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**OFFICE OF POLICY, PLANNING AND SCIENCE
COASTAL MANAGEMENT OFFICE
Coastal Permit Program and Coastal Zone Management**

Proposed Amendments: N.J.A.C. 7:7-1.4; and 7:7E-1.1, 1.5, 1.6, 1.8, 3.4, 3.21, 3.27, 3.45, 5.1, 5.2, 6.2, 8.12 and 8.14

Proposed Repeal: N.J.A.C. 7:7E Appendix 1, Figure 20

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number:

Proposal Number:

A **public hearing** concerning this proposal will be held on <<insert date>>, at:

New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, NJ 08625

Submit written comments by {60 days after publication} to:

Oneida Cuevas, Esq.
Office of Legal Affairs
Attn: DEP Docket Number
NJ Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton, NJ 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a

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requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The proposed amendments can be viewed or downloaded from the Department's web site at <http://www.state.nj.us/dep>.

The agency proposal follows:

Summary

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing amendments to the Coastal Permit Program rules, N.J.A.C. 7:7 and the Coastal Zone Management rules, N.J.A.C. 7:7E. The Coastal Permit Program rules establish the procedures by which the Department reviews permit applications and appeals from coastal permit decisions. The Coastal Zone Management rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. The proposed amendments as detailed in the following paragraphs: update the goals of the New Jersey's Coastal Management Program; incorporate new digital mapping of prime fishing areas and set forth transparent standards for development within these areas; add the Shawcrest/Hildreth Island to the list of bay islands exempted from the Bay islands rule; specify the standards used to review proposed coastal activities and development within wetlands in the Hackensack Meadowlands District; clarify the application of the Coastal Zone Management rules in the review of coastal activities or developments within the Hackensack Meadowlands District; add electrical substations to the list of activities that are exempt from the impervious cover and vegetative cover requirements of subchapters 5, 5A and 5B; and facilitate the preservation of historic structures in danger of demolition, such as those of the Doo Wop era.

Coastal Goals

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New Jersey's Federally approved Coastal Management Program and the Coastal Zone Management rules at N.J.A.C. 7:7E were founded on broad coastal goals. These goals, referred to in the current rules as the "eight basic coastal policies," have been a part of the Coastal Zone Management rules since they were promulgated in 1978. These coastal goals have remained essentially unchanged to the present.

There is accumulating evidence and growing national concern that the oceans are at risk from nonpoint and point source pollution, climate change, over fishing and the effects of coastal development. The Pew Foundation funded the Pew Oceans Commission beginning in 2000. In June 2003, the Pew Oceans Commission released its report to the nation on the state of America's living oceans which is available at www.pewoceans.org. The Pew Oceans Commission concluded that America's oceans are in crisis, with ocean-related tourism and recreation threatened by pollution and sprawl. The U.S. Commission on Ocean Policy mandated by the Oceans Act of 2000 (P.L. 106-256) and authorized by Congress, was charged with making findings and developing recommendations to the President and Congress for a coordinated and comprehensive national ocean policy. The U.S. Commission on Ocean Policy, in its final report of September 2004, highlighted the serious problems facing our nation's marine environment. A copy of the final report is available at www.oceancommission.gov. The report contains over 200 recommendations that offer a strategy for promoting multiple uses and balancing competing stakeholder interests in the nation's oceans, coasts, and Great Lakes. In light of the work of these two national commissions, and the Department's 26 years of experience implementing the existing coastal goals through the Coastal Management Program and Coastal Zone Management rules, the Department concluded that the coastal goals should be refined. The amendments proposed herein and discussed in detail below, are New Jersey's refined coastal goals and the policies that are to be employed to attain the goals.

Prime Fishing Special Area Rule

Prime fishing areas have a demonstrable history of supporting a significant local quantity of recreational and commercial fishing activity. The Department first mapped prime fishing areas in the 1980s. Since the map is over 20 years old, it was determined in

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2003 that an update was needed. Charter boat, party boat and private boat captains were surveyed to identify the areas they consider “significant fishing areas” or prime fishing areas. This information was then compiled and refined into a digital format. The Department proposes to amend the rules to reference the updated prime fishing area Geographic Information System coverage and incorporate more transparent standards to strengthen the protection of fish and shellfish resources and maintain the commercial and recreational fishing in these areas.

Bay Islands Special Area Rule

The Bay islands rule is intended to protect these environmentally sensitive areas from development and to protect the public during coastal evacuations. However, the rule exempts certain bay islands from its requirements based on a review of the physical conditions of the island, including environmental sensitivity, accessibility, and level of existing development. The Department is proposing to add the Shawcrest/Hildreth Island, located in Lower and Middle Townships, Cape May County to the list of bay islands exempted from the rule. As discussed in detail below, this decision was made based on the physical conditions of the site, accessibility to State Highway 47, the level of existing development and that these areas are serviced by public utilities including sewer, electric, gas and water.

Hackensack Meadowlands District and Wetlands Special Area Rules

The Coastal Management Program defines the New Jersey coastal zone as including all areas where the State has authority through the Department and the New Jersey Meadowlands Commission to regulate land and water uses that may have a significant impact on coastal resources. The Hackensack Meadowlands District consists of uplands and coastal wetlands interlaced by tidal rivers and streams. Because the Hackensack Meadowlands District encompasses waters and adjacent shoreline with direct and significant impact on coastal waters and resources, it was included in the New Jersey Coastal Management Program and identified as a geographic area of particular concern under the Federal Coastal Zone Management Act, 16 U.S.C. 1450. Under the New Jersey Coastal Management Program, the Hackensack Meadowlands is treated differently from other parts of the coastal zone in recognition of the Hackensack Meadowlands

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Reclamation and Development Act, N.J.S.A. 13:17-1 et seq. and the comprehensive land use planning that has occurred under the auspices of the New Jersey Meadowlands Commission. The Hackensack Meadowlands District is designated by the New Jersey Coastal Management Program as a geographic area of particular concern requiring special management. According to the Federal Coastal Zone Management Program regulations at 15 C.F.R. 923.20, special management may include regulatory or permit requirements applicable only to the area of particular concern.

Under the New Jersey Coastal Management Program, the Hackensack Meadowlands District is treated differently than other parts of the coastal zone because of the comprehensive land use decision-making governed by a regional agency which is part of State government and has objectives and policies compatible with the New Jersey Coastal Management Program. The New Jersey Meadowlands Commission Master Plan and District Zoning Regulations were adopted as part of the Federal Coastal Management Program. In 2004, the Commission adopted a new Master Plan and significant amendments to the District Zoning Regulations. The proposed amendments to N.J.A.C. 7:7E-3.45 described in detail below, will clarify the application of the Coastal Zone Management rules in the review of coastal activities or developments within the Hackensack Meadowlands District. In addition, the amendments proposed to N.J.A.C. 7:7E-3.45 will incorporate the November 9, 2005 Memorandum of Agreement between the Department and New Jersey Meadowlands Commission which identifies the roles of each agency in reviewing proposed development and coastal activities within the Hackensack Meadowlands District.

In conjunction with the amendments to the Hackensack Meadowlands rule, the Department is also proposing amendments to the wetlands rule at N.J.A.C. 7:7E-3.27. These amendments address the standards used to review proposed coastal activities and development within wetlands in the Hackensack Meadowlands District.

Impervious Cover and Vegetative Cover Requirements for General Land Areas and Certain Special Areas

Subchapters 5, 5A and 5B contain the substantive standards for determining the allowable amount of impervious cover that may be placed on a development site and the

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amount of vegetative cover that must be preserved or planted on a development site. These coverage requirements do not apply to eight types of developments including: the development of a single family home that is not part of a larger development; a linear development except one contained wholly within a development and or serving a development; a mining operation; a public park; aquaculture defined at N.J.S.A. 58:1A-3; sanitary landfill; a wastewater treatment plant, or water treatment plant. The Department is proposing to add electrical substations to the list of activities that are exempt from the impervious cover and vegetative cover requirements of subchapters 5, 5A and 5B. This proposed amendment follows from a January 2006 Administrative Consent Order filed in the *Matter of Atlantic City Electric Company, Conectiv and PEPCO Holdings, Inc.*, Docket Number A-1156-03. The consent order represents a settlement which resolves Atlantic City Electric's appeal from a Coastal Area Facility Review Act (CAFRA) permit decision as well as numerous other issues between Conectiv and the Department unrelated to the coastal rules.

Resource Rules; Historic Structures

The post-World War II affluence and mobility changed the American landscape and uniquely influenced the development of the Wildwoods. The Wildwoods location, easily accessible from both North Jersey (via the newly completed Garden State Parkway), and the metropolitan –Philadelphia area , their sandy beaches and musical attractions (the first nationwide broadcast of “American Bandstand” in 1957 was hosted by the Starlight Ballroom in Wildwood) resulted in intense development of the area. The resultant architecture of this period is known locally as “Doo Wop” after the musical style. This style is characterized by themes (exotic location, luxury, popular culture, space exploration and the American colonial period); angles, cantilevered roofs, walls that lean in and out; asymmetry; jalousie windows; balconies often with iron railings; broad roof overhangs; neon signage; boomerang, kidney or amoeba-shaped swimming pools, signs and interior finishes; and large expanses of plate glass windows.

The Wildwood Shore Resort Historic District, known as the “Doo Wop area,” which is located in Wildwood Crest, Cape May County, is eligible for inclusion on the New

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Jersey and National Registers of Historic Places. The District is an architecturally outstanding collection of these 1950's, 1960's and 1970's Doo Wop era motels that may be the largest such collection in the United States. The buildings are generally two or three stories in height, constructed of concrete and/or cinder block, with balconies; most lack heat or elevators, and are in need of refurbishment. Given the real estate value of beachfront property in the area, along with current local zoning and Coastal Area Facility Review Act (CAFRA) requirements, the District may not survive. A number of the motels exhibiting the "Doo Wop" era architectural style have been demolished in recent years and replaced with new condominium buildings. In an effort to maintain and sustain the unique character of the remaining buildings and thereby promote their preservation, the Department is proposing to amend the Coastal Zone Management rules to facilitate the refurbishment of these structures. Specifically, in balancing the need for parking with the preservation of these historic structures, the Department is proposing to amend the Scenic resources and design rules, N.J.A.C. 7:7E-8.12 and Traffic rules, N.J.A.C. 7:7E-8.14 to allow the expansion of these motels and reduce the parking requirements associated with such expansion, as described below in the section by section summary.

The following is a summary of the proposed amendments.

N.J.A.C. 7:7 Coastal Permit Program rules

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

This rule provides that the Department shall not issue a CAFRA permit unless it makes the findings required by N.J.S.A. 13:19-10 in accordance with the Coastal Zone Management Rules, N.J.A.C. 7:7E-1.5(b). The cross-reference to N.J.A.C. 7:7E-1.5 is being updated to reflect the reorganization of subchapter 1 of the Coastal Zone Management rules.

N.J.A.C. 7:7E Coastal Zone Management rules

N.J.A.C. 7:7E-1.1 Purpose and scope

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The purpose and scope of the Coastal Zone Management rules are set forth at N.J.A.C. 7:7E-1.1. Pursuant to N.J.A.C. 7:7E-1.1(a), the Coastal Zone Management rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone.

N.J.A.C. 7:7E-1.1(b) provides a brief history of New Jersey's Coastal Management Program. The Department proposes amendments to correct titles to the referenced Environmental Impact Statements and clarify that New Jersey's Coastal Management Program was approved in two segments. The first segment, approved by the National Oceanic and Atmospheric Administration (NOAA) in September 1978, included the CAFRA area only. Because the Department, under CAFRA, had already prepared a coastal management strategy for the CAFRA area in 1977, the Department elected to seek Federal approval of this segment first and then to complete the boundary, policy and management system for the remainder of the State's Coastal Management Program. The Department developed the "Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement." This document added the tidally influenced waterfront areas in the northeastern part of the State along the Hudson River (known as the northern waterfront area), the Hackensack Meadowlands area, and the southeastern area of the State along the Delaware River and its tributaries (known as the Delaware River area) to the segment that had received Federal approval in 1978. In September 1980, Federal approval was received for the second segment.

N.J.A.C. 7:7E-1.1(c) addresses consideration of the national interest as required by the Federal Coastal Zone Management Act. The Department proposes to recodify part of this language at N.J.A.C. 7:7E-1.1(b) because consideration of the national interest is a requirement for approval of a coastal management program under the Federal Coastal Zone Management Act. As such, this language is more appropriately codified at N.J.A.C. 7:7E-1.1(b) since this subsection addresses Federal approval of the Coastal Management Program.

N.J.A.C. 7:7E-1.1(c) also provides that the adoption of the Federal Coastal Zone Management rules as administrative rules ensures their enforceability under the Federal Coastal Zone Management Act. The Department proposes to replace this provision to

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make clear that the Coastal Zone Management rules, including the coastal goals and policies set forth are enforceable policies under the Federal Coastal Zone Management Act. Enforceable policies under the Federal Coastal Zone Management Act are State policies that are legally binding under State law and by which the State exerts control over private and public coastal uses and resources. Examples of enforceable policies include constitutional provisions; laws; regulations; land use plans; and/or ordinances; and judicial or administrative decisions.

The “eight basic coastal policies” (goals) of the Coastal Zone Management rules and Coastal Management Program currently located at N.J.A.C. 7:7E-1.5(a)1i-viii are proposed to be recodified at N.J.A.C. 7:7E-1.1(c) with amendments. As stated previously, the Department reexamined the coastal policies in light of the recent concern over the health of the oceans and also because the policies have remained essentially unchanged for the past 26 years. The revised coastal goals proposed herein encompass one or more of the existing eight basic coastal policies. Each revised coastal goal is accompanied by related policies that set forth the means to accomplish that particular goal. By providing greater detail, State and local government agencies as well as the general public, will have a better understanding of each goal and the means that may be employed to attain the goal. In addition to establishing coastal policies, the revised goals reflect concepts expressed in the recommendations of the Pew Commission and U.S. Commission on Ocean Policy. A discussion of each revised goal follows.

It is the policy of the Coastal Management Program to protect the quality of New Jersey’s coastal ecosystems, thus conserving important natural resources; the health and diversity of the species that live there; and the water quality and natural environment necessary for their health. Proposed new N.J.A.C. 7:7E-1.1(c)1 sets forth the goal of healthy coastal ecosystems. The coastal zone has historically been home to large human populations because of the abundance of resources available for supporting human habitation. However, experience has shown that as coastal resources attract large populations, the resources themselves can become threatened. Therefore, the need to maintain healthy and diverse coastal systems in the face of coastal development is a primary goal of the Coastal Management Program.

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The coastal goal of effective management of ocean and estuarine resources is proposed at new N.J.A.C. 7:7E-1.1(c)2. Coastal dependent activities such as recreational and commercial fishing, shipping, alternative energy technology, boat repair and maintenance, and sand mining must be balanced with protection and restoration of marine and coastal ecosystems. Competition among various user groups must be managed in order to encourage water-dependent uses and yet ensure that resources are utilized in an efficient and appropriate manner. Protecting marine and coastal resources, promoting safe navigation and providing both commercial and recreational opportunities are key policies that must be employed to attain this coastal goal.

New Jersey's tidal waterways and their shores are a valuable but limited public resource. The ability of the public to access and use these lands and waters is a goal of the Coastal Management Program, as described at proposed new N.J.A.C. 7:7E-1.1(c)3. Public rights of access to and use of the tidal waterways and their shores, including the ocean, bays, and rivers, are founded in the Public Trust Doctrine. Public trust rights to tidal waterways and their shores include the ability of the public view and to pass physically to, from and along tidal waterways and their shores, and to use these lands and waters for activities such as fishing, swimming, sunbathing, bird watching, walking and boating. In order to ensure that the Public Trust Doctrine is implemented, this coastal goal aims to preserve existing and increase safe, environmentally sound and meaningful public access to and use of the State's tidal waterways and their shores.

The coastal goal of sustained and revitalized water-dependent uses is proposed at new N.J.A.C. 7:7E-1.1(c)4. Waterfront areas capable of and suitable for water-dependent development are a limited resource in the coastal zone. Because these areas are limited, non water-dependent development should not displace existing or preempt future water-dependent use of waterfronts, particularly in port areas. In urban areas, especially those in need of new investment and revitalization, water-dependent development and public access along the water's edge are encouraged as a way to connect and activate the waterfront as a stimulus for new urban development. Similarly, new or maintenance dredging in support of water-dependent development is acceptable where necessary; where impacts on the natural environment can be minimized; when there is a

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demonstrated need that cannot be met by existing facilities; and where there is an acceptable means to handle dredge material. Dredged material management sites have become limited as coastal development has increased. Preservation of existing dredged material placement sites is necessary.

The goal of coastal open space is proposed at new N.J.A.C. 7:7E-1.1(c)5. Protecting and restoring open space as well as ensuring appropriate use by the public is a goal of the Coastal Management Program. The natural, scenic, historic, and ecologically significant landscapes often encompassed by open space are central to effective coastal management. Coastal open space is a fundamental aspect of a viable, healthy, attractive and productive coastline and promotes water-dependent economic activity and coastline protection.

Safe, healthy and well-planned coastal communities and regions is a goal of the Coastal Management Program. This coastal goal is proposed at new N.J.A.C. 7:7E-1.1(c)6. As coastal communities continue to grow, it is essential that development is managed and well planned to protect both the resources that draw development and the health and safety of coastal residents. If unchecked, development of the coast would overwhelm natural resources, water supplies and infrastructure. With continued population growth, incentive for development will increase and efforts to concentrate the development to avoid sprawl into natural areas must keep pace. Where industrial activities have declined, there are sites no longer in demand for industrial use and others that have been contaminated by past activities. Rather than allow these sites to languish, the Coastal Management Program encourages their redevelopment in order to improve distressed communities. Mixed-use redevelopment is promoted, rather than having areas that are exclusively residential or commercial. Management of natural resources is also a key component of safe, healthy and well-planned coastal communities. Natural resources play a crucial role in protecting the shore and coastal development from natural hazards. Natural systems such as barrier islands, beaches, dunes and wetlands provide protection from storms by reducing wave energy. In areas that are susceptible to natural hazards, it is essential that hazard mitigation plans be developed to reduce risks to coastal inhabitants.

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The coastal zone is a complex mix of resources and competing uses. Consequently, the Coastal Management Program must integrate a wide range of roles and actions including: research, planning, policy development, regulation, enforcement, land acquisition and management as well as public education and outreach to ensure conflicts are minimized and uses are appropriate. As part of the decision-making process, comprehensive planning and research is a vital tool. This is reflected in the coastal goal, Coordinated coastal decision-making, comprehensive planning and research at proposed new N.J.A.C. 7:7E-1.1(c)7. Some portions of the coastal zone are of such importance that it is appropriate to establish management plans specific to these areas. For these geographic areas of particular concern, special management plans may be the most suitable means of resource management. In other instances, activities in the coastal zone such as energy facility siting; locating wastewater treatment facilities; or transportation corridors are of such regional or national interest that they require special planning efforts as a way to balance resource protection with broad public needs. As part of this goal, the Coastal Management Program will encourage the preparation of comprehensive plans.

The general public is the beneficiary of the Coastal Management Program and it is essential that the public's role is both encouraged and enhanced. Increased public involvement and education lead to a better-informed citizenry and a heightened sense of stewardship of coastal resources and participation in the Coastal Management Program. Local stakeholders can provide essential insight into local issues and how these issues can be effectively addressed. Additionally, coastal residents are often the first to identify new and emerging issues. Therefore, it is essential to develop effective outreach programs that not only encourage public participation, but also educate the public about the value of the coastal zone as a recreational, economic, aesthetic, historical and cultural resource. For these reasons, the goal, Coordinated public education and outreach, is proposed at new N.J.A.C. 7:7E-1.1(c)8.

Existing N.J.A.C. 7:7E-1.1(d) and N.J.A.C. 7:7E-1.5(a) describe the development of the Coastal Zone Management rules and their application in the coastal decision-making process. The Department proposes to consolidate, reorganize, and clarify these sections at N.J.A.C. 7:7E-1.1(d) and (e). The Department also proposes to delete the language at

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N.J.A.C. 7:7E-1.1(d), which describes the decision-making process in the Hackensack Meadowlands District. Instead, the roles of the New Jersey Meadowlands Commission and the Department are set forth at N.J.A.C. 7:7E-3.45, as proposed to be amended (see below).

N.J.A.C. 7:7E-1.5 CAFRA findings

Existing N.J.A.C. 7:7E-1.5 describes the coastal decision-making process; contains the coastal goals of the Coastal Management Program; and lists the findings the Department is required to make prior to the issuance of a CAFRA permit pursuant to N.J.S.A. 13:19-10. As explained above, N.J.A.C. 7:7E-1.5(a) is being recodified, with amendments, at N.J.A.C. 7:7E-1.1(d) and (e).

N.J.A.C. 7:7E-1.6 Mitigation

The Mitigation rule at N.J.A.C. 7:7E-1.6 sets forth the general requirement that mitigation should be provided on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. The requirements for mitigation of a particular resource are addressed more specifically in each applicable rule.

The Department is proposing to amend the cross-reference to the basic coastal policies at N.J.A.C. 7:7E-1.6(a) to reflect the recodification of the coastal goals and supplemental policies at N.J.A.C. 7:7E-1.1(c), as previously described.

N.J.A.C. 7:7E-1.8 Definitions

N.J.A.C. 7:7E-1.8 contains definitions of terms used in the chapter. The Department proposes to replace the introduction to the definitions at N.J.A.C. 7:7E-1.8(a) with language that is consistent with the introduction of the definitions in the Coastal Permit Program rules, N.J.A.C. 7:7. In February 2003, the definitions were codified at N.J.A.C. 7:7E-1.8 for purposes of assisting the reader in easily locating the terms (see 34 N.J.R. 83). Prior to this amendment, the definitions were codified as part of the coastal decision-making process at N.J.A.C. 7:7E-1.5(c). As such, the introduction to the definitions section was stated in terms of the definition's relationships to the coastal decision-making process. Since the definitions are intended to be applicable to the entire

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chapter, the language indicating that the rules are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged or prohibited and cross-referencing the principles at N.J.A.C. 7:7E-1.5(a) is no longer necessary.

The Department proposes to add a definition of “footprint of development” for purposes of the proposed amendments to the Scenic resources and design rule at N.J.A.C. 7:7E-8.12 and the Traffic rule at N.J.A.C. 7:7E-8.14, as discussed below. The proposed definition is consistent with the Coastal Permit Program rules, N.J.A.C. 7:7-1.3.

N.J.A.C. 7:7E-3.4 Prime fishing areas

N.J.A.C. 7:7E-3.4 contains the Department’s rule for the protection of prime fishing areas. Prime fishing areas include tidal water areas and water’s edge areas which have a demonstrable history of supporting significant local quantity of recreational or commercial fishing activity. The term “quantity” is being replaced with “intensity” which is a better indicator of fishing activity.

N.J.A.C. 7:7E-3.4(a) contains a listing of areas considered to be prime fishing areas. The Department is proposing to add “groins” to the list of prime fishing areas. Similar to jetties, groins extend from the shoreline into a body of water. Groins are constructed of the same materials as jetties and have the ability of supporting significant intensities of recreational and commercial fishing activity. The Department is also proposing to add examples of physical features that are also considered prime fishing areas. These physical features include rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestone, coral, shell and tubeworms, slough areas and offshore canyons.

In addition, N.J.A.C. 7:7E-3.4(a) lists various publications and maps which identify prime fishing areas. As discussed previously, the prime fishing area map referenced in this section (New Jersey’s Specific Sport and Commercial Fishing Grounds Chart) is more than 20 years old. In 2003, the Division of Fish and Wildlife’s Bureau of Marine Fisheries, with funding from the Coastal Management Program, updated the map in digital format for inclusion in the Department’s Geographic Information System. The updating of the map was accomplished through direct interviews with recreational fishing

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boat captains. Prime recreational fishing grounds identified in the various publications referenced in the rule and commercially prepared sport fishing charts (Homeport Charts and Charter Boat Charts) were transferred onto two sets of NOAA nautical charts, which served as the working or base map. For fishing grounds within 20 nautical miles of the coast, NOAA nautical charts Series 12326, 12323, 12318 and 12214 at a scale of 1:80,000 were used. For fishing beyond 20 nautical miles NOAA nautical charts Series 12200 and 12300 at a scale of 1:400,000 were used.

During the summer of 2003, 28 party boat captains, 47 charter boat captains and 22 private boat captains from each fishing port (inlet) along the Atlantic Coast of New Jersey were interviewed by Department staff. These recreational fishing party boat, charter boat and private boat captains were selected because they fish the ocean waters on a daily basis using a wide variety of methods to catch a variety of fish species. The interview process entailed examining the accuracy of the already delineated prime fishing areas on the base map. Fishermen modified the base map by drawing their changes on the map. In general, modifications to the boundaries of the prime fishing areas resulted in an increase to the size of the prime fishing area. In a similar fashion, the captains drew new prime fishing areas on the base maps.

The revised base maps were then digitized into the New Jersey Specific Sport Ocean Fishing Grounds Coverage and incorporated into the Department's Geographic Information System. The proposed amendments to N.J.A.C. 7:7E-3.4(a) will include the areas identified on this digital map as prime fishing areas. This coverage is available to the public through the Coastal Management Program's web site at www.state.nj.us/dep/cmp

Existing N.J.A.C. 7:7E-3.4(b) contains the standards for uses within prime fishing areas. N.J.A.C. 7:7E-3.4(b)1 sets forth permissible uses within these areas, including recreational and commercial fin fishing, shellfishing, scuba diving and other water-related recreational activities. Existing N.J.A.C. 7:7E-3.4(b)2 provides that sand and gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas is prohibited, while disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards. The Department proposes a new N.J.A.C. 7:7E-3.4(b), in

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order to strengthen the protection of prime fishing areas. The existing standard, which prohibits sand mining in prime fishing areas if it would adversely affect high fishing productivity, will be replaced with a standard that prohibits development that would adversely affect the high fishing productivity or fishing use of the area, with three exceptions. The three exceptions proposed at new N.J.A.C. 7:7E-3.4(b)1 through 3 include development that is in the national interest provided there are no prudent and feasible alternatives that would result in less impact to prime fishing areas, fishery productivity or fishing use of the area; maintenance dredging conducted in accordance with N.J.A.C. 7:7E-4.6; and alterations of groins and jetties for the purpose of restoring longshore sand movement. The proposed rule does not substantially change the standards for sand and gravel mining but does strengthen the protection of this area by providing standards for other development activities. Given the importance of these areas for fishing use and high fish productivity, it is necessary to prevent activities that adversely affect these attributes in this special area unless that activity is in the national interest, continues a pre-existing use, or restores natural conditions.

The Department proposes new N.J.A.C. 7:7E-3.4(c) to provide that a development that is found acceptable within a prime fishing area in accordance with proposed N.J.A.C. 7:7E-3.4(b)1 or (b), must mitigate for impacts to this special area. Mitigation measures must reflect the value lost, for example, the reduction of fish habitat or fishing access. Proposed N.J.A.C. 7:7E-3.4(b)1 provides for a development that is in the national interest, where there is no prudent and feasible alternative that would result in less impact to the prime fishing area, fishery productivity or fishing use of the area, whereas proposed N.J.A.C. 7:7E-3.4(b)3 provides for the alteration of groins and jetties for the purpose of restoring longshore sand movement. Examples of mitigation are creation of wetlands or shallow water habitat that will serve as a nursery area for marine fish, or improvement of fishing access through the provision of parking or accessway, or the removal of submarine cables.

Existing N.J.A.C. 7:7E-3.4(c) contains the rule rationale. The Department proposes to recodify the rule rationale at N.J.A.C. 7:7E-3.4(d). The Department also proposes to

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amend the rationale to update statistical information that has not been updated since 1979.

N.J.A.C. 7:7E-3.21 Bay islands rule

Existing N.J.A.C. 7:7E-3.21 describes bay islands as former wetlands where uplands have been created by past filling, particularly with dredged material. These filled areas are adjacent to wetlands, intertidal flats, tidal waterways, shellfish beds and endangered and threatened wildlife species habitats. In many cases, development of the islands would pose a significant threat to these environmentally sensitive resources. Bay islands are also subject to flooding and, by virtue of their location, function as bridges between the mainland and barrier islands. If developed, these islands would pose an added storm evacuation problem. In addition, they are usually distant from public services and therefore are not suitable for development.

The Bay islands rule is intended to protect these environmentally sensitive areas from development and to protect the public during coastal evacuations. However, the rule exempts certain bay islands from its requirements based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Further, it was determined that future development on these exempted islands would not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands. The bay islands exempted from the rule have many characteristics in common, including a significant amount of previously filled wetlands, existing high intensity commercial and/or residential development, direct access to major roads and access to existing utility infrastructure to support development.

The Department is proposing to amend the list of exempted bay islands at N.J.A.C. 7:7E-3.21(b) to include portions of the areas known as Shawcrest Island and Hildreth Meadow located in Lower and Middle Townships, Cape May County, respectively. These areas are located between the mainland portion of Middle and Lower Townships and Five Mile Island and contain the municipalities of North Wildwood, Wildwood and Wildwood Crest. The exempted bay island will be referred to as Shawcrest/Hildreth

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Island in the rule. Shawcrest/Hildreth Island is adjacent to State Highway 47. The portion of the island south of State Highway 47 is approximately 48 acres in size and is completely developed with mobile homes and a marina. The portion of the island north of State Highway 47 is approximately 28 acres in size and has been developed for use as a landfill, as well as an amusement park, including miniature golf course, go-cart track and arcade. Both areas are serviced by public utilities including sewer, electric, gas and water. While the total land area of the island is approximately 280 acres, the Department is including only the two areas consisting of approximately 76 acres identified above. The remaining 204 acres of the island consist of wetlands and sparse development and are not appropriate for exemption from the rule. The areas mapped as Shawcrest/Hildreth Island are available as a download at the CAFRA layers webpage:

www.nj.gov/dep/gis/CAFRAlayers.htm. The exemption of the Shawcrest/Hildreth Island from the Bay Islands rule does not exempt any future development from all other applicable Coastal Zone Management rules.

N.J.A.C. 7:7E-3.27 Wetlands

The Wetlands rule at N.J.A.C. 7:7E-3.27 sets forth the standards for reviewing development proposed within wetlands. In conjunction with the amendments proposed to the Hackensack Meadowlands District rule at N.J.A.C. 7:7E-3.45, amendments are proposed to the Wetlands rule to address the standards used to review proposed coastal activities and development within wetlands in the Hackensack Meadowlands District.

Currently, development in all tidal and freshwater wetlands located outside of the Hackensack Meadowlands and north of the Raritan River is subject to the permitting requirements of the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A. However, development in wetlands located in the Hackensack Meadowlands does not require a freshwater wetland permit, except that the discharge of dredged or fill materials may require a permit issued under the Federal Clean Water Act, 33 U.S.C. 1251, and applicable State laws, under a permitting program administered by the State. The Department addresses proposed development in wetlands in the Hackensack Meadowlands District through the Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certificates under Section 401 of the Clean Water Act, 33 U.S.C. 1251, and the

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Federal consistency provisions under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. 1451. Through the Department's experience in reviewing wetland impacts within and outside of the Hackensack Meadowlands District, the Department has determined that the standards of the Freshwater Wetlands rules for individual permits, general permits and mitigation at N.J.A.C. 7:7A-4, 5, 7 and 15 are the appropriate standards to apply to development in wetlands in the Hackensack Meadowlands District, rather than the currently used Coastal Zone Management rules standards at N.J.A.C. 7:7E-3.27(c). The Department is proposing new N.J.A.C. 7:7E-3.27(b)1 to reflect this determination. N.J.A.C. 7:7E-3.27(b)1 provides that coastal activities and developments proposed in wetlands in the Hackensack Meadowlands District shall be consistent with the standards of the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A-4, 5, 7 and 15, relating to conditions on regulated activities conducted in wetlands and mitigation, if the activities are either proposed below the mean high water line where a waterfront development permit is required, or are proposed above the mean high water line and not subject to review by the New Jersey Meadowlands Commission.

Consistent with current practice, under the proposed amendments, these standards and the other standards of the Coastal Zone Management Wetlands rule, N.J.A.C. 7:7E-3.27, do not apply to proposed activities and developments in wetlands located above the mean high water line that require review by the New Jersey Meadowlands Commission. The Department has determined that the New Jersey Meadowlands Commission Master Plan addresses the management of such wetlands and therefore additional review by the Department is not necessary.

The Department has determined that the standards for review of coastal activities and developments proposed within wetlands located north of the Raritan River are the appropriate standards for use in the Hackensack Meadowlands District. Through this rulemaking, the Department is not assuming jurisdiction over wetlands in the Hackensack Meadowlands District under the Freshwater Wetlands Protection Act, but rather seeks to apply the development standards that are appropriate for these wetlands and that are consistent with the standards used outside of the Hackensack Meadowlands District in the

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northern portion of the State, when reviewing such development through the Waterfront Development Law, certification under the Federal Clean Water Act, and for consistency under the Federal Coastal Zone Management Act.

N.J.A.C. 7:7E-3.45 Hackensack Meadowlands District

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

Pursuant to New Jersey's Federally approved Coastal Management Program, the New Jersey Meadowlands Commission acts as the lead coastal planning and management agency within this special area. The New Jersey Meadowlands Commission District Zoning Regulations (N.J.A.C. 19:4) were adopted in 1980 as part of the Coastal Management Program. In early 2004, the New Jersey Meadowlands Commission adopted a revised Master Plan and revised New Jersey Meadowlands Commission District Zoning Regulations to implement the Master Plan. In response to these revisions and based on the Department's 24 years of experience reviewing coastal activities within the District, the Department has taken two steps. First, on November 9, 2005, the Department entered into a Memorandum of Agreement with the New Jersey Meadowlands Commission identifying the roles of each agency in reviewing proposed developments and activities in the District. Second, the Department is proposing to amend this special area rule to clarify the application of the Coastal Zone Management rules in the review of coastal activities or developments within the District.

Existing N.J.A.C. 7:7E-3.45(a) provides a brief description of the District. This subsection states that the District encompasses 19,730 acres of water, coastal wetlands and associated uplands. According to the New Jersey Meadowlands Commission staff, this acreage was calculated using municipal tax records and planimetry paper copies of tax maps from 1969. In revising the Master Plan, the acreage of the District was recalculated using digitized tax maps which correct inaccuracies. The recalculated acreage of the District is 19,485 acres. Therefore, the Department proposes to amend N.J.A.C. 7:7E-3.45(a) to reflect the recalculated acreage. Further, N.J.A.C. 7:7E-3.45(a)

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is being amended to delete language identifying the New Jersey Meadowlands Commission as the State-level management agency because the management agency is not relevant to the definition of this special area. Language indicating that the New Jersey Meadowlands Commission is the lead planning and management agency within the District is being added to the rationale at proposed new N.J.A.C. 7:7E-3.45(h). The title of the Hackensack Meadowlands Reclamation Act is also being amended for accuracy. Lastly, the reference “See Figure 20” that concludes the subsection is proposed for deletion. The reference to this figure in chapter 1 is in error – there is no Figure 20 in Appendix 1, and the Appendix 1 figure depicting the boundary of the Hackensack Meadowlands District is Figure 11. However, as Figure 11 is inaccurate and unnecessary in terms of establishing boundaries, Appendix 1, Figure 11 is proposed for repeal.

Existing N.J.A.C. 7:7E-3.45(b) generally describes the role of the Department and the New Jersey Meadowlands Commission in the Coastal Management Program. In 1980, it was determined that the Master Plan was consistent with the goals of the Coastal Management Program. The existing rule explains that the Master Plan and the New Jersey Meadowlands Commission District Zoning Regulations are adopted as part of the Coastal Management Program. N.J.A.C. 7:7E-3.45(b) does not set forth specific development standards within the Meadowlands District. N.J.A.C. 7:7E-3.45(b) merely provides background information and is therefore more appropriately located within the rule rationale. Therefore, this section is being recodified and updated as part of the rule rationale at proposed new N.J.A.C. 7:7E-3.45(h).

Proposed new N.J.A.C. 7:7E-3.45(b) through (f) contain the substantive standards for proposed coastal activities or developments within the District. These standards are dependent upon whether a zoning certificate or statement of consistency from the New Jersey Meadowlands Commission is required and whether the proposed activity or development is subject to the Waterfront Development Law, N.J.S.A. 12:5-3.

New Jersey Meadowlands Commission District Zoning Regulations ensure the consistency of a proposed activity or development with the New Jersey Meadowlands Commission Master Plan. A zoning certificate issued by the New Jersey Meadowlands Commission is one vehicle that demonstrates a proposed activity or development is

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consistent with the New Jersey Meadowlands Commission Master Plan. Therefore, proposed new N.J.A.C. 7:7E-3.45(b) and (c) require that a proposed activity or development be consistent with the New Jersey Meadowlands Commission Master Plan if it is subject to review by the New Jersey Meadowlands Commission. Because the New Jersey Meadowlands Commission District Zoning Regulations ensure the consistency of a proposed activity or development with the New Jersey Meadowlands Commission Master Plan, the issuance of a zoning certificate by the New Jersey Meadowlands Commission is proposed at new N.J.A.C. 7:7E-3.45(b) as evidence that the Master Plan has been met for those coastal activities or developments that require a zoning certificate.

Certain coastal activities or developments do not require a zoning certificate but follow an alternative process established by the New Jersey Meadowlands Commission. Proposed new N.J.A.C. 7:7E-3.45(c) provides that issuance of a statement of consistency by the New Jersey Meadowlands Commission serves as evidence that those coastal activities or developments that do not require a zoning certificate are consistent with the New Jersey Meadowlands Commission Master Plan. These projects fall into three categories. The first two categories are municipal or county projects necessitating the expenditure of any public funds, and requiring a resolution from the New Jersey Meadowlands Commission in accordance with N.J.S.A. 13:17-12(b); and exempt municipal projects located on land owned by a municipality that is in compliance with all applicable New Jersey Meadowlands Commission District Zoning Regulations, at N.J.A.C. 19:4-3.2(a)5. These municipal projects are identified at N.J.A.C. 7:7E-3.45(c)1 and 2. In accordance with the Memorandum of Agreement between the Department and the New Jersey Meadowlands Commission, the Commission will issue either a resolution or a statement of consistency with the Master Plan for these developments and activities. The third category of projects, identified at N.J.A.C. 7:7E-3.45(c)3, are developments and improvements proposed or sponsored by the New Jersey Meadowlands Commission, in accordance with the New Jersey Meadowlands District Zoning Regulations at N.J.A.C. 19:4-3.2(a)3. In accordance with the Memorandum of Agreement, the New Jersey Meadowlands Commission will also approve a resolution or provide a statement of

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consistency with the Master Plan for projects that the New Jersey Meadowlands Commission undertakes.

In the District, the Waterfront Development Law, N.J.S.A. 12:5-3 applies to coastal activities or developments located in a tidal waterway or in any lands lying thereunder, up to and including the mean high water line. Accordingly, proposed new N.J.A.C. 7:7E-3.45(d) provides that all applicable Coastal Zone Management rules apply to these activities or developments regardless of whether a zoning certificate or statement of consistency from the New Jersey Meadowlands Commission is required.

Certain activities and developments do not require a zoning certificate from the New Jersey Meadowlands Commission and do not follow any alternative review process with the New Jersey Meadowlands Commission. Examples of such activities and developments are coastal activities on Federal lands, municipal, county, or State highway projects (e.g. New Jersey Turnpike), and railroad projects. Proposed new N.J.A.C. 7:7E-3.45(e) provides that these coastal activities and developments must comply with all applicable Coastal Zone Management rules.

Existing N.J.A.C. 7:7E-3.45(c) which addresses the inapplicability of the Freshwater Wetlands Protection Act to coastal activities under the jurisdiction of the New Jersey Meadowlands Commission is proposed to be recodified at N.J.A.C. 7:7E-3.45(f) with no changes in text.

As discussed previously, on November 9, 2005 the Department and New Jersey Meadowlands Commission entered into a Memorandum of Agreement that identifies the roles and responsibilities for each agency in reviewing proposed coastal activities and developments within the Hackensack Meadowlands District. The Department is proposing to incorporate the review process in the Memorandum of Agreement at proposed new N.J.A.C. 7:7E-3.45(f).

The rule rationale at existing N.J.A.C. 7:7E-3.45(d) is proposed to be recodified at N.J.A.C. 7:7E-3.45(h) and amended to include the language of existing N.J.A.C. 7:7E-3.45(b), as described above. Further, the rationale has been amended to describe the relationship between the New Jersey Meadowlands Commission Master Plan and New Jersey Meadowlands District Zoning Regulations.

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N.J.A.C. 7:7E-5.1 Purpose and Scope

N.J.A.C. 7:7E-5.1 sets forth the requirements for impervious cover and vegetative cover on sites located in the upland waterfront development area (N.J.A.C. 7:7E-5A) and CAFRA area (N.J.A.C. 7:7E-5B). N.J.A.C. 7:7E-5.1(d) lists the types of developments to which the impervious cover and vegetative cover requirements of subchapters 5A and 5B do not apply. The Department is proposing to amend this list to add electrical substations as N.J.A.C. 7:7E-5.1(d)9. For safety reasons, the areas surrounding electrical substation equipment must be cleared and graded to drain away from the equipment thereby preventing puddling and vegetative growth. These areas are typically covered with quarry stone or paved to minimize vegetative growth and promote drainage. Limited impervious areas are also necessary to provide access to electrical substation equipment for maintenance. This proposed amendment follows from a January 2006 Administrative Consent Order in the *Matter of Atlantic City Electric Company, Conectiv and PEPCO Holdings, Inc. (Atlantic City Electric Co. v. New Jersey Department of Environmental Protection, Docket Number A-1156-03)*. Pursuant to the Administrative Consent Order, the Department agreed to propose an amendment to the Coastal Zone Management rules that would exempt electrical substations from the impervious cover and vegetative cover requirements of subchapters 5, 5A and 5B of the Coastal Zone Management rules.

The Department is also proposing a new definition of “electrical substation” at N.J.A.C. 7:7E-5.2, as discussed below.

N.J.A.C. 7:7E-5.2 Definitions

N.J.A.C. 7:7E-5.2 sets forth definitions specific to subchapters 5, 5A and 5B. To facilitate the exemption under proposed N.J.A.C. 7:7E-5.1(d)9 described above, of electrical substations from the impervious cover and vegetative cover requirements of subchapters 5, 5A and 5B, the Department is proposing a definition of electrical substation. An electrical substation is a subsidiary facility through which electricity is

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passed. An electrical substation consists of the footprint of the substation equipment, safety and maintenance zone and areas necessary for access and parking.

N.J.A.C. 7:7E-6.2 Basic location rule

This rule provides that even if a proposed development is found acceptable in accordance with N.J.A.C. 7:7E-3, 4, 5, 5A, 5B and 6, the Department can reject or conditionally approve the proposed development location as reasonably necessary to promote public health, safety and welfare; protect public and private property, wildlife and fisheries; and preserve, protect and enhance the natural environment. For purposes of consistency with the coastal goals and policies, N.J.A.C. 7:7E-6.2(a)1 is being amended to replace the term “promote” with “protect.”

7:7E-8.12 Scenic resources and design

N.J.A.C. 7:7E-8.12(d) requires that new coastal development adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk that is located outside the northern waterfront region, Delaware River region and Atlantic City provide an open view corridor and be setback from the beach, dune, boardwalk or waterfront. The Department is proposing to modify this requirement for new coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places. The Department proposes new N.J.A.C. 7:7E-8.12(e) to provide that such new coastal development need not comply with the open view corridor or setback requirements of N.J.A.C. 7:7E-8.12(d) provided the development preserves the historic structure and does not detract from, damage or destroy the value of the historic structure. Attributes that establish or contribute to the value of a historic structure include: association of the structure with events that have made a significant contribution to the broad patterns of our history; the embodiment by the structure of the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; and the overall integrity of location, design, setting, materials, workmanship, and feeling associated with

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the structure (see New Jersey Register of Historic Places rules, N.J.A.C. 7:4-2.3). This provision does not apply to new development proposed to be located outside of the historic structure's footprint of development.

The Department's Historic Preservation Office has determined that the expansion of certain historic structures within the structure's footprint of development in certain circumstances will not adversely affect the value of the historic structure. This is particularly the case in Wildwood Crest. The motels of the Doo Wop area are such that the expansion of these structures through the addition of floors within the historic structure's footprint of development can be designed so that it will not detract from the historic value of the structure. This provision is intended to facilitate the refurbishment and expansion of existing historic structures such as those of Wildwood Crest's Doo Wop area, so that they may be preserved rather than demolished.

The Department proposes to recodify existing N.J.A.C. 7:7E-8.12(e) to N.J.A.C. 7:7E-7.812(f) with no changes in text.

7:7E-8.14 Traffic

The Traffic rule at N.J.A.C. 7:7E-8.14(e) requires that coastal development located in municipalities which border the Atlantic Ocean provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. N.J.A.C. 7:7E-8.14(e)1-3 contains exceptions to this parking requirement.

In an effort to maintain and sustain the unique character of certain historic structures on or eligible for listing on the New Jersey or National Register of Historic Places, the Department is proposing to relax the parking requirements at a ratio of two spaces per residential unit for such structures. The Department proposes to relax the parking requirements in cases where the new development: (1) preserves the historic structure; (2) will not detract from, damage or destroy the value of the historic structure; (3) is located within the historic structure's footprint of development; (4) provides on-site and/or off-site parking for any new floors within the footprint of development at a ratio of one parking space per new residential unit, and (5) retains existing parking spaces associated with the historic structure.

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Most, if not all, of the sites of the historic motels in the Doo Wop area of Wildwood Crest are entirely covered with structure, pool and parking. Therefore, there is no room on the site to accommodate additional parking. In order to comply with the existing parking requirements, developers have torn down the structures and new buildings have been built with parking provided underneath the building. To balance the need for the preservation of historic motels and the character of the shore communities with the need to provide adequate parking in shorefront communities, the Department has determined it appropriate to adjust the parking ratio in these limited circumstances.

Social Impact

As discussed in the Summary, the revised coastal goals are in response to the growing concern regarding the health of the ocean and coastal ecosystems and the Department's 26 years of experience implementing the Coastal Zone Management rules and existing goals. By providing greater detail through the addition of policies related to each goal, State and local government agencies and the general public will have a better understanding of each goal and the means that may be employed to attain the goal. By implementing the policies to attain the eight coastal goals, citizens of New Jersey will benefit from clean water; enhanced access to and use of tidal waterways and their shores; revitalized water dependent uses; additional areas of preserved open space; sustained coastal communities; a more coordinated coastal decision-making process involving comprehensive research and planning; and an awareness of the importance of the coastal areas to the vitality of New Jersey.

According to the Department's Division of Fish and Wildlife's Bureau of Marine Fisheries, more than 800,000 people participate annually in marine sport fishing and shellfishing in New Jersey's waters. The classification of additional water areas as prime fishing areas will continue to preserve this valuable tourism industry.

The Department anticipates that the proposed amendments to the Hackensack Meadowlands District rule will have a positive social impact. The proposed amendments that specify the Coastal Zone Management rules applicable to proposed coastal activities

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or developments when a New Jersey Meadowlands Commission zoning certificate is required; when a statement of consistency from the New Jersey Meadowlands Commission is required; when neither a zoning certificate or statement of consistency from the New Jersey Meadowlands Commission is required; and when a permit is required under the Waterfront Development Law, will result in predictability. Further, the proposed amendments to the Wetlands rule, will have a positive impact as the same wetlands standards will be applied to wetlands located within the District as outside the District and also north of the Raritan River.

The proposed amendments to the Scenic resources and design and Traffic rules will have a positive social impact. The proposed amendments to these rules are intended to preserve the historic resources and character of New Jersey shore communities. These proposed amendments will also have a positive impact on the Doo Wop area of Wildwood Crest. Over 20 percent of the motels from the 1950's, 1960's and 1970's located in the Doo Wop area have been demolished. The proposed amendments to these rules are intended to provide the motel owners relief from the parking and setback requirements of the Coastal Zone Management rules and enable them to refurbish and expand these motels, thereby preserving this historic area.

The proposed amendments related to bay islands will have a positive social impact on the current and future occupants and visitors to Shawcrest/Hildreth Island due to the redevelopment that will follow. Redevelopment and proper closure of the landfill located north of State Highway 47 would allow for increased public access to the waterfront for a productive recreational use of the site.

The proposed amendments related to electrical substations will have a positive social impact by facilitating the placement of electrical substations in the coastal zone. Electrical substations are needed to provide a reliable source of electricity to the general population and visitors of the State of New Jersey, decreasing brown-outs and other service interruptions.

Economic Impact

The proposed amendments to the Coastal Management Program's goals will have a positive economic impact. The goals of healthy coastal ecosystems; management of

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ocean and estuarine resources; meaningful public access to and use of tidal waterways and their shores; and coastal open space, will result in the protection of New Jersey's precious coastal resources, will encourage access to these resources and will preserve open space for these resources. This will have a positive economic impact on New Jersey's tourism industry. The goals of sustained and revitalized water dependent uses and safe, healthy and well-planned coastal communities will encourage the redevelopment of coastal brownfield and greyfield sites with mixed uses and promote the enhancement of existing maritime uses such as ports along the waterfront.

The Department anticipates the proposed amendments to the prime fishing areas rule will also have a positive economic impact on the commercial and recreational fishing industries. The updated mapping will expand the areas subject to protection under this rule, thereby protecting the fish productivity and accessibility of these areas. The recreational fishery industry is worth \$1.5 billion annually to the economy. However, the classification of additional areas as prime fishing areas may have the potential to negatively impact the siting of submerged cables and sand mining areas since more areas will be subject to protection under this rule.

It is anticipated that the proposed amendments to the Hackensack Meadowlands District rule will have a positive economic impact. By clearly identifying the Coastal Zone Management rules that will be applied to a given project within the Hackensack Meadowlands District, developers and Federal agencies may reduce the costs associated with preparing an application for development within the District. In addition, the ability to use the standards for freshwater wetlands permits will be economically beneficial to proposed development in the Hackensack Meadowlands District.

The Department anticipates that the proposed amendments to the Scenic resources and design and Traffic rules will have a positive economic impact on the affected shore communities. The proposed amendments will promote tourism by allowing certain historic structures to be refurbished and added on to, which will increase the number of motel rooms available to the public. Similarly, the changes to the Bay islands rule will have a positive economic impact as Shawcrest/Hildreth Island is redeveloped, with the potential of providing additional housing, hotel rooms and/or marina.

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The proposed amendments related to electrical substations will have a positive economic impact by providing a greater opportunity for the placement of electrical substations in the coastal zone without additional costs to power companies to acquire land to meet impervious coverage requirements.

Environmental Impact

The proposed amendments will continue to have a positive environmental impact on the coastal zone. The primary goal of the Coastal Management Program is to maintain healthy and diverse coastal systems in the face of coastal development. The proposed coastal goals will continue to protect the resources of the coastal zone.

The Department anticipates that the proposed amendments to the prime fishing areas rule will have a positive environmental impact as more areas will be protected under this special area rule.

As a result of the proposed amendments to the Hackensack Meadowlands District and Wetlands rules, the same wetlands standards will apply to all wetlands located north of the Raritan River, unless the wetlands are subject to the New Jersey Meadowlands Commission Master Plan and District Zoning Regulations. The wetlands standards that will apply are the standards of the Freshwater Wetlands Protection Act rules that apply to issuance of individual and general permits, which the Department, in adopting those regulations, found to be protective of wetlands. In addition, mitigation will be required for those wetland disturbances, to offset the impact of wetlands disturbance. It is expected that the proposed amendments to the Scenic resources and design and Traffic rules will have a positive environmental impact, as it will encourage preservation of historic structures and districts.

Although the amendments related to the Bay islands rule will exempt Shawcrest/Hildreth Island from the requirements of the Bay islands rule, it is not anticipated that the impervious cover on the island will increase as a result. Rather, the number of units on the island will increase. As development on the island will be subject to all remaining special area and resource rules, this is not anticipated to have an adverse effect on the environment. The amendments to N.J.A.C. 7:7E-5.1 will exempt electrical

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substations from the impervious cover requirements of subchapters 5, 5A and 5B.

Compliance with all other applicable rules in the Coastal Zone Management Rules is still required and will prevent adverse impact on the environment.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65), require that State agencies which adopt, readopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis.

The Federal Coastal Zone Management Act (16 U.S.C. 1450) 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 Federal Coastal Zone Management Program guidelines are found at 15 C.F.R. 923. The guidelines do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. They simply provide a planning and management process, without establishing development standards for development in the coastal area.

Accordingly, Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

Jobs Impact

The proposed amendments to the Coastal Management Program's coastal goals will have a positive impact on jobs in the State. The coastal goals of sustained and revitalized water-dependent uses and safe, healthy and well-planned coastal communities are intended to maintain, encourage and enhance maritime uses, thereby preserving and potentially increasing maritime related jobs. Further, by strengthening the standards of the prime fishing areas rule and increasing the number of prime fishing areas protected, the proposed amendments will have a positive affect on jobs related to the fishing industry.

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The Department does not anticipate that the proposed amendments to the Hackensack Meadowlands District rule will impact jobs in the District, nor does it expect that the amendments to the rules regarding electrical substations will have an impact on jobs.

The Department anticipates that the proposed amendments to the Scenic resources and design and Traffic rules will have a positive impact on jobs. The proposed amendments will allow the historic structures to be refurbished with additions, which will create jobs in the construction industry and job growth in the motel industry.

Exempting Shawcrest/Hildreth Island from the Bay islands rule at N.J.A.C. 7:7E-3.21 may spur redevelopment of certain portions of the island which will in turn lead to increased jobs in the project development and construction fields. In addition, future commercial development would increase job availability.

Agriculture Industry Impact

The proposed amendments to the prime fishing areas rule will not affect the siting of aquaculture facilities, which are considered a form of agriculture, because aquaculture activities are located in areas of low fish productivity and prime fishing areas are areas of high fish productivity.

The proposed amendments to the Coastal Management Program's coastal goals will have a positive impact on the agriculture industry, including aquaculture activities. Specifically, the proposed coastal goal of healthy coastal ecosystems will preserve existing agricultural or aquacultural uses.

The proposed amendments to the Bay island, Wetlands, Hackensack Meadowlands District, subchapter 5, Scenic resources and design and Traffic rules will not impact the agriculture industry.

Regulatory Flexibility Statement

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendments will continue to affect a significant number of builders and property owners defined as "small businesses" in the Act. However, the proposed amendments will not alter or expand the Department's

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jurisdiction over development subject to regulation under CAFRA, the Waterfront Development Law or the Wetlands Act of 1970. In addition, the Department has determined that the proposed amendments will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Act.

The proposed amendments will not result in additional costs, such as consulting and permit application fees, to those proposing to construct development subject to regulation under the above referenced coastal statutes. The proposed amendments to the Hackensack Meadowlands District may assist small business by clarifying which Coastal Zone Management rules and which wetlands standards will be applied to a project within the Hackensack Meadowlands District. The proposed amendments to the Scenic resources and design and Traffic rules will provide more flexibility to small business owners of historic structures which will allow the owners to upgrade and expand their existing structures. The proposed amendments related to electrical substations are not expected to have any impact on small businesses.

The proposed amendments related to bay islands would facilitate redevelopment of Shawcrest/Hildreth Island, which may provide a small measure of additional opportunities for small businesses.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies that adopt, amend or repeal any rule to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed amendments on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed amendments are expected to have a positive impact on Smart Growth in the State. The updating of the coastal goals, particularly the goals of safe, healthy, and well-planned coastal communities and sustained and revitalized water-dependent uses promotes smart growth. Further, by requiring that proposed developments within the Hackensack Meadowlands District be consistent with the goals and policies of the New

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Jersey Meadowlands Master Plan, through the issuance of a zoning certificate or statement of consistency by the New Jersey Meadowlands Commission, the proposed amendments will promote growth in compliance with the vision of the New Jersey Meadowlands Commission. The predictability provided by applying the same standards to all wetlands north of the Raritan River will have a positive effect on planning development consistent with State regulations in this geographical area. The Department's proposal to exempt Shawcrest/Hildreth Island from the Bay islands rule will allow redevelopment of an area with existing impervious cover, and already served by sewers, roads and water. Finally, by providing relief from the parking and setback requirements of the Coastal Zone Management rules for historic structures, the proposed amendments will promote the continued use and refurbishment of these structures. One area where such relief is particularly critical is the Doo Wop area of Wildwood Crest, where over 20 percent of the motels of the 1950's, 1960's and 1970's have been demolished. The proposed amendments will promote refurbishment and expansion of these motels, located in an area designated as a center for growth in the State Plan. As a result, the Department expects the proposed amendments will have a positive impact on the State's achievement of smart growth and implementation of the State Plan.

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

Full text of the rule proposed for repeal, N.J.A.C. 7:7E Appendix 1, Figure 11, may be reviewed by contacting the New Jersey Office of Administrative Law, P.O. Box 049, Trenton, NJ 08625-0049. The Appendix 1 Figures could not be reproduced in the New Jersey Register or the Administrative Code.

N.J.A.C. 7:7 Coastal Permit Program

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

(a) (No change.)

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(b) The Department shall not issue a permit under CAFRA unless the Department makes the findings required by N.J.S.A. 13:19-10. [Such] **The** findings shall be made in accordance with N.J.A.C. 7:7E-1.5[(b)](a).

N.J.A.C. 7:7E Coastal Zone Management

7:7E-1.1 Purpose and scope

(a) (No change.)

(b) In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management Strategy **and published** [for public review as] the “New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement” [(EIS) for Federal approval] **in May 1978. The proposed program covered the CAFRA area only.** In August 1978, the Governor submitted the revised “New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final [EIS] **Environmental Impact Statement**” for Federal approval [,which]. **The approval** was received in September 1978. In May 1980, the Department submitted further revisions, published as the “Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement.” **These revisions incorporated the northern waterfront area, Delaware River area and New Jersey Meadowlands into the Program. In August 1980, the Department submitted the “New Jersey Coastal Management Program and Final Environmental Impact Statement”** for Federal approval. [, which was] **The approval was** received in September 1980. [The Coastal Zone Management rules constitute the substantive core of the program.] **The Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-4d) as providing for full consideration of the national interest in the wise use of coastal resources as required under the Federal Coastal Zone Management Act (16 U.S.C. 1450).**

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[(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the Coastal Zone Management rules of the coastal management program of the State of New Jersey prepared under the Federal Coastal Zone Management Act. Further, the Department interprets the "public health, safety and welfare" clause in CAFRA (N.J.S.A. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:19A-4d) to include a full consideration of the national interests in the wise use of coastal resources.]

(c) Both the Coastal Management Program and the Coastal Zone Management rules are founded on the eight broad coastal goals described at (c)1 through 8 below. The coastal goals express results that the Coastal Management Program strives to attain. Each goal is supplemented by related policies that set forth the means to realize that goal. The Coastal Zone Management rules, including the coastal goals and policies set forth below, are enforceable policies of New Jersey's Coastal Management Program as approved under the Federal Coastal Zone Management Act (16 U.S.C. 1450). The New Jersey Coastal Management Program goals and supplemental policies are:

1. Healthy coastal ecosystems.

i. Protect, enhance and restore coastal habitats and their living resources to promote biodiversity, water quality, aesthetics, recreation and healthy coastal ecosystems; and

ii. Manage coastal activities to protect natural resources and the environment.

2. Effective management of ocean and estuarine resources.

i. Develop and implement management measures to attain sustainable recreational and commercial fisheries;

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ii. Manage commercial uses to reduce conflict between users and encourage water- dependent uses; and

iii. Administer the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities.

3. Meaningful public access to and use of tidal waterways and their shores.

i. Promote public trust rights to tidal waterways and their shores;

ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;

iii. Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;

iv. Enhance public access by promoting adequate affordable public facilities and services;

v. Balance diverse uses of tidal waterways and their shores; and

vi. Protect, enhance and promote waterfront parks.

4. Sustained and revitalized water-dependent uses.

i. Promote, sustain and enhance active port and other water-dependent facilities, and maritime uses;

ii. Promote the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses;

iii. Conserve waterfront sites for water-dependent activities; and

iv. Promote environmentally sound and economically feasible dredging and dredge material management practices and preserve historic dredged material placement sites;

5. Coastal open space.

i. Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that:

(1) Provide opportunities for passive and active recreation,

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(2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values,

(3) Minimize natural hazards, and

(4) Abate impacts from nonpoint sources of pollution,

ii. Promote and enhance public access to and use of open space where appropriate; and

iii. Promote strategies for the creation of open space.

6. Safe, healthy and well-planned coastal communities and regions.

i. Manage coastal activities and foster well-planned communities and regions that:

(1) Encourage mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites,

(2) Promote concentrated patterns of development,

(3) Ensure the availability of suitable waterfront areas for water dependent activities,

(4) Sustain coastal economies,

(5) Create vibrant coastal communities and waterfronts,

(6) Conserve water supply,

(7) Protect the natural environment,

(8) Minimize the threat of natural hazards to life and property,

(9) Provide public access to tidal waterways and their shores, and

(10) Preserve and restore historic and cultural resources and aesthetic coastal features,

iii. Maintain, enhance and encourage maritime uses;

iv. Preserve and enhance beach and dune systems and wetlands, and manage natural features to protect the public from natural hazards;

v. Protect public health, safety and welfare;

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vi. Promote and implement strategies for the development of hazard mitigation plans; and

vii. Promote and implement strategies that eliminate or reduce risks to human health and the ecosystem from coastal activities.

7. Coordinated coastal decision-making, comprehensive planning and research.

i. Promote the attainment of the New Jersey Coastal Management Program goals by encouraging other government agencies to employ the policies which supplement the goals;

ii. Encourage incorporation of the coastal goals and supplemental policies into State, regional and municipal land use management, funding and acquisition programs within the coastal zone;

iii. Coordinate cooperative government sponsored and academic coastal research and information dissemination to foster informed decision-making;

iv. Ensure opportunities for public participation in coastal decision-making;

v. Encourage the preparation of comprehensive plans, including:

(1) Energy facility plans that balance the need for energy facilities and protection of the coastal ecosystem and scenic resources,

(2) Land acquisition plans that further the goals and supplemental policies of New Jersey's Coastal Management Program, and

(3) Special area management plans that protect significant natural resources and provide the opportunity for sound coastal dependent economic development.

8. Coordinated public education and outreach.

i. Coordinate education and outreach activities on coastal issues; and

ii. Encourage coastal related education and participation opportunities for the public.

[(d) The coastal land and water areas of New Jersey are diverse. The same development placed in different locations will have different impacts on the coastal ecosystem and

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built environment as well as different social and economic implications. Decisions on uses of coastal resources shall be made using the three step process consisting of the location rules (N.J.A.C. 7:7E-2 through 6), the use rules (N.J.A.C. 7:7E-7), and the resource rules (N.J.A.C. 7:7E-8) of this chapter. Depending upon the proposed use, project design, location, and surrounding region, different specific rules in each of the three steps may be applicable in the coastal decision-making process. The Coastal Zone Management rules address a wide range of land and water types (locations), present and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. The Department does not, however, expect each proposed use of coastal resources to involve all location rules, use rules, and resource rules. Rather, the applicable rules are expected to vary from proposal to proposal. Decisions on the use of coastal resources in the Hackensack Meadowlands District will be made by the New Jersey Meadowlands Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.]

(d) The coastal land and water areas of New Jersey are diverse. The Coastal Zone Management rules address a wide range of land and water types (locations), current and potential land and water uses, and natural, cultural, social and economic resources in the coastal zone. In developing these rules, balances were struck among various conflicting, competing, and contradictory local, State, and national interests in coastal resources and in uses of coastal locations. This balancing and conflict- reducing approach reflects that coastal management involves consideration of a broad range of concerns in contrast to other resource management programs which are more limited in scope.

(e) The Location rules (subchapters 3 through 6), Use rules (subchapter 7) and Resource rules (subchapter 8) stem from the coastal goals at (c) above. The Department does not expect that each proposed use of coastal resources to involve all location rules, use rules, and resource rules. Decision-making on proposed

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actions involves examining, weighing, and evaluating complex interests using the framework provided by this chapter. The Coastal Zone Management rules provide a mechanism for integrating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a rule or a combination of rules, may vary depending upon the context of the proposed use, location, and design.

N.J.A.C. 7:7E-1.5 CAFRA [Coastal decision-making process] findings

(a) The Coastal Zone Management rules represent the consideration of various conflicting, competing, and contradictory local, State, and national interests in diverse coastal resources and in diverse uses of coastal locations. Numerous balances have been struck among these interests in defining these rules, which reduce but do not presume to eliminate all conflicts among competing interests. One reason for this intentional balancing and conflict reducing approach is that coastal management involves explicit consideration of a broad range of concerns, in contrast to other resource management programs which have a more limited scope of concern. Decision-making on individual proposed actions using the Coastal Zone Management rules must therefore consider all three steps in the process, and weigh, evaluate, and interpret inevitably complex interests, using the framework established by the rules. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a specific rule or combinations of the rules may vary, depending upon the context of the proposed use, location, and design. Finally, these principles should not be understood as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Zone Management rules provides a mechanism for incorporating professional judgment by the Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.

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1. In the application of administrative discretion, the Department officials will be guided by eight basic coastal policies which summarize the direction of the specific rules

- i. Protect and enhance the coastal ecosystem.
- ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.
- iii. Employ a method for decision making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.
- iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.
- v. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.
- vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.
- vii. Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.
- viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.]

[(b)] **(a)** (No change in text.)

N.J.A.C. 7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, that is, replacement in kind within the same watershed. The Department will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the [basic coastal policies (N.J.A.C. 7:7E-1.5(a)1)] **coastal goals and supplemental policies at N.J.A.C. 7:7E-1.1(c)**. Requirements for mitigation of a particular resource are addressed more

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specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.49).

(b) (No change.)

N.J.A.C. 7:7E-1.8 Definitions

(a) [The Coastal Zone Management rules are stated in terms of actions that are encouraged, required, acceptable, conditionally acceptable, discouraged, or prohibited. Some rules include specific conditions that must be met in order for an action to be deemed acceptable. Within the context of the Coastal Zone Management rules and the principles defined in N.J.A.C. 7:7E-1.5(a), the following words have the following meanings.] **The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.**

...

“Footprint of development” means the vertical projection to the horizontal plane of the exterior of all exterior walls of a structure.

...

N.J.A.C. 7:7E-3.4 Prime fishing areas

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local [quantity] **intensity** of recreational or commercial fishing activity. **These areas include[s] all coastal jetties, [and] groins, public fishing piers or docks, and artificial reefs. Prime fishing areas also include features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell and tubeworms, slough areas and offshore canyons.** Prime fishing areas also include **areas identified in** [all red line delineated features within the coastal waters illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's

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Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988),] "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay" **Figley and McCloy (1988)** [.While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone] **and those areas identified in the Department's Geographic Information System (GIS) coverage titled, "New Jersey's Specific Sport Ocean Fishing Grounds."** **This GIS coverage is available through the Coastal Management Program's website at www.nj.us/dep/cmp.**

[(b) Standards relevant to prime fishing areas are as follows:

1. Permissible uses of prime fishing areas include recreational and commercial fin fishing and shellfishing, as presently regulated by the Department's Division of Fish and Wildlife, scuba diving and other water related recreational activities.

2. Prohibited uses include sand or gravel submarine mining which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards.]

(b) Development which would adversely affect the high fishing productivity or fishing use of the prime fishing area is prohibited, except for the following:

1. Development that is in the national interest provided there is no prudent and feasible alternative that would result in less impact to the prime fishing area, fishery productivity or fishing use of the area;

2. Maintenance dredging performed in accordance with N.J.A.C. 7:7E-4.6; and

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3. Alteration of groins and jetties for purposes of restoring longshore sand movement.

(c) The impacts of a development that complies with (b)1 or 3 above to a prime fishing shall be mitigated. Mitigation shall reflect the value lost, for example, reduction in fish habitat or fishing access. Examples of mitigation are creation of wetlands or shallow water habitat that serve as a nursery area for marine fish, or improvement of fishing access through a parking provision or an accessway, or by removal of submarine cables.

[(c)] **(d) Rationale:** Natural bathymetric features, such as the Shrewsbury Rocks, [and] important sand ridges, and artificial structures act as congregation areas for many species of finfish, shellfish, and [a diversity of] **diverse** invertebrate species [which] **that** are essential to marine ecosystem functioning. These areas are heavily [utilized] **used** by recreational and commercial fishermen. Commercial fishing occurs primarily along the Delaware Bay and **in the** Atlantic Ocean **off the New Jersey coast**. [Over 2.7 million] **Annually, more than 800,000** people [annually], **of which 639,000 reside in New Jersey,** participate in marine sport fishing and shellfishing [in New Jersey]. [This represents the highest number of participants in any state, from Maine to Maryland. Of that total, 1.6 million reside in New Jersey, with the remaining number coming mostly from Pennsylvania and New York (792,000) and 300,000 respectively.)] **In a recent survey conducted by the National Marine Fisheries Service, New Jersey ranked first in the harvest of four of the five most important recreational fish species (summer flounder, bluefish, seabass, and tautog) and ranked second in the harvest of striped bass. The recreational fishery industry is worth \$1.5 billion annually to the economy of New Jersey. In 2001, New Jersey's commercial fisheries contributed \$590 million to the State's economy.** [In 1979, \$178 million was spent on recreational fishing including party boats and the value of commercial fisheries landings totaled \$53 million (New Jersey Coastal Fisheries Management Strategy NJDEP, Division of Fish,

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Game and Wildlife, draft, 1982). The Mid-Atlantic Regional Fisheries Management Council manages fishing activities seaward of the State's coastal zone.]

7:7E-3.21 Bay island

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads (see Appendix, Figure 3, incorporated herein by reference). Existing lagoon edges (N.J.A.C. 7:7E-3.24) are not bay islands.

1. (No change.)

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The impervious cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

OCEAN COUNTY

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township

Pelican Island, Dover/Berkeley Townships

West Point Island, Lavallette Borough

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ATLANTIC COUNTY

Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

Shawcrest/Hildreth Island, Lower and Middle Townships. The areas mapped as Shawcrest/Hildreth Island are identified in the Department's Geographic Information System(GIS) coverage, titled "Shawcrest/Hildreth Island." This coverage is available as a download at the CAFRA layers webpage: www.nj.gov/dep/gis/CAFRAlayers.htm

West Wildwood, Wildwood City

West 17th Street, Ocean City

(b) – (d) (No change.)

7:7E-3.27 Wetlands

(a) (No change.)

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act [of 1987] is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A), **except as provided at 1 below.**

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1. In the Hackensack Meadowlands District, a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located below the mean high water line shall comply with the standards of N.J.A.C. 7:7A-4, 5, 7 and 15. A coastal activity or development that proposes the placement of dredged or fill materials in wetlands located above the mean high water line and that does not require a zoning certificate, resolution or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. 7:7E-3.45(c) shall comply with the standards of N.J.A.C. 7:7A-4, 5, 7 and 15.

(c) – (i) (No change.)

7:7E-3.45 Hackensack Meadowlands District

(a) The ["Hackensack Meadowlands District"] is a [19,730] **19,485**-acre area of water, coastal wetlands and associated uplands [designated for management by a State-level agency known as the New Jersey Meadowlands Commission by] **within the boundaries described in** the Hackensack Meadowlands Reclamation and Development Act [of 1968] (N.J.S.A. 13:17-1 et seq.). [See Figure 20.] _

[(b) The New Jersey Meadowlands Commission will act as the lead coastal planning and management agency within this Special Area. The New Jersey Meadowlands Commission Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263). The Department will periodically review Commission actions and will consider incorporating any proposed changes in New Jersey Meadowlands Commission plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.]

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

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

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

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

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

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

iii. A complete copy of the plans for the municipal project, and a certification of the planning board, have been sent to the New Jersey Meadowlands Commission for review, and the New Jersey Meadowlands Commission has not

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notified the municipality within 45 days of the receipt thereof of any objection to the project; and

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

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

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

[(c)] **(f)** (No change in text.)

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

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

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

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

7:7E-5.1 Purpose and Scope

(a) - (c) (No change.)

(d) This subchapter and N.J.A.C. 7:7E-5A and 5B do not apply to:

1. – 6. (No change.)

7. Wastewater treatment plants; [or]

8. Water treatment plants[.]; **or**

9. Electrical substations.

(e) – (g) (No change.)

7:7E-5.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7E-1.8, the following words and terms are defined for the purposes of this subchapter and N.J.A.C. 7:7E-5A and 5B:

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“Electrical substation” means a subsidiary facility of an electric power system through which electricity is passed for transmission, transformation, or distribution. For example, an electrical substation may transform high voltage electricity to low voltage electricity for distribution. An electrical substation consists of the footprint of the substation equipment, the minimum safety and maintenance zone, and the minimum area necessary for access and parking.

7:7E-6.2 Basic location rule

(a) A location may be acceptable for development under N.J.A.C. 7:7E-3, 4, 5, 5A, 5B and 6, but the Department may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. [Promote the] **Protect** public health, safety and welfare;
2. – 3. (No change.)

7:7E-8.12 Scenic Resources and Design

(a) –(c) (No change.)

(d) In all areas, except the Northern Waterfront region, the Delaware River Region and Atlantic City, new coastal development adjacent to a bay or ocean or bayfront or oceanfront, beach, dune or boardwalk and higher than 15 feet in height measured from the existing grade of the site or boardwalk shall **comply with the following, unless it meets the requirements at (e) below:**

1. – 2. (No change.)

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune or boardwalk, and is higher than 15 feet

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in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at 1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development as defined at N.J.A.C.7:7E-1.8.

1. The development preserves the historic structure; and

2. The development will not detract from, damage, or destroy the value of the historic structure.

[(e)] (f) (No change.)

7:7E-8.14 Traffic

(a) – (d) (No change.)

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e) 1, 2, [or] 3 **or 4** below, shall provide sufficient on-site and/or off-site parking for its own use at a ratio of two spaces per residential unit. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. 7:7E-7.5(d), the parking facility rule, where applicable.

1. – 3. (No change.)

4. The Department shall reduce the parking requirement for development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, provided the proposed development complies with i. through v. below. The reduced parking requirement does not apply to any new development located outside of the existing footprint of development.

i. The development preserves the historic structure;

ii. The development will not detract from, damage, or destroy the value of the historic structure;

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iii. The development is located within the footprint of development of the historic structure, as defined at N.J.A.C.7:7E-1.8;

iv. The development provides on site and/or off site parking for any new units created through the addition of new floors within the footprint of development as defined at N.J.A.C. 7:7E-1.8 at a ratio of one space per new residential unit; and

v. All existing parking spaces associated with the historic structure are retained.

(f) (No change.)