.A.C. 7:7-4.2(a)7. The public may review the application package at the municipal clerk’s office, planning board and environmental commission. The LURP-1 form requires the applicant to submit information on the applicant, the applicant’s agent, the location of the project site, a project description, the type of permit(s) being applied

for, and a listing of Federal, State and local permits needed for the proposed project.

The Department also makes available its permit tracking system on the internet through “Data Miner” at [www.state.nj.us/dep/opra/online](http://www.state.nj.us/dep/opra/online) which allows interested parties to search not only for a specific project’s status but also the status of all projects in a municipality, county or statewide. “Data Miner” provides the name and contact number for the project manager of the application so that he or she may be contacted with specific questions or comments.

The Department believes that, while there may be technically incorrect information contained within the administratively required materials, the basic information found in the LURP-1 form and in the EIS/Compliance Statement regarding project description, location and site conditions is sufficient to allow the public to evaluate the potential impacts of the project. The public is afforded the opportunity to review, evaluate and submit comments either in writing or at the public hearing (if one is held) on the application. Following the public hearing or comment period, the Department has 15 days to request information in response to internal review and public comment. Any information submitted in response to the Department’s requests for additional information is available to interested parties for review at the Department.

12. COMMENT: Once an application is deemed complete for public hearing or comment, the Department should have 15 days to set a date for a public hearing or the commencement of a 30-day comment period. (36)

RESPONSE: Pursuant to the Coastal Permit Program rules at N.J.A.C. 7:7-4.5(b), the Department shall, within 15 days of declaring the application complete for filing, set a date for the hearing. If no public hearing is to be held and instead there is to be a public comment period, the Department shall within 15 days of declaring the application complete set the date of the commencement of the comment permit (N.J.A.C. 7:7-4.5(d)). Once the Department declares an application complete for public hearing or public comment, notice of the status change is published in the DEP Bulletin.

13. COMMENT: There should be no final permitting decision until at least 10 days following the receipt of all public comments in order for the Department to have sufficient time to consider and incorporate suggested changes to the application and/or draft permit. Therefore, at N.J.A.C. 7:7-4.4, Initial review of applications, the Department should add to the end of (b)3, “provided however, that no decision on the application shall be made for at least 10 days following the conclusion of the supplemental public comment period” and the Department should add a new (e) at N.J.A.C. 7:7-4.7 that states the following, “In no event shall the Department make a decision on a permit application less than 10 days from any public hearing or the close of any supplemental comment period.” (36)

RESPONSE: The Department has not made the suggested change. CAFRA permit applications are governed both by the 90-Day Construction Law (N.J.S.A. 13:1D-29 et seq.) and the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.). In cases where a public hearing is held for a CAFRA permit, the record remains open for a minimum of 15 days to allow for public comments that may result from the hearing (N.J.A.C. 7:7-4.5(f)1). When a 30 day public comment period is held in lieu of a public hearing, the Department has 15 days to request information based on comments received in the comment period (N.J.A.C. 7:7-4.6(a)). The Department is not precluded from making a decision on a CAFRA permit application in less than 10 days. However, because of the nature and complexity of CAFRA permits, a longer time is generally required for the review and consideration of such permit applications.

The timeframes for review of a Waterfront Development or coastal wetlands permit application are mandated by the 90-Day Construction Law (N.J.S.A. 13:1D-29 et seq.) which provides at N.J.S.A. 13:1D-31 that the Department shall approve, condition or disapprove an application for a construction permit within 90 days following the date that the application is complete.

In the case of Waterfront Development and Coastal Wetland applications for which a public hearing was held, the application shall be declared complete for final review on the date of the public hearing (N.J.A.C. 7:7-4.6(c)). The Department intends to propose an amendment, as part of a larger rule package by the end of this year, to allow the record to remain open for 15 days

following a public hearing for a Waterfront Development or coastal wetlands permit.

The Department processes applications in as timely a manner as possible within the timeframes provided by the 90 Day Construction Permit Law after adequate consideration of comments received and does not believe that inserting a requirement that a decision on an application be delayed, even if the Department has reached a final decision, would improve the permitting process.

14. COMMENT: Like a CAFRA permit application, the public should be afforded a 30-day comment period on Waterfront Development and Coastal wetland permit applications. In order to accomplish this, N.J.A.C. 7:7-4.5(c), Public hearings and public comment periods, should be amended to add to the list of permit applications requiring a 30-day comment period Coastal wetlands and Waterfront Development permit applications. In addition, at N.J.A.C. 7:7-4.5(d), the Department should delete the phrase, “If a public comment period is to occur” since all permit applications should have a 30-day public comment period. (36)

RESPONSE: Waterfront development and coastal wetlands applications are reviewed on timelines based on the 90-Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.). CAFRA applications are also subject to the 90-Day Construction Permit Law. However, at N.J.S.A. 13:1D-30, the 90-Day Construction Permit Law includes an exception for permits issued pursuant to the Coastal Area Facility Review Act and defers to the timeline provisions in CAFRA (N.J.S.A. 13:19-1 et seq.). A comment period for waterfront development and coastal wetlands applications is not mandated by the Waterfront Development Law or the Wetlands Act of 1970, whereas the Coastal Area Facilities Review Act requires that the Department provide either a public hearing or public comment period.

In order to balance the requirements for the timing of review of a Waterfront Development or coastal wetlands permit application with the Department’s desire to allow public input on the permitting process, a 15-day comment period has been established for these types of applications. The Department determined that 15 days is sufficient given the limited scope of

many waterfront development and coastal wetland projects. CAFRA individual permit applications, with their 30-comment period, tend to be more complex and far reaching in their impacts than the other coastal applications for which the impacts are more local in nature.

15. COMMENT: If the draft CAFRA permit is not publicly available prior to the public hearing or 30-day comment period, the public must be afforded a separate opportunity to comment on the draft permit. Therefore, a new N.J.A.C. 7:7-4.5(l) should be added to the rules that states, “In the event that a draft permit was not available for public review prior to the commencement of the public hearing or 30-day comment period on the application, the Department shall, after the issuance of a draft permit, conduct a 30-day public comment period on the draft permit.” (36)

RESPONSE: The Department does not prepare draft permits for coastal applications. There is no provision under the Coastal Area Facility Review Act, the Waterfront Development Law or the Wetlands Act of 1970 requiring the preparation or dissemination of a “draft permit”. If a public hearing is held for a CAFRA permit application, a preliminary analysis is prepared. The Department’s analysis may be available prior to the hearing. Even if in a particular case it is not available prior to hearing, the preliminary analysis is always available at the public hearing or upon request as required by N.J.A.C. 7:7-4.4(a)5. The preliminary analysis outlines the proposed project’s status with regard to the Coastal Zone Management Rules and although possible permit conditions may be stated in the analysis, it is not a “draft permit”. The public may submit comments for 15 days following the hearing on the application, based on a review of the application itself or of the preliminary analysis. A preliminary analysis is not required for applications where there is not a public hearing; however, the application itself is available for review at the municipal level and at the Department and the public may comment during the comment period.

The Coastal Area Facilities Review Act establishes the time frames for review of CAFRA applications. It requires at N.J.S.A. 13:19-9(c) that the “Department shall approve, approve with conditions or disapprove an application...within 60 days after the hearing, if one is held, or within 60 days after the close of the comment periods if no hearing is held”. If additional



information is requested in response to public comment during the public hearing or comment period, the “Department shall approve, approve with conditions, or disapprove an application within 90 days following receipt of the additional information”. There is no second public comment period established by this Act.

The Department, in its review of an application, makes every effort to incorporate applicable comments into the final project it permits whether by requiring revisions to the project or by the placing of conditions on the permit. Given the time constraints imposed by the 90-Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and reiterated in the Coastal Permit Program rules, making a “draft permit” available for public review is not feasible.

16. COMMENT: If any additional information is requested by the Department, hearing participants and those submitting comments should receive notice of how they may obtain copies of the additional information and should be given a limited, supplemental public comment period on matters pertaining to the additional information. In order to accomplish the latter, at N.J.A.C. 7:7-4.6(b), the rule should be amended to add to the Department’s declaration of completeness the requirement for a supplemental public comment period regarding issues related to the additional information received by the Department. (36)

RESPONSE: All CAFRA, waterfront development and coastal wetlands permit applications and their contents are a matter of public record and are available for inspection by the public. This includes all additional information requested during the application process. The notice that is required as part of the application at N.J.A.C. 7:7-4.2(a)4 specifies that the complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office.

Before compiling its request to the applicant for additional information, the Department considers all public comments it receives and incorporates them, as appropriate, in its request. Therefore, once the applicant satisfies the Department’s request, he or she is also responding to the public comments. It then becomes the Department’s responsibility to determine whether or

not the applicant has satisfactorily addressed the Department's request and the application meets all of the permitting standards. Thus, only in rare cases, for example when the satisfaction of the Department's request results in a change in scope or nature of the project (different block and lots are included in the project or the project changes from commercial to residential, for example), would the Department require a supplemental public comment period prior to the start of the 90-day clock.

17. COMMENT: N.J.A.C. 7:7-4.6(c) should be amended to make 4.6(a) and (b) applicable to Waterfront Development and Coastal Wetland permit applications, except that such applications may be declared complete for final review on the date of the public hearing, if any. (36)

RESPONSE: The Department believes that the commenter is suggesting that the record remain open for 15 days following a public hearing for a Waterfront Development or coastal wetlands permit. The Department agrees. However, this change cannot be made on adoption due to the substantive nature of the change. It is the Department's intention to propose this amendment as part of a larger rule package by the end of this year.

**N.J.A.C. 7:7-6.2 Comments:**

18. COMMENT: The proposed amendment of N.J.A.C. 7:7-6.2 strengthens environmental impact and compliance statements requirements with a specific reference to Section 10 of the Coastal Area Facility Review Act, so that it is more clear that CAFRA permits can be authorized only if positive findings can be and are made regarding compliance with Section 10. This is a meaningful change, a clarification of policy that the commenters fully support. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

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

**N.J.A.C. 7:7-6.2 Comments:**

18. COMMENT: The proposed amendment of N.J.A.C. 7:7-6.2 strengthens environmental impact and compliance statements requirements with a specific reference to Section 10 of the Coastal Area Facility Review Act, so that it is more clear that CAFRA permits can be authorized only if positive findings can be and are made regarding compliance with Section 10. This is a meaningful change, a clarification of policy that the commenters fully support. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

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

**N.J.A.C. 7:7-7.8 and 7.9 Comments:**

19. COMMENT: Although the setback requirements seem reasonable and consistent with current Department policies, we request clarification that ‘below grade structures’ (N.J.A.C. 7:7.8(1)2 and 7.9(1) 2) include swimming pools and as such, swimming pools would be permitted in the setback area (9)

RESPONSE: On an oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) must be set back at least 25 feet from existing or proposed oceanfront shore protection structures (N.J.A.C. 7:7.8(1)2 and 7.9(1) 2). This distance is 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 does not apply to below grade structures. The phrase “below grade structures” does include in-ground swimming pools since below grade structures are not capable of becoming floating debris in an extreme tidal surge or storm event. However, “below grade structures” would not include above ground swimming pools. Accordingly, it would not be appropriate to indicate that all swimming pools qualify as “below grade structures.” The Department believes use of the term “below grade structure” is sufficiently clear to express the intention of the rules.

**N.J.A.C. 7:7-7.14 Comments:**

20. COMMENT: There is concern with the revisions to the coastal general permit for reconstruction of a legally existing functioning bulkhead (N.J.A.C. 7:7-7.14) requiring that existing bulkheads on manmade lagoons be replaced in-line. This requirement will pose a significant hardship for many people who have lots on manmade lagoons since many of the property owners have constructed pools, decks, and associated uplands structures in close proximity to the existing bulkheads which will now be in jeopardy if it is necessary to remove the existing bulkhead in order to construct the replacement bulkhead. (39)

RESPONSE: While the Department recognizes that construction of replacement bulkheads within the same footprint may require more costly construction techniques as well as the reconstruction/removal of some existing structures, this amendment will enable the Department to stop the narrowing of lagoons caused by repeated bulkhead replacement waterward of existing bulkheads. Advanced bulkheading technology coupled with best management practices should be able to limit the number of upland structures that would need to be removed or replaced. In cases where the applicant, their engineer and their bulkheader agree that the replacement of the bulkhead within the same footprint would be detrimental or hazardous to the upland structures, the applicant may choose to apply for an individual waterfront development permit and demonstrate in their compliance statement that replacement of the bulkhead in the same footprint is not feasible. The Department may authorize an individual permit for a replacement up to 24 inches waterward of an existing bulkhead if the applicant can demonstrate compliance with all applicable rules in the Coastal Zone Management rules .

21. COMMENT: Multiple replacement bulkheads constructed outshore of existing deteriorated bulkheads would, overtime, pose a serious hindrance to navigation. However, in lieu of limiting bulkhead replacement to the same footprint in all lagoons, the requirement of in-line replacement of bulkheads should be limited to lagoons where the width of the lagoon is 80 feet or less, with replacement bulkheads allowed to be placed 18-24 inches waterward of the existing bulkheads in lagoons exceeding 80 feet in width. (39)

RESPONSE: The Department has concerns about impacts to the navigability of lagoons

regardless of their width. Even lagoons with widths greater than 80 feet still may have a small navigable area not only due to the bulkheads and docks but also the size of the vessels moored.

The adopted amendments limiting bulkhead replacements in lagoons to the existing footprint, apply to general permit applications. General permits are designed to address a finite set of activities which are considered to have limited impacts. In instances where the applicant believes that he or she should be allowed to replace a bulkhead waterward of the existing bulkhead without adversely affecting the navigability of the lagoon, he or she may apply for an individual permit.

22. COMMENT: Bulkhead replacements should be limited to the same footprint in all lagoons. However, the regulations should go further by deliberately moving toward a program that provides incentives to natural shorelines and natural/soft/vegetative alternatives to traditional bulkheading.(3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

RESPONSE: The Department acknowledges the commenters' support for the requirement that bulkheads in lagoons be replaced in the same footprint.

At N.J.A.C. 7:7E-7.11 the Department, already encourages the use of non-structural solutions to shoreline erosion problems. The rules requires the infeasibility and impracticability of a non-structural solution must be demonstrated before structural solutions may be deemed acceptable. However, the Department recognizes that in many instances, traditional bulkheading may be necessary in order to protect the upland property from serious erosion, water velocity, and wave run-up. Traditional bulkheading may also be necessary to protect existing structures placed close to the waterway. In cases where there is shallow water depth, traditional bulkheading may be the preferred method of shore protection in order to limit sediment from moving into the adjacent waterway. In such a situation, bulkeading limits the amount of dredging required. In an effort to protect the resources and navigability of lagoons while attempting to accommodate property owners' needs, the Department has chosen to limit the bulkhead replacements under this general permit to those that occur the same footprint.

**N.J.A.C. 7:7-7.26 Comments:**

23. COMMENT: The proposed definition for “beach berm” found at N.J.A.C. 7:7-1.3 as well as the proposed changes to the coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units found at N.J.A.C. 7:7-7.26 will negatively impact the casino beach bars which have been operated by many casinos in Atlantic City by requiring that the bars be reconfigured and downsized to such an extent that they would no longer be economically viable. (33)

RESPONSE: The beach berm area is the usable beach area extending from the most inland extent of wave run-up to the toe of the primary dune. From year to year and even within a given year, the size and grading of a beach can change dramatically. Erosional forces such as wave run-up and storm surges will shrink the usable portion of a beach while beach fill projects, as well as natural sand accumulation, will enlarge a beach area. In an effort to better locate the tourism structures proposed to be located on beaches, including those referenced by the commenter, the Department has revised the standard for structures located on a beach, to require that structures occupy a maximum of 33% of the width of the beach berm area with a maximum total coverage of one acre. Limiting the area that tourism structures will occupy in the beach berm area will balance the use of the beach resource by the public at large with the accessory use of the beach bars.

In addition, by requiring that the structure be located on the most landward portion of the beach area, the structures will be better protected from unusually high tides and storm surges. During severe storm events, the beach bar structures could become, in and of themselves, dangerous to other permanent residential and commercial structures if portions of the beach bars were to become dislodged and travel in floodwaters. In light of recent weather trends, including the upswing in the number of hurricanes, tropical storms and nor'easters in recent years, there is an increasing potential for severe damage. The Department believes that the protection to be

gained by this provision outweighs any economic impacts.

24. COMMENT: Proposed N.J.A.C. 7:7-7.26(a)5i should be amended to read as follows, “Redevelopment shall occupy a maximum of 33 percent of the total width of the beach berm area within the limits of the project, except where the application of this formula would result in a development width of less than one hundred feet, in which case development shall be permitted to occupy a width of up to 100 feet within the beach berm area; and” in order to afford beach bar operators the ability to continue offering this tourist amenity and the flexibility to design and construct the beach bars. (33)

RESPONSE: From year to year and even within a given year, the size and grading of a beach can change dramatically. The adopted amendment reflects the Department’s recognition of the ever-changing nature of a beach area. The suggested change in language is not viable since, following a year with severe weather patterns or heavy erosion, allowing a structure that is 100 feet wide may completely occupy the entire usable beach area and may, in fact, place the structure itself in harm’s way during a storm event as well as limit the usable beach area for public use.

25. COMMENT: Lengthening the season for allowable temporary structures on the beach to October 31 of each year amounts simply to promoting more intense development on the beachfront, pushing waterward the line that separates land from beach and further diminishing the area that New Jersey has available for naturally functioning beach and dune systems. The proposed revisions to siting these seasonal, commercial structures simply does not resolve this problem. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

RESPONSE: Extending the time period that a structure is authorized to remain on a beach area , when viewed in conjunction with other adopted amendments, will not necessarily result in a more intense use of the beach resource. The time extension is in response to the climate changes that have lengthened the warm weather season. In other sections of this general permit, specifically at N.J.A.C. 7:26(a)5, the Department has made amendments which seek to limit the

impacts on the beach resource by limiting the size of the temporary structures. The Department has adopted amendments which revise the standards for structures located on a beach to require that structures occupy a maximum of 33% of the width of the beach berm area with a maximum total coverage of one acre. It should be noted that in cases where there is concern for public safety or access to the beach, the Department reserves the right to limit the total beach coverage to less than 33% to address these concerns. The stricter limitation on size for the temporary structures mitigates for the extended time period that these structures may stay in place.

**N.J.A.C. 7:7-7.28 Comments:**

26. COMMENT: The creation of a new general permit for three or fewer residential units is strongly opposed. The Department should remove this portion of the rule in its entirety and move towards readoption of the Coastal Permit Program without this proposed general permit. The proposed general permit for residential projects of three or fewer residential units lowers the bar for environmental review and weakens the public's ability to meaningfully participate in the regulatory permitting process. (1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 26, 27, 29, 31, 32, 37)

27. COMMENT: The Coastal Permit Program should be used to control sprawl and protect coastal resources, ecologically sensitive areas, coastal water quality and water supply, and to scale back development in coastal high hazard areas to respond to concerns about climate changes, sea level rise and increased erosion along New Jersey's shoreline. However, the proposed general permit for three or fewer residential units promotes development in the coastal zone without regard to these concerns. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

28. COMMENT: The general permit for three or fewer residential units is likely to exacerbate water quality problems due to pollution caused by sediment and toxic runoff from increased impervious surfaces. (36, 40)

29. COMMENT: The proposed coastal general permit erases the progress that has been



made in recent years to increase the amount of regulatory oversight for development in the coastal zone. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

30. COMMENT: The proposed coastal general permit flies in the face of meaningful, policy-based and environmentally responsible coastal policy. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

31. COMMENT: It is not the Department's job to make developers' lives easier by facilitating administrative review of permits. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 32, 37)

32. COMMENT: The Coastal Permit Rules should be implemented to protect the diversity and integrity of the land and water in the coastal zone and the public's rights of access to the coast and coastal/waterfront areas. In the case of the new general permit for three or fewer residential units, it is the interests of developers and not the interests of the public that are served by the proposed rule. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

33. COMMENT: The proposed general permit and the rule package are contrary to the intent and policies of the Coastal Zone Management Program and are a serious failure to align New Jersey's coastal program with climate change, sea level rise and coastal erosion. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

34. COMMENT: The streamlining of the permit process in the coastal zone and high hazard areas is irresponsible and will impact already strained resources, sensitive areas, habitat, water quality and water supply. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

35. COMMENT: Small projects do not necessarily have less impact on the coastal zone. Therefore, these projects should be subject to the same submittal, level of review, and public notice/comment requirements demonstrating strict compliance with special resources rules as is required of applications for individual permits. (1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 21,

22, 23, 24, 26, 27, 29, 31, 37)

36. COMMENT: Streamlining the permit process by creating a coastal general permit for three units or fewer could negatively impact the surrounding property owners by actually lowering their property values. (5, 6)

37. COMMENT: The requirement of Public Access to the Waterfront should not be included in the proposed new general permit for three or fewer residential units unless limited to sites with beachfront access only. (38)

38. COMMENT: The new general permit for three or fewer residential units, which provides at N.J.A.C. 7:7-7.28(d) that the development must comply with the Dunes rule, N.J.A.C. 7:7E-3.16, unless the development is isolated from a beach/dune system by a paved public road, seawall or bulkhead, should be revised to allow the road, seawall or bulkhead to be either publicly or privately owned. (38)

39. COMMENT: The proposed general permit for three or fewer residential units bars residential construction in areas subject to the filled waters edge regulation if the site has had a water dependent use (i.e., a marina) at any time since July 31, 1977. Redevelopment of water dependent uses need not eliminate water dependent uses since marinas can coexist with residential use. This provision should be revised to allow for the combined use. (28, 38)

40. COMMENT: How will the Department determine if a water dependent use has existed on a site at any time since July of 1977 as required by the language of the proposed coastal general permit for three or fewer residential units? (9)

41. COMMENT: The new coastal general permit for three or fewer residential units will remove many of the encumbrances on small parcels by making permit fees more economical and shortening the permit review time. (19, 20)

42. COMMENT: Public access should not be included as a requirement for the proposed coastal general permit for three or fewer units in order to preserve the property owners' privacy and security and limit liability. (9, 19, 20, 30)

RESPONSE TO COMMENTS 26 TO 42: Based upon comments received and upon further consideration, the Department has decided not to adopt the proposed general permit for three or fewer residential units [in order to reassess the submittal requirements of the proposed general permit including the notice and compliance statement/environmental impact statement requirements.](#) It is the Department's intention to consider [these](#) substantive changes to the proposed Coastal General Permit. ~~for the development of three or fewer dwelling units.~~ Any changes determined to be appropriate will be the subject of a future proposal and further public comment. ~~In particular, the Department intends to reassess the submittal requirements of the general permit including the notice and compliance statement/environmental impact statement requirements.~~

**N.J.A.C. 7:7-7.29 Comments:**

43. COMMENT: The Department should add "wildlife or plant management/enhancement/restoration" to the proposed rule as a lead in to the existing phrase "restoration, creation, or enhancement of the habitat, water quality functions and values of wetlands, wetland buffers, and open water areas" in order to specifically authorize wildlife or plant management/enhancement/restoration. This should be added specifically at N.J.A.C. 7:7-7.29(a), (b)6, (b)7, (d), (d)1, (e)1, (e)5, and (f). (34)

RESPONSE: N.J.A.C. 7:7-7.29(c) contains a list of the type of activities that can be undertaken with this general permit. Each of the proposed activities has been used for habitat creation and enhancement projects throughout the State. For example, altering hydrology (N.J.A.C. 7:7-7.29(c)1) and regrading (N.J.A.C. 7:7-7.29(c)4) are common tools used for wetland mitigation. Breaching a structure to allow water into an area (N.J.A.C. 7:7-7.29(c)2) is commonly used for wetland mitigation in tidal areas. Providing nesting boxes or structures and altering vegetation

(N.J.A.C. 7:7-7.29(c)3 and (c)5 respectively) are habitat enhancement methods used throughout the State's fish and wildlife management areas. The current rule language does not specifically state that the general permit may be used for "wildlife or plant management/enhancement/restoration." However, specific activities that would fall into the category of "wildlife or plant management/enhancement/restoration" are already listed as permissible at N.J.A.C. 7:7-7.29(c). This general permit would authorize those activities. Activities not specifically listed may still be permissible through an individual permit from the Department.

44. COMMENT: The Department should amend the proposed coastal general permit for habitat creation and enhancement activities, found at N.J.A.C. 7:7-7.29, to authorize habitat creation and enhancement activities in dunes or other upland cover types that may benefit wildlife. (8)

RESPONSE: The coastal general permit for habitat creation and enhancement activities is based on the Freshwater Wetlands general permit #16 (N.J.A.C. 7:7A-5.16). This general permit has been in common use for many years and the activities authorized by this permit have been shown to have a positive environmental impact on wetlands and the wildlife that rely on these wetlands. The Department is investigating habitat enhancement and creation activities in areas other than wetlands, such as intertidal/subtidal shallows, for inclusion in the coastal general permit at N.J.A.C. 7:7-7.29. Habitat creation and enhancement activities in upland areas, such as dunes, may also be viable activities for a general permit. However, a determination as to whether a general permit covering any of these activities will be proposed in the future will be contingent upon the outcome of a review of the possible adverse environmental impacts resulting from the activities.

45. COMMENT: The proposed general permit at N.J.A.C. 7:7-7.29 identifies at (b)2 "sponsors" for the activities covered by the general permit, including the Partners for Fish and Wildlife program administered by the commenter (the U.S. Fish and Wildlife Service). The U.S. Fish and Wildlife Service also currently administers the Coastal Program, which provides technical and financial assistance to on-the-ground habitat restoration projects. As such, the

commenter recommends that N.J.A.C. 7:7-7.29(b)2 be amended to include the Coastal Program, or a similar program, administered by the U.S. Fish and Wildlife Service. (8)

RESPONSE: As explained in the proposal summary regarding this proposed general permit (see 37 N.J.R. 4113), N.J.A.C. 7:7-7.29(a) establishes that the coastal general permit for habitat creation and enhancement activities authorizes activities necessary to implement a plan for the restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, buffers and open water areas where the plan is sponsored or substantially funded by a Federal or State agency or other entity among those listed at (b). Subsection (a) provides that the "sponsor" must be an active participant in or substantial financial contributor to the activities and must endorse the activities in writing. Listed at (b) are the entities whose plans for such activities are acceptable for purposes of the general permit provided the conditions at (c) through (g) are met.

As noted by the commenter, the Coastal Program is administered by the U.S. Fish and Wildlife Service and provides technical and financial assistance for habitat restoration. Including the Coastal Program and similar programs also administered by the U.S. Fish and Wildlife Service that likewise provide technical and financial assistance for habitat projects among the entities that sponsor plans under which activities would be eligible for authorization is within the intended purpose of the general permit as described in the summary and above. Accordingly, the Department has amended the rule on adoption to include the Coastal Program and similar programs administered by the U.S. Fish and Wildlife Service at N.J.A.C. 7:7-7.29(b)2.

45. COMMENT: Proposed N.J.A.C. 7:7-7.29(b)2 should be amended to specify that this paragraph includes “the Partners for Fish and Wildlife Program, Coastal Program, or a similar program, administered by the U.S. Fish and Wildlife Service”. (8)

RESPONSE: ~~???~~ IS IT THE COASTAL PROGRAM OR THE PARTNERS???to working with others toThis mission is accomplished through a variety of programs that the U.S. Fish and Wildlife Service administers which provide technical and financial assistance for habitat

~~restoration projects, including~~It logically follows that any program, such as ~~and the~~, or a similar program, which is administered by the U.S. Fish and Wildlife Service would share the same mission ~~Project plans approved under these and similar programs administered by the U.S. Fish and Wildlife Program would be acceptable for purposes of the general permit because they are designed to support habitat restoration projects. Accordingly, t~~ Since the U.S. Fish and Wildlife Service essentially controls its Partners for Fish and Wildlife Program, Coastal Program, and similar programs, these programs are under the umbrella of the U.S. Fish and Wildlife Service and would act in a manner to further the mission of the parent agency. ~~T~~ The addition of this language does not expand the number of agencies since the parent agency, U.S. Fish and Wildlife Service, was originally included. The inclusion of the new language serves only to enumerate the separate agencies for clarification. ~~The Department agrees that, should the US Fish and Wildlife Service administer a program similar to the Partners for Fish and Wildlife Program or its Coastal Program, which provides technical and financial assistance for habitat restoration projects, it should also be covered by this paragraph.~~ NEED TO ADD SOMETHING OR REARRANGE — I'M NOT SURE HOW THE SPONSOR FITS IN, SO I CAN'T REALLY SUGGEST ANYTHING~~The Department has added the suggested language upon adoption.~~ WHAT OAL IS REALLY LOOKING FOR IS WHAT WE TALKED ABOUT IN TRYING TO BEEF THIS UP BEFORE SENDING IT TO THE GOVERNOR'S OFFICE. ESSENTIALLY, WHAT IS IT ABOUT THE COASTAL PROGRAM THAT MAKES THIS SO SIMILAR TO THE PARTNERS THING THAT WE ACTUALLY PROPOSED SO AS TO MAKE COMMENT ON THE COASTAL PROGRAM ITSELF UNNECESSARY. IS THE COASTAL PROGRAM AND THE PARTNERS PROGRAM SO INTERTWINED IN SOMEWAY THAT ANY COMMENTS ON ONE WOULD NECESSARILY BE THE SAME AS ON THE OTHER? SOMETHING ELSE? OBVIOUSLY, WE DON'T WANT TO CREATE MORE THAN WHAT WE CAN SUPPORT FACTUALLY, SO DON'T GET TOO CREATIVE IF THE RELATIONSHIP ISN'T THERE.

46. COMMENT: In general, the proposed coastal general permit for habitat creation and enhancement ~~activities,~~activities found at N.J.A.C. 7:7-7.29, is supported. However, the commenters have concerns over the narrowness of qualifying projects and certain authorized

activities. The Department should broaden the scope of the permit to include various projects supported and funded by Restore America's Estuaries and the National Fish and Wildlife Foundation which are not currently listed as qualifying sponsors in the proposed coastal general permit. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

RESPONSE: The Department acknowledges the comment in support of the rule. The proposed coastal general permit was drafted to mirror the existing Freshwater Wetlands General Permit for habitat creation and enhancement activities at N.J.A.C. 7:7A-5.16. The current activities were limited to similar activities found in the freshwater wetlands general permit. The Department will evaluate other activities such as habitat restoration and enhancement in intertidal and subtidal shallows areas, for possible inclusion in future rule proposals.

The Department has added, upon adoption, language to include the Partners for Fish and Wildlife Program, Coastal Program or a similar program, administered by the U.S. Fish and Wildlife Service at N.J.A.C. 7:7-7.29(b)2 in order to be more inclusive of sponsorship. The Department, in creating this general permit, did not intend to expand it to authorize projects that were not specifically sponsored by a Federal or State Program.

General permits are designed to address a finite set of activities which the Department determines have limited impacts. This general permit was designed for programs conducted or administered by Federal or State agencies with which the Department has a history of developing and implementing habitat creation and enhancement activities.

47. COMMENT: "Oyster reef structures" should be included as an activity which may be authorized by the proposed coastal general permit for habitat creation and enhancement activities, found at N.J.A.C. 7:7-7.29. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

RESPONSE: This coastal general permit is limited to habitat restoration and enhancement activities in wetlands. The construction of "oyster reef structures" takes place in open water areas and not wetlands. The Department is in the process of investigating the creation of a

coastal general permit for various aquaculture activities that may include “oyster reef structures”. In the interim, regulated entities wishing to engage in the creation of oyster reef structures may apply for an individual waterfront development permit.

48. COMMENT: The proposed coastal general permit for habitat creation and enhancement activities, found at N.J.A.C. 7:7-7.29 should be clarified to indicate whether the use of pesticides is authorized as “cutting, burning or otherwise managing vegetation.” Pesticide use should not be allowed. (3, 4, 7, 10, 13, 15, 16, 23, 24, 26, 27, 29, 31, 37)

RESPONSE: When and where it is appropriate, and with Department review and approval, the use of herbicides and/or pesticides may be authorized in order to manage vegetation under this coastal general permit. While the Department will not approve the use of herbicide and/or pesticides for vegetation management in inappropriate circumstances, there are situations in which the application of these substances can be properly managed to achieve the desired fish and wildlife management objective without harm to the environment.

49. COMMENT: Mandating a conservation restriction for a habitat restoration project, as required in the proposed general permit for habitat creation and enhancement activities, could be detrimental in promoting habitat restoration as it may appear overly restrictive to the landowner. Many landowners are willing to implement habitat restoration projects, but not if such projects require permanent conservation restrictions. The Department should reconsider and eliminate this requirement. (8)

RESPONSE: The inclusion of a conservation restriction as a requirement of this general permit will ensure that the habitat created/restored/enhanced as a result of the activities authorized will be preserved in perpetuity. The required conservation restriction assures that the current and future property owners retain the habitat. Failure to assure that the habitat is maintained would negate the positive aspect of the originally authorized activity. Therefore, the Department believes that this provision is necessary to achieve the desired goal of the permit.



50. COMMENT: The Department should waive the application fee for the proposed coastal general permit for habitat creation and enhancement activities, found at N.J.A.C. 7:7-7.29 in order to encourage restoration projects. (8)

RESPONSE: In response to this comment, upon review, the Department has determined that, in order to be consistent with the Freshwater Wetlands General Permit for habitat creation and enhancement activities at N.J.A.C. 7:7A-5.16 and to encourage this desirable activity, it is appropriate to waive the fee for the coastal general permit. A review of the Department's database determined that under the Freshwater Wetlands permitting program, there have been a total of six applications in the years 2000 through 2005 for the Freshwater Wetlands General Permit which is analogous to the coastal general permit. This is an average of one application of this type per year. The total fee, if not waived, would be \$500.00. At an average of one permit application per year, the financial impact of waiving the fee for this general permit is negligible. N.J.A.C. 7:7-7.29 has been amended on adoption to remove the proposed fee.

~~RESPONSE: In response to this comment, upon review, the Department has determined that, in order to be consistent with the Freshwater Wetlands General Permit for habitat creation and enhancement activities at N.J.A.C. 7:7A-5.16 and to encourage this desirable activity, it is appropriate to waive the fee for the coastal general permit. total N.J.A.C. 7:7-7.29 has been amended on adoption to remove the proposed fee.~~

51. COMMENT: The commenter appreciates and supports the creation of the proposed coastal general permit for habitat creation and enhancement activities, found at N.J.A.C. 7:7-7.29. (8)

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

#### Federal Standards Statement

Executive Order No. 27(1994) and P.L. 1995, c.65 (amending N.J.S.A.52:14B-1 et seq.) require that State agencies that adopt, readopt, or amend State rules include a statement as to whether the rule contains any standards or requirements which exceed those imposed by Federal law.

The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather it provides broad guidelines for states developing coastal management programs. The State's Coastal Management Program meets the guidelines established under the Federal Coastal Zone Management Program, and the State of New Jersey has obtained approval from the National Oceanic and Atmospheric Administration to implement its program under the Federal Coastal Zone Management Act. These guidelines are found at 15 C.F.R. Part 923. They include the basic components that must be included in a state's coastal zone management plan but do not set forth procedures by which individual activities within a State's coastal zone are to be regulated. Therefore, the Department has concluded that the Coastal Permit Program rule readoption with amendments do not exceed any Federal standards or requirements. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

Full text of the readopted rule with amendments follows (additions to the proposal indicated in boldface with asterisks **\*thus\***: deletions from the proposal in brackets with asterisks \*[thus]\*):

## **CHAPTER 7. COASTAL PERMIT PROGRAM RULES**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **7:7-2.3 Waterfront development**

(a) – (c). No change from proposal.

(d) A permit shall be required for the construction, reconstruction, alteration, expansion or enlargement of any structure, or for the excavation or filling of any area, any portion of which is in the waterfront area as defined in (a) above, with the exceptions listed below:

1. – 3. No change from proposal.

4. The repair, replacement, renovation, or reconstruction, in the same location and size of the

preexisting structure, of any **\*[legally existing]\*** dock, wharf, pier, bulkhead or building\*, **legally existing prior to January 1, 1981,\*** that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or that appears on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972) or that received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction, in the same location and size of 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;

5. The repair, replacement, renovation, or reconstruction, in the same location and size of the preexisting structure, of any **\*[legally existing]\*** 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 adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction is in the same location and size of 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

6. No change from proposal.

(e) – (i) No change from proposal.

#### 7:7-10.2 Application fees for waterfront development permits

(a) The application fee for each of the following shall be \$500.00:

1. Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7, **\*excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee\***; or

2. (No change.)

(b) – (e) (No change.)

#### 7:7-10.3 Application fees for Coastal Wetland permits

(a) The application fee for a Wetlands Act of 1970 permit ("Coastal Wetlands permit") shall be one percent of the construction costs, or a minimum of \$500.00 for residential dock construction associated with a single family or duplex dwelling unit, and\*, **except as provided at (b) below,\*** a minimum of \$500.00 for all other regulated developments.

(b) The application fee for review of a coastal general permit application pursuant to N.J.A.C. 7:7, **\*excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee\***; shall be \$500.00.

#### 7:7-10.4 Application fees for CAFRA permits

(a) – (d) (No change.)

(e) The application fee for the review of a coastal general permit application pursuant to N.J.A.C. 7:7-7, **\*excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29, for which there is no fee\***; shall be \$500.00.

(f) (No change.)

7:7-7.28 \*[Coastal general permit for the development of three or fewer dwelling units

(a) This coastal general permit authorizes the development of three or fewer dwelling units and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the development and accessory development are located landward of the mean high water line.

(b) Development under this coastal general permit shall not result in the development of more than three dwelling units either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8.

(c) Development under this coastal general permit shall comply with the following rules: N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas, 3.19 Erosion Hazard Areas, 3.21, Bay Island Corridors, 3.22 Beaches, 3.27, Wetlands, 3.28, Wetland Buffers, 3.31, Coastal Bluffs, 3.36, Historic and Archeological Resources, 3.38, Endangered or Threatened Wildlife or Vegetation Species Habitats, 3.46, Wild and Scenic River Corridors, 8.4, Water Quality, 8.7, Stormwater Management, 8.11, Public Access to the Waterfront, and 8.12, Scenic Resources and Design.

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except for development to be constructed on a dune that is isolated from a beach/dune system by a paved public road, seawall or bulkhead that existed on July 19, 1993, if the site and development meets all of the following:

1. The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal Flood Insurance Rate Map;
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 municipal Flood Insurance Rate Map;
5. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the units and/or accessory structures; and
6. The proposed development does not include the construction of a shore protection structure.

(e) On sites with a water dependent use as defined at N.J.A.C. 7:7:7E-1.8, existing at any

time since July 31, 1977, development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.23, Filled Water's Edge.

(f) 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.

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

(h) For a wooded site, site clearing shall be limited to an area no more than 20 feet from the footprint of each residential unit and the footprint of the area necessary for each driveway, septic, and utility line installations.

(i) The development shall comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1.

(j) 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.

(k) Development under the coastal general permit shall comply with the following setbacks:

1. On an oceanfront site with existing or proposed shore protection structures, the residential dwelling units and/or accessory structures (except decks) shall be set back a minimum of 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 a revetment. This setback shall not apply to below grade structures;

2. On a non-oceanfront site with existing or proposed shore protection structures, the residential dwelling units and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. A site with coastal bluffs shall instead comply with N.J.A.C. 7:7E-3.36;

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

(m) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Six copies of a site plan(s), signed and sealed by a Professional Engineer or Land

Surveyor, showing the following:

- i. The mean and spring high water lines of the tidal waters at or in proximity to the site;
  - ii. Existing features at the site including topography and structures, and the limits of wetlands, wetland buffers, dune areas, beach areas, endangered or threatened wildlife or vegetation species habitats, flood hazard areas, coastal bluffs and vegetation;
  - iii. Existing roads and utilities immediately adjacent to the site;
  - iv. All proposed development, including all structures, grading, clearing and limits of disturbance; and
  - v. The limits and depth of all proposed excavation within 25 feet of the bluff crest; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with (a) through (l) above, including supplemental documents, as appropriate, such as maps or surveys.]\* **\*Reserved\***

#### 7:7-7.29 Coastal general permit for habitat creation and enhancement activities

- (a) (No change from proposal.)
- (b) The following habitat creation and enhancement plans are acceptable provided they demonstrate compliance with (c) through (g) below:
  1. (No change from proposal.)
  2. A project plan approved under the Partners for Fish and Wildlife program, **\*Coastal Program, or a similar program,\*** administered by the U.S. Fish and Wildlife Service;
  - 3 - 7. (No change from proposal.)
- (c) – (g) (No change from proposal.)

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994), permit the public to understand accurately and plainly the purpose and expected consequences of this readoption with amendments. I hereby authorize this readoption with amendments.

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Date

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LISA P. JACKSON  
Commissioner