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ENVIRONMENTAL PROTECTION
LAND USE MANAGEMENT
LAND USE REGULATION PROGRAM

Coastal Permit Program Rules

Proposed Readoption with Amendments: N.J.A.C. 7:7
Authorized By: Bradley M. Campbell, Commissioner,
Department of Environmental Protection

Authority: N.J.S.A. 12:5-3, 13:1D-9, 13:1D-29 et seq.,
13:9A-1 et seq., 13:19-1 et seq.

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

DEP Docket Number:

Proposal Number: PRN 2005

Public hearings concerning this proposal will be held at the following times and locations:

Wednesday, December 14, 2005 at 1:00 p.m.

Long Branch City – Council Chambers

344 Broadway

Long Branch, New Jersey 07740

Thursday, December 15, 2005 at 1:00 p.m.

The Richard Stockton College of New Jersey

Townsend Residential Life Center (parking in lot 4 or 5)

Jim Leeds Road

Pomona, New Jersey 08240-0195

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Submit written comments on this proposal by January 5, 2006, to:

Gary J. Brower, Esq.
Office of Legal Affairs
Attn: DEP Docket Number
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 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.

A copy of the proposal is available on paper or on disk by calling the Department at (609) 633-7021. The rule proposal can also be found at the Department's website (<http://www.nj.gov/dep>). The agency proposal follows:

Summary

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

The Department of Environmental Protection (Department) has reviewed the Coastal Permit Program rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. However, the Department recognizes that certain amendments to the rules are necessary and is therefore proposing herein to readopt the Coastal Permit Program rules with various amendments related to jurisdiction, definitions, and application procedures. In addition, the Department is proposing new general permits as well as amendments to existing general permits.

The Coastal Permit Program Rules at N.J.A.C. 7:7 establish the procedures by which the Department reviews permit applications and appeals from permit decisions under the Coastal

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Area Facility Review Act (CAFRA) (N.J.S.A. 13:19-1 et seq.), the Waterfront Development Law (N.J.S.A. 12:5-3 et seq.), and the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.). As authorized by these statutes, the Coastal Permit Program Rules govern the following types of activities: (1) under CAFRA, the construction of development within the coastal area described at N.J.S.A. 13:19-4; (2) under the Waterfront Development Law, the filling or dredging of, or placement or construction of structures, pilings or other obstructions in any tidal waterway, or in certain upland areas adjacent to tidal waterways (see N.J.A.C. 7:7-2.3); and (3) under the Wetlands Act of 1970, the draining, dredging, excavation, or depositing of material, and the erection of structures, driving of pilings or placing of obstructions in any coastal wetlands which have been mapped or delineated pursuant to the Wetlands Act of 1970 (a list of these maps and a full list of regulated activities appear in N.J.A.C.7:7-2.2). The Coastal Permit Program Rules also contain the coastal general permits, permits-by-rule, and the Long Branch Redevelopment Zone permit.

The rules at N.J.A.C. 7:7 are administered primarily by the Department's Land Use Regulation Program, by the Bureau of Coastal and Land Use Compliance and Enforcement, and the Office of Dredging and Sediment Technology. When making decisions on coastal permit applications, the Department uses the procedures in N.J.A.C. 7:7 and applies the substantive standards in the Coastal Zone Management rules at N.J.A.C. 7:7E regarding the use and development of coastal resources.

The rules proposed for readoption at N.J.A.C. 7:7 and the amendments proposed to N.J.A.C. 7:7 are described below.

Coastal Permit Program Rules (N.J.A.C. 7:7)

Subchapter 1. General Provisions

Subchapter 1, General Provisions, sets forth the purpose and scope of the Coastal Permit Program Rules, and contains the definitions of terms used throughout the chapter. Subchapter 1 also contains provisions regarding evaluation of coastal permit applications, the conditions applicable to coastal permits, permit fees, provisional permits, emergency permit authorizations, and the procedure to follow when more than one coastal permit is required.

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N.J.A.C. 7:7-1.3 Definitions

The Department is proposing a definition for “beach berm” since this term is used in the proposed amendments to N.J.A.C. 7:7-7.26 to define the usable beach area available for the construction of structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units.

The Department is proposing a definition for “charitable conservancy” since this term is used in proposed N.J.A.C. 7:7-7.29, the coastal general permit for habitat creation and enhancement activities. The term defines agencies that are eligible as sponsors for habitat creation and enhancement activities and whose goals include that acquisition and preservation of land or water areas or of a particular land or water area in a natural, scenic or open condition. The organizations listed at N.J.A.C. 7:7-7.29 are those known to the Department with available funding for habitat creation and enhancement activities.

The Department is also proposing to amend the definition for "Seasonal or temporary structures related to the tourism industry." The existing definition specifies that these structures remain in place during the period from May 1 through September 30. The proposed amendments to the coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units at N.J.A.C. 7:7-7.26 extend the time period during which the structure may remain in place to October 31 (see the discussion of those amendments below). Therefore, the definition is proposed to be amended for consistency.

N.J.A.C. 7:7-1.5 Permits and Permit Conditions

Coastal jurisdictional determinations have been available from the Department for many years. However, the process for submittal has not been formalized. The Department is proposing to amend N.J.A.C. 7:7-1.5(a) to describe the availability of written jurisdictional determinations from the Department to determine the applicability of the Coastal Area Facility Review Act, the Wetlands Act of 1970 and the Waterfront Development Law to a proposed project. The submittal requirements to obtain a jurisdictional determination are also included in this section and include a jurisdictional determination form with the location and description of the proposed project, project plans and a location map.

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Subchapter 2. Activities for which a Permit is Required

Subchapter 2, Activities for which a Permit Is Required, lists the categories of activities requiring permits under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law.

N.J.A.C. 7:7-2.1 CAFRA

The Department is proposing to correct a typographical error at N.J.A.C. 7:7-2.1(b)8ii. Particularly, the Department is proposing to correct the reference to September 1, 1973 in this subparagraph to make it consistent with the rest of paragraph 8 under which applicability is based upon development activity or common ownership on or after September 19, 1973.

N.J.A.C. 7:7-2.3 Waterfront Development

The Department is proposing to restructure N.J.A.C. 7:7-2.3(a)3 to make it more readable. The proposed language is presented in an outline form to clarify the extent of the waterfront area in areas of the State outside of the “coastal area” defined by CAFRA and outside of the New Jersey Meadowlands District. The Department is additionally proposing to update the name Hackensack Meadowlands Development District to New Jersey Meadowlands District. The Department is proposing to include at N.J.A.C. 7:7-2.3(d)4 and 5 language to further clarify that the exemption for the repair, replacement, renovation or reconstruction of various waterfront structures described in these paragraphs is required to take place at the same location and be of the same size, and that the size shall be measured in all three dimensions; length, width and height. The Department evaluates exemption requests using these criteria. However, clearly stating the dimension requirements in the rule will give the regulated public clearer direction regarding eligibility for waterfront exemptions prior to application submittal.

Existing N.J.A.C. 7:7-2.3(f) outlines the supplemental requirements for exemption applications under the Waterfront Development Law. The Department is proposing to add a requirement at N.J.A.C. 7:7-2.3(f)1iv, 2iv. and 3viii that the applicant submit a map showing the general site location of the development for each type of exemption offered. Submittal of the

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location map will allow Department staff to locate the project site on the required Wetlands and Tidelands maps more efficiently.

Subchapter 3. Preapplication Reviews

Subchapter 3, defines preapplication reviews, outlines the procedure for requesting a preapplication review from the Department, and describes the level of information available from the Department to guide the potential applicant through the application process.

Subchapter 4. Permit Review Procedures

Subchapter 4 outlines the required contents of coastal permit applications, public notification requirements, the Department's application review procedures, and the timetable for reaching decisions on these applications.

Subchapter 5. Procedures to Request an Adjudicatory Hearing to Contest a Permit Decision

Subchapter 5 governs the timetable and format for requesting an adjudicatory hearing to contest a permit decision, identifies where hearing requests are to be filed, and describes the Department's obligations and procedure for responding to a hearing request.

Subchapter 6. Environmental Impact Statements

Subchapter 6 describes when an environmental impact statement (EIS) or compliance statement is required, the required format and content of the statement, and to whom the statement is distributed.

N.J.A.C. 7:7-6.1 Format and Contents

Existing N.J.A.C. 7:7-6.2 outlines the format and information to be included in an Environmental Impact Statement (EIS) or compliance statement submitted to the Department. The Department is proposing to add a reference to Section 10 of the Coastal Area Facility Review Act in order to clarify that requirements 1 through 7 are derived from the Act. The Department is also proposing a reference to N.J.A.C. 7:7E-1.5(b), the Coastal Zone Management

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Rules in order to clarify the coastal decision-making process and emphasize that a CAFRA permit shall be authorized only if positive findings can be made with regard to N.J.S.A. 13:19-10.

Subchapter 7. General Permits and Permits-by-Rule

Subchapter 7 contains the procedures and substantive standards governing the issuance of coastal general permits and permits-by-rule under CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970. Subchapter 7 additionally contains procedures and substantive standards governing the coastal general permits and permits-by-rule. This subchapter also contains the Long Branch Redevelopment Zone Permit, which streamlines the review process for CAFRA permit applications within the City of Long Branch's redevelopment zone.

The Department has assessed the activities permitted in each of the coastal general permits, both adopted and proposed, for compliance with the Coastal Area Facility Review Act at N.J.S.A. 13:19-10. A positive finding has been made for each general permit applicable in the CAFRA area as follows: a.) conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards, b.) prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region, c.) provides for the collection and disposal of litter, recyclable material and solid waste in such a manner as to a minimize adverse environmental effects and the threat to the public health, safety, and welfare, d.) would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies, e.) would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region, f.) is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare, and g.) would result in minimal practicable degradation of unique or irreplaceable land types, historical or archeological areas, and existing public scenic attributes at the site and within the surrounding region. A summary of these findings has been prepared and is available upon request from the Department.

N.J.A.C. 7:7-7.14 Coastal general permit for the reconstruction of a legally existing functioning bulkhead

The existing general permit for the reconstruction of a legally existing functioning bulkhead provides applicants with several options for replacement bulkheads: they may be constructed in-place, upland of the existing bulkhead or in front of the existing bulkhead within 18 inches when timber is used and within 24 inches when vinyl is used regardless of whether the waterway is natural or a man-made lagoon. The Department is proposing to restructure N.J.A.C. 7:7-7.14(a) to differentiate between the allowable location of replacement bulkheads on natural waterways versus replacement bulkheads along man-made lagoon sites. As proposed, replacement bulkheads in lagoons would be required to be located in-place or upland of the existing bulkhead while the option to replace a bulkhead in front of the existing bulkhead would be available only to sites along natural waterways.

This amendment would enable the Department to stop the narrowing of lagoons caused by repeated bulkhead replacement waterward of existing bulkheads. Many lagoons are narrow with a small navigable area. Each bulkhead replacement has the potential to constrict the lagoon by 18 to 24 inches. Over time, and with repeated replacement bulkheads on either side of the lagoon, the navigable portion of the lagoon could become so constricted as to be hazardous to boaters.

N.J.A.C. 7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons

The Department is proposing to amend N.J.A.C. 7:7-7.19(a)2 and 6 to require the inclusion of the mooring area and associated mooring piles in the 20% allowable encroachment in a man-made lagoon. The existing general permit does not require the mooring area or mooring piles to be included in the 20% encroachment. The Department believes this amendment is necessary because man-made lagoons are typically narrow. The 20% allowable encroachment, on either side of the lagoon, is designed to leave 60% of the center width of the man-made lagoon open for navigation. However, because vessels are allowed under the existing rules to be moored within the remaining 60% of center width, the navigable areas of lagoons

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have been constricted, creating a potential hazard to navigation. By including the mooring area and mooring piles within the 20% encroachment area, the Department is acting to ensure navigability and safety of lagoons for the boating public. Since this permit is required for new construction, legally existing docks and moorings, that are not included as part of a general permit application, will not be required to be modified. If an applicant is modifying the existing mooring system in an area where there is more than 20% encroachment, the applicant will be required to re-design the system so that all components are within the 20% allowable encroachment.

Existing N.J.A.C. 7:7-7.19(b), contains the additional information necessary to review an application for the coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons. The requirement at existing N.J.A.C. 7:7-7.19(b)iv that the opposite side of the lagoon be shown on the site plan is being expanded to include the requirement to show the width of the lagoon on the site plan, because this information is necessary for the comprehensive review of the coastal general permit to assure that an accurate assessment of the 20% allowable encroachment area can take place.

N.J.A.C. 7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

The construction of seasonal and temporary structures related to the tourism industry is not regulated as public development under CAFRA but may be regulated as commercial development. Such seasonal and temporary structures can have a significant positive impact on the tourism industry when associated with hotels, motels, commercial developments and large multi-family residential developments, serving a larger number of people.

Temporary tourism structures are currently permitted to remain in place from May 1 to September 30 of each year. Because the tourist season often extends into the month of October, the Department is proposing at N.J.A.C. 7:7-7.26(a)1 to extend the time period during which seasonal and temporary structures may remain in place to October 31 in order to facilitate an extended tourist season.

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It has been the Department's experience in reviewing permit applications for this general permit that the existing standards for siting these structures do not take into account the ever-changing beach topography. From year to year and even within a given year, the size and grading of a beach can change dramatically. Erosional forces such as wave run-up and storm surges will shrink the usable portion of a beach while beach fill projects, as well as natural sand accumulation, will enlarge a beach area. In an effort to better locate the tourism structures proposed on beaches, the Department is proposing to amend N.J.A.C. 7:7-7.26(a)5. The existing general permit requires that tourism structures be located 50 feet landward of the mean high water line, except on beaches, where development is required to be located on the most landward portion of the beach. The Department is proposing to revise the standard for structures located on a beach, to additionally require that structures occupy a maximum of 33% of the width of the beach berm area with a maximum total coverage of one acre. It should be noted that in cases where there is concern for public safety or access to the beach, the Department is proposing that it reserve the right to limit the total beach coverage to less than 33% to address these concerns.

The beach berm area is the usable beach area extending from the most inland extent of wave run-up to the toe of the primary dune. A definition of the beach berm area has been proposed at N.J.A.C. 7:7-1.5. Limiting the area that tourism structures will occupy in the beach berm area will limit impacts to the beach resource. The beach berm area is the portion of the beach which is typically used for tourism related activities which is a leading industry in the State of New Jersey. In addition, by requiring that the structure be located on the most landward portion of the beach area, the structures will be better protected from unusually high tides and storm surges.

The Department is proposing additional standards for authorization of the general permit at N.J.A.C. 7:7-7.26(a)9 and 10. Proposed N.J.A.C. 7:7-7.26(a)9 requires that public access shall be maintained or provided in accordance with N.J.A.C. 7:7E-8.11. General permits authorized by the Department pursuant to this section have routinely included conditions requiring that public access be provided. By incorporating compliance with N.J.A.C. 7:7E-8.11 into the standards for the general permit, applicants are informed, in advance, of the Department's requirements upon issuance of the coastal general permits.

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General permits are valid for a period of five years from the date of issuance. Beach conditions can vary greatly from one tourist season to the next because of erosion, storms or alteration due to beach fills or other human activities. To account for shifts in the usable beach area (beach berm), the Department is proposing at N.J.A.C. 7:7-7.26(a)10 to require that by April 1 each year, for the duration of the general permit, the permittee submit to the Department three copies of revised site plans showing the location of the beach berm area and showing that the seasonal tourism structure will continue to comply with standards 2 through 9 of the general permit. In addition, to ensure that the information on the plan reflects current conditions, the plan is required to bear a date no more than thirty days before submittal to the Department.

New coastal general permits

The Department is proposing three new coastal general permits as follows: (1) geotechnical survey borings, (2) development of three or fewer residential units and (3) habitat creation and enhancement activities.

N.J.A.C. 7:7-7.27 Coastal general permit for the placement of geotechnical survey borings

Proposed N.J.A.C. 7:7-7.27 is a coastal general permit for the placement of geotechnical survey borings. Geotechnical survey borings are excavations constructed for the purpose of obtaining information on subsurface conditions, for the purpose of determining the presence or extent of contamination in subsurface soils or groundwater, and for obtaining seismic information. The general permit does not authorize test pit excavations since the scope of environmental impacts associated with test pit excavations is greater than that for the other activities authorized in this coastal general permit. These activities currently require an individual CAFRA and/or waterfront development permit.

Proposed N.J.A.C. 7:7-7.27(a) permits the placement of geotechnical survey borings both upland of and below the mean high water line provided that: (1) the borings are not located in shellfish habitat (N.J.A.C. 7:7E-3.2), submerged vegetation habitat (N.J.A.C. 7:7E-3.6) or endangered or threatened wildlife or plant species habitats (N.J.A.C. 7:7E-3.38); (2) the project complies with wild and scenic river corridors (N.J.A.C. 7:7E-3.46), wetlands (N.J.A.C. 7:7E-3.27) and wetlands buffers (N.J.A.C. 7:7E-3.28); (3) borings for remedial actions take place in

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accordance with subchapter 3 of the Technical Requirements for Site Remediation (N.J.A.C. 7:26E-3.1 through 3.13); (4) disturbance is limited to that necessary to access and conduct the borings; (5) activities are performed outside of the stated restricted timeframes in order to protect the habitat and breeding areas for species of concern based on the accepted breeding windows; (6) acid producing soils are handled in accordance with Projects Exposing Deposits of Acid-producing Soils (N.J.A.C. 7:13-3.7); and (7) bore holes are backfilled as outlined.

Proposed N.J.A.C. 7:7-7.27(b) contains the additional information required for authorization under this proposed new coastal general permit. Site plans must be submitted showing: (1) the mean high and spring high water lines; (2) for activities upland of the mean high water line: topography, structures and the limits of wetlands, dunes, beaches, flood hazard areas, coastal bluffs and vegetation; (3) for activities waterward of the mean high water line: limits of shellfish, submerged vegetation, topography and structures, and limits of wetlands; (4) existing roads and utilities adjacent to the site; (5) the location of the survey activities, equipment to be used, methods, and limits and depths of the proposed borings; and (6) the limits of grading, clearing, and limits of disturbance. In addition, a compliance statement demonstrating how the proposed development complies with the coastal general permit standards is required. The Department is proposing to require this additional information enumerated in (1), (2), and (3) in order to fully assess the proposed activity's impact to areas of concern such as wetlands, beaches, dunes and shellfish habitat. The requirement at (4) that roads and utilities be shown on plans is proposed in order that any possible interruption of service by these infrastructures can be limited or eliminated altogether. As in (1), (2), and (3), the requirements at (5) and (6) are proposed in order to allow the Department to fully assess possible environmental impacts caused by the proposed activity.

N.J.A.C. 7:7-7.28 Coastal general permit for the development of three or fewer residential units

Proposed N.J.A.C. 7:7-7.28 is a new coastal general permit for the development of three or fewer residential units. Since July 1994, the Department has been reviewing general permits for single family homes and duplexes that are not part of a larger or previous development as defined at N.J.A.C. 7:7-1.2(b)8 and individual permits for developments exceeding the single

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family/duplex threshold. In view of the fact that previous development includes developments that either were previously constructed after September 19, 1973 or developments that previously received a CAFRA permit there have been many instances where an individual permit is currently required for a development consisting of one unit. For example, if a single family home was constructed on a waterfront site after July 19, 1973 but prior to July 19, 1994 (effective date of the revised CAFRA law giving the Department jurisdiction over all development within 150 feet of the mean high water line), a CAFRA permit was not needed. However, if the current owner wishes to subdivide the property and construct a single family home or duplex on the vacant portion of the subdivided parcel, bringing the total number of unit to two or three, this construction would not be eligible for the existing coastal general permit for a single family home or duplex due to the presence of the previously constructed dwelling unit. An individual CAFRA permit would be required. The Department is proposing this coastal general permit for three or fewer units in order to address scenarios such as this.

It has been the Department's experience that, while there are impacts associated with any size development, the impacts associated with a development consisting solely of a single family/duplex are minimal when constructed in accordance with the guidelines set forth in the coastal general permit for the development of a single family home or duplex found at N.J.A.C. 7:7-7.8. Any increase in the number of proposed units increases the environmental impacts associated with the development. The environmental impacts markedly increase when more than three units are involved since potential project sites large enough to accommodate more than three units have a greater likelihood to contain environmentally sensitive areas. In addition, larger sites require a more in-depth review for stormwater runoff quantity and quality control as well as other impacts regulated by the Coastal Zone Management rules (N.J.A.C. 7:7E).

The application submittal requirements for an individual permit are more extensive than the requirements for a general permit. In addition, the timetable for review is longer due to the notification requirements and public comment period. Although developments in excess of one unit/duplex require more extensive review than one single family home or duplex, small developments of three units or fewer do not warrant the intensive submittal and review time required for an individual permit. In order to provide relief from the individual permit process, the Department has determined that it is appropriate to review a permit application for a

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development consisting of three or fewer units where the development meets the standards outlined in this proposed coastal general permit.

Proposed N.J.A.C. 7:7-7.28(b) specifies that development under the coastal general permit shall not result in the development of more than three residential units either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8. Previous development is taken into account due to the cumulative impacts on the environment. As stated previously, an increase in the number of proposed units increases the environmental impacts associated with the development; however, the environmental impacts markedly increase when more than three units are involved.

Proposed N.J.A.C. 7:7-7.28(c) lists specific sections of the Coastal Zone Management rules with which the proposed development must comply. Specifically, the proposed development must comply with, Coastal High Hazard Areas (N.J.A.C. 7:7E-3.18); Erosion Hazard Areas (N.J.A.C. 7:7E-3.19); Bay Island Corridors (N.J.A.C. 7:7E-3.21); Beaches (N.J.A.C. 7:7E-3.22); Wetlands (N.J.A.C. 7:7E-3.27); Wetland Buffers (N.J.A.C. 7:7E-3.28); Coastal Bluffs (N.J.A.C. 7:7E-3.31); Historic and Archeological Resources (N.J.A.C. 7:7E-3.36); Endangered or Threatened Wildlife or Vegetation Species Habitats (N.J.A.C. 7:7E-3.38); Wild and Scenic River Corridors (N.J.A.C. 7:7E-3.46); Water Quality (N.J.A.C. 7:7E-8.4); Stormwater Management (N.J.A.C. 7:7E-8.7); Public Access to the Waterfront (N.J.A.C. 7:7E-8.11); and Scenic Resources and Design (N.J.A.C. 7:7E-8.12).

The Department has chosen the above rules because many of the other rules contained in the Coastal Zone Management Rules are not applicable to projects of this scope. For example, Subchapter 4 of the Coastal Zone Management Rules applies only to structures which are located waterward of the mean high water line. This coastal general permit, as proposed, requires that the proposed structures be located upland of the mean high water line in order to be eligible for the coastal general permit. Many of the Use Rules found in Subchapter 7 are not applicable to the construction of residential units. Other rules were omitted due to the narrow scale and scope of the activities authorized in this proposed general permit.

Proposed N.J.A.C. 7:7-7.28(d) requires that a residential development of three or fewer units and/or accessory development(s) comply with the Dune rule, N.J.A.C. 7:7E-3.16, unless the development is located on a dune which is isolated from a beach and dune system by a paved

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public road, public seawall or public bulkhead that existed on July 19, 1993, and it meets the conditions specified at proposed N.J.A.C. 7:7-7.28(d)1 through 6. July 19, 1993 was chosen since it is the effective date of the revisions to the Coastal Area Facilities Review Act broadening the State's jurisdiction in the coastal zone. The Department believes that compliance with the proposed conditions, discussed in further detail below, will permit small scale development on dunes that have been isolated from the active beach and dune system by a paved public road, or public seawall or bulkhead maintained by a public entity without significant adverse long-term impacts to the natural functioning of the beach and dune system or elimination of the protective functioning of the dune.

The proposed conditions which must be met for a project to qualify for the proposed general permit are: (1) the road, seawall or bulkhead is of sufficient size to be designated as the V-Zone boundary on the municipal Flood Insurance Rate Map, (FIRM); (2) the road, seawall or bulkhead has eliminated the protective function of the isolated dune by providing a significant barrier to coastal processes; (3) the road, seawall or bulkhead is functional and is currently maintained by a public entity; (4) the area of the proposed construction is designated as a A-Zone, B-Zone or C-Zone on the municipal FIRM; (5) site disturbance, including grading, excavation and vegetation removal, is minimized; and (6) the proposed development does not include the construction of shore protection structures. Dunes serve to protect upland development from erosional forces including day-to-day tidal flux and storm surges. Provided that the above criteria can be met, the Department is confident that developments of three units or fewer can be constructed in a manner that will allow the existing dune systems to continue to continue their protective function. The construction of shore protection structures in conjunction with proposed residential development authorized in this coastal general permit may actually cause undermining of the dune system causing the dunes to cease to provide their protective function.

Proposed N.J.A.C. 7:7-7.28(e) requires that residential development of three units or fewer comply with the Filled Water's Edge rule at N.J.A.C. 7:7E-3.23 if the site has a water-dependent use as defined at N.J.A.C. 7:7E-1.8 existing at any time since July 31, 1977. The water's edge along New Jersey's shore, bays and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for

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waterborne commerce and recreational boating. Though an estimated 37 percent of the state's 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. Since many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses, and since few excellent sites remain for recreational and commercial boating, it is desirable to restrict redevelopment of sites currently or recently occupied by a water dependent use.

Proposed N.J.A.C. 7:7.28(f) through (j) contain physical standards that shall be complied with prior to, during and post-construction including at (f), the prohibition on use of a plastic liner under landscaped or gravel areas, (g) the requirement that driveways be constructed using permeable material or be pitched to direct run-off to permeable areas of the site, (h) the limitation on clearing of wooded areas of site to that necessary for the footprint of development and a twenty foot wide perimeter, (i) the requirement that development comply with the elevation and flood proofing requirements of the National Flood Insurance Program regulations at 44 CFR Chapter 1 which outline finished floor elevation, basement regulations and other criteria to protect development from flood forces and (j) the requirement to install a silt fence, prior to construction activities, upland of surface waterbodies or wetlands and to keep the silt fence in place until the completion of all construction and landscaping. These requirements are currently standard in the coastal general permit for the development of a single family home or duplex, N.J.A.C. 7:7-7.8 and the coastal general permit for the expansion, or reconstruction (with or without expansion), of a single family home or duplex, N.J.A.C. 7:7-7.9; both of which served as models for this proposed general permit.

Proposed N.J.A.C. 7:7-7.28(k) contains the setback requirements for residential development of three units or less. On oceanfront sites, development shall be set back a minimum of 25 feet from existing or proposed oceanfront shore protection structures as measured from the waterward face of the bulkhead or seawall and from the top of slope on the waterward face of revetment which is consistent with the N.J.A.C 7:7-7.8, the coastal general permit for the construction of single family homes or duplexes. The setback is requirement is a safeguard to protect structures from the destruction forces of storm surges and extremely high tides. In addition, during extreme weather conditions, solid structures that become dislodged become floating debris capable of causing damage beyond that of the weather damage. This

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setback does not apply to decks or below grade structures since below grade structures are not capable of becoming floating debris and in addition, decks have spacing which will allow water to flow through and if dislodged will break into much smaller pieces with little chance of causing expansive damage. On non-oceanfront sites with existing or proposed shore protection structures, the residential dwelling units shall be set back at least 15 feet from the existing or proposed shore protection structure. It is the Department's experience that a setback of 15 feet is the minimum that is necessary to protect structures from undermining due to the deterioration of shore protection structures. Fifteen feet is also the standard minimum setback to allow replacement bulkheads to be constructed in compliance with the Coastal Engineering Use rule at N.J.A.C. 7:7E-7.11 since the support structure of bulkheads (dead-men, tie-backs, etc.) can extend upland up to fifteen feet or more. If the site is adjacent to coastal bluffs, the development shall comply with the requirements at N.J.A.C. 7:7E-3.36 instead of providing the 15 foot setback since in bluff areas a larger setback may be necessary to protect proposed structures from undermining and to protect the bluff.

At proposed N.J.A.C. 7:7-7.28(l), the Department clarifies that the general permit does not authorize any activities which are regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A. Activities regulated under this statute require applicants to demonstrate compliance with Wetlands (N.J.A.C. 7:7E-3.27) which requires an alternatives analysis. The Department does not believe that the extensive review required for an alternatives analysis is appropriately conducted as part of the review of a general permit.

Proposed N.J.A.C. 7:7-7.28(m) contains the additional information requirements necessary to review an application for authorization under this coastal general permit. The Department proposes to require the submittal of six copies of a site plan showing: (1) the mean high and spring high water lines; (2) the existing features at the site including topography and structures and the limits of dunes areas, beach areas, flood hazard areas, coastal bluffs and vegetation; (3) existing roads and utilities immediately adjacent to the site; (4) all proposed development including all structures, grading, clearing and limits of disturbance; and (5) the limits and depths of all proposed excavation within 25 feet of a bluff crest in order to demonstrate that the bluff is not being undermined. In addition, a compliance statement demonstrating how the proposed development complies with the coastal general permit standards

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is required. Applicants are encouraged to submit supplemental documents such as maps or surveys in order demonstrate compliance and the Department may request supplemental information in order to clarify assertions in the application.

N.J.A.C. 7:7-7.29 Coastal general permit for habitat creation and enhancement activities

Proposed at N.J.A.C. 7:7-7.29 provides a coastal general permit for habitat creation and enhancement activities. Proposed N.J.A.C. 7:7-7.29(a) provides that such activities may include habitat creation and enhancement activities in the coastal areas necessary to implement a plan for the restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, wetlands buffers and open waters areas, which is sponsored or substantially funded by a Federal or State agency or other entity. Proposed N.J.A.C. 7:7-7.29(b) contains a list of agencies and programs that have goals to create and enhance habitat as well as fund habitat creation and enhancement activities. Applicants proposing activities in conjunction with these programs and the goals of habitat restorations and enhancement will qualify to use the proposed general permit.

Proposed N.J.A.C. 7:7-7.29(c) contains a list of the type of activities that can be undertaken with the proposed general permit. Each of the proposed activities has been used for habitat creation and enhancement projects throughout the State. For example, altering hydrology (proposed N.J.A.C. 7:7-7.29(c)1) and regrading at proposed N.J.A.C. 7:7-7.29(c)4 are common tools used for wetland mitigation. Breaching a structure to allow water into an area (proposed N.J.A.C. 7:7-7.29(c)2) is commonly used for wetland mitigation in tidal areas. Providing nesting boxes or structures and altering vegetation (proposed N.J.A.C. 7:7-7.29(c)3 and (c)5 respectively) are habitat enhancement methods used throughout the State's fish and wildlife management areas.

Proposed N.J.A.C. 7:7-7.29(d) outlines generally what must be demonstrated to the Department in order to show that a proposed activity is consistent with the intent of the proposed general permit. The proposed project is required to be part of a comprehensive plan for restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, wetlands buffers, and/or State open waters. This requirement aids in the creation of an overall habitat management plan. The proposed project shall also be sponsored or funded by

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entities listed in N.J.A.C. 7:7-7.29(b). This criteria encourages cooperative management of restored, created or enhanced habitat. Proposed at N.J.A.C. 7:7-7.29(3) is the requirement that activities authorized by this coastal general permit shall be consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, CAFRA and the Coastal Zone Management rules. This criteria is proposed to provide consistency with the statutes applicable to activities authorized in this coastal general permit. The Department is proposing the criteria that habitat restoration and enhancement activities improve the values and function of the ecosystem and will have a reasonable likelihood of success. Without improvement to the value and function of the ecosystem and without a reasonable likelihood of success, the Department would find no benefit to the proposed activities and would not be able to make a positive finding for this coastal general permit.

Proposed N.J.A.C. 7:7-7.29(e) contains the specific conditions that each application must meet in order to qualify for the general permit. Proposed N.J.A.C. 7:7-7.29(e)1 requires that a general permit for activities to be conducted in Special Areas, as defined at N.J.A.C. 7:7E-3, shall be issued only if the Department finds that there are no practical alternatives that would involve less or no disturbance or destruction of the Special Areas. Proposed N.J.A.C. 7:7-7.29(e)2 requires that the activities be conducted in such a way to as to minimize impacts to Special Areas. Proposed N.J.A.C. 7:7-7.29(e)3 requires that the proposed activities not reduce the total amount of Special Areas on a site. However, the Department may approve a decrease in total special area if it is determined that there is sufficient environmental benefits to outweigh the negative environmental impacts of the decrease. Special areas were defined to provide protection to significantly important environmental resources and the requirement that impacts be minimized guarantees this protection. Proposed N.J.A.C. 7:7-7.29(e)4 that relates to dam removal, contains requirements that are necessary to ensure compliance with N.J.A.C. 7:20 (Dam Safety regulations) in order to provide consistency with applicable statutes. Finally, proposed N.J.A.C. 7:7-7.29(e)5 requires that the habitat creation or enhancement area be protected from future development using a conservation restriction. This provision ensures that all the benefits derived from the activities conducted under the proposed general permit are protected.

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Proposed N.J.A.C. 7:7-7.29(f) states that the sole purpose of the activities that qualify for the proposed general permit must be habitat creation and enhancement. If habitat creation and enhancement is considered to be incidental to another activity it is more appropriate that the entire project be reviewed in the context of an individual permit.

Proposed N.J.A.C. 7:7-7.29(g) contains the additional information required for authorization under the coastal general permit. Site plans must be submitted showing: (1) the mean high and spring high water lines; (2) the upper and lower limits of wetlands, wetlands buffers, beaches, dunes and coastal bluffs areas; (3) limits of all intertidal and subtidal shallows areas, submerged vegetation, and shellfish habitat areas; (4) existing features at the site and on adjacent waterfront sites; (5) existing roads and utilities adjacent to the site; and (6) the limits and depth of all proposed excavation, proposed grading, or fill. In addition, a compliance statement demonstrating how the proposed development complies with the coastal general permit standards is required. The Department is proposing to require this additional information enumerated in (1), (2), and (3) in order to fully assess the proposed activity's impact to areas of concern such as wetlands, beaches, dunes and shellfish habitat. The requirements at (4) and (5) that existing development and roads and utilities be shown on plans are proposed in order to assess possible impact to existing development and to avoid any possible interruption of infrastructure service. As in (1), (2), and (3), the requirement at (6) is proposed in order to allow the Department to fully assess possible environmental impacts caused by the proposed activity to such resources as soils and water table or the exposure of acid producing soils .

Subchapter 8. Authority and Enforcement

Subchapter 8 outlines the statutory authority allowing the pursuit of various remedies to resolve violations of the CAFRA (N.J.S.A. 13:19-1 et seq.) and Waterfront Development (N.J.S.A. 12:5-1 et seq.) statutes. The subchapter further specifies the procedures for issuing an administrative order (N.J.A.C. 7:7-8.2), procedures for the assessment, settlement and payment of civil administrative penalties for violations (N.J.A.C. 7:7-8.3) pursuant to CAFRA, and the procedure to request an adjudicatory hearing to contest an administrative order or penalty assessment and procedures to conduct the hearing (N.J.A.C. 7:7-8.4) pursuant to CAFRA. The civil penalties for violations are detailed at N.J.A.C. 7:7-8.5 through 8.9. Following at N.J.A.C.

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7:7-8.10 are the procedures for the assessment, settlement and payment of civil penalties pursuant to waterfront development, and the procedure to request an adjudicatory hearing to contest an administrative order or penalty assessment and procedures to conduct the hearing pursuant to Waterfront Development at N.J.A.C. 7:7-8.11. The civil penalties for violations of the Wetlands Act of 1970 are found at N.J.A.C. 7:7-8.12. The civil actions for violation of CAFRA, Waterfront Development and the Wetlands Act of 1970 are found at N.J.A.C. 7:7-8.13. Section 8.14 is a statement of severability for this subchapter.

Subchapter 9. Reserved

Subchapter 10. Fees

This subchapter outlines the fees required for Waterfront Development applications (N.J.A.C. 7:7-10.2), Coastal Wetlands applications (N.J.A.C. 7:7-10.3), and CAFRA applications (N.J.A.C. 7:7-10.4). The standards for assessing a single permit fee for single projects requiring multiple permits are found at N.J.A.C. 7:7-10.5. The fees for modifications and all other coastal fees are also outlined in this subchapter.

Social Impact

The existing rules have had a positive social impact by providing comprehensive, efficient, and integrated procedures for regulating the delicately balanced coastal area of the State. The Coastal Permit Program rules provide a mechanism for coordinating land use permitting in the coastal area. Upon re adoption, the Coastal Permit Program rules will continue to provide reasonable procedures for governing the regulated community's compliance with the Department's administration of CAFRA, the Wetlands Act of 1970 and the Waterfront Development Law. Readopting these rules will also allow the Department to continue the public notice and information aspects of administering the coastal permit program, which keep the public informed about coastal permit requirements for development. The Coastal Permit Program rules have allowed the Department to provide opportunities for public involvement in development decisions.

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Failure to readopt these rules would adversely affect property owners in coastal areas because eliminating the guidelines on what coastal development is regulated, what permits are applicable, how to submit permit applications and how and when the Department administers the coastal regulatory program, as well as eliminating the coastal general permits and permits-by-rule would allow development to proceed in a random or undesirable manner.

The readopted chapter will have the further social benefit of providing the Department with the mechanism to implement the Coastal Zone Management rules at N.J.A.C. 7:7E. Through integration of these policies with the procedures contained in N.J.A.C. 7:7, the Department has made progress in achieving the following policy objectives: (1) protecting and enhancing the coastal ecosystem; (2) concentrating rather than dispersing the pattern of coastal residential, commercial, and industrial development and encouraging the preservation of open space; (3) employing 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; (4) protecting the health, safety and welfare of people who work, reside and visit in the coastal zone; (5) promoting public access to the waterfront through linear walkways; (6) maintaining active port and industrial facilities, and providing for necessary expansion in adjacent sites; (7) maintaining and upgrading existing energy facilities, and siting and constructing new energy facilities in such a way to minimize impacts to the coastal area; and (8) encouraging residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.

These positive social impacts have been realized by both the general public and by those property owners whose property values and quality of life might otherwise have been reduced by haphazard development in the coastal area.

Many of the proposed amendments to the Coastal Permit Program Rules will have little, if any, social impact. The definitions for “beach berm” and “charitable conservancy” proposed at N.J.A.C. 7:7-1.3 are intended to clarify terminology found within the rule. The proposed amendment to N.J.A.C. 7:7-1.5(a) to describe the availability of written jurisdictional determinations from the Department and the information required for the request serves to formalize a process which has been in place for more than twenty-five years. The proposed amendment to N.J.A.C. 7:7-2.1(b)8 is a correction of a typographical error correcting the effective date of CAFRA. The proposed amendment to N.J.A.C. 7:7-2.3(a)3 deletes the existing

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paragraph format and re-organizes the paragraph in an outline form to make it more readable however, the information contained in the adopted paragraph is the same as in the proposed language. The proposed amendments to N.J.A.C. 7:7-2.3(d)4 and 5 are intended to clarify that exemptions for waterfront development for the repair, renovation, or reconstruction of pre-existing structures shall be within the same footprint in all dimensions, length, width, and height. The Department is proposing at N.J.A.C. 7:7-2.3(f)1, 2, and 3 to require submission of a general site location map with the submittal of a waterfront development exemption request. This requirement is common to many other application submittal requirements lists and is for administrative purposes. The Department is proposing to add the CAFRA citation referring to N.J.S.A. 13:19-10 and N.J.A.C. 7:7E-1.5(b) to N.J.A.C. 7:7-6.2(c) to clarify the statutory authority for the requirements listed in N.J.A.C. 7:7-6.2(c) 1 through 7 to be included in a compliance statement or EIS. These proposed amendments are administrative in nature and therefore will neither positively or negatively impact society.

The coastal general permit for reconstruction of a legally existing functioning bulkhead at N.J.A.C. 7:7-7.14 is proposed to be amended to authorize replacement bulkheads in lagoons only if the replacement is upland of or in the same footprint as the existing bulkhead. This will have a beneficial social impact since limiting the bulkhead replacements will curtail the narrowing of the navigable portion of the lagoon currently caused by repeated bulkhead replacements taking place 18 to 24 inches waterward of existing bulkheads. By limiting the narrowing of lagoons, the Department is ensuring that lagoons will continue to be open for boating and other recreational purposes.

The proposed amendment of the definition for “seasonal or temporary structures related to the tourism industry” at N.J.A.C. 7:7-1.3 will be made to ensure consistency between the definition and the proposed amendments to the coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial development and multi-family residential developments over 75 units at N.J.A.C. 7:7-7.26. The time period allowed for these structures to remain in place has been lengthened by one month changing the dates from May 1 through September 30 to May 1 through October 31. Many of the structures authorized by the adopted general permit are used for social gathering areas including entertainment and food and beverage service. This will have a positive social impact since the

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authorized structures will be available for the enhanced enjoyment of the coastal region for a greater period of time.

In addition, the coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial development and multi-family residential developments over 75 units at N.J.A.C. 7:7-7.26 is proposed to be amended to limit the size and placement of structures on beaches and require that public access be maintained or provided in accordance with the public access to the waterfront rule at N.J.A.C. 7:7E-8.11. This will again have a positive social impact since by limiting the size and placement of the structures and requiring public access, the Department will continue its policy of keeping as much usable beach area open for the use and enjoyment of the general public.

At N.J.A.C. 7:7-7.27, the Department is proposing a new coastal general permit for geotechnical survey borings. This permit, upon adoption, will be used for the purpose of obtaining information on subsurface conditions or for the purpose of determining the presence or extent of contamination in subsurface soils or groundwater and for seismic information. This is a positive social impact since the information gathered as a result of the will aid in determining the proper siting of roads, bridges and other facilities.

At N.J.A.C. 7:7-7.28, the Department is proposing a new coastal general permit for the development of three or fewer residential units. Currently residential development in excess of one single family home or one duplex requires that the applicant receive an individual CAFRA or waterfront development permit. Individual permits have a longer review time, more extensive notification procedures and a higher fee than applications for general permits. Upon adoption, this general permit would allow small developments of up to three units provided that the standards listed are met. Positive social impacts include a shortened review time for applications with a smaller fee and the availability of a larger number of residential units within the shorter time frames.

At N.J.A.C. 7:7-7.29, the Department is proposing a new coastal general permit for habitat creation and enhancement activities. The positive social impacts associated with this general permit include the restoration, creation or enhancement of habitat for wildlife, improved water quality, and improved quality of wetlands and open water areas.

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This proposed re-adoption with amendments has an overall positive social impact. While the requirements of the Coastal Permit Program rules, through integration with the Coastal Zone Management rules, may prevent some property owners from maximizing the immediate development value of their land, such losses in development value will continue to be offset by the social, economic and environmental benefits of preserving the basic integrity of the coastal area.

Economic Impact

The Coastal Permit Program rules provide an orderly and efficient method for preparing, reviewing, issuing and enforcing coastal permit applications and coastal permit decisions. The coastal permit program is supported by two main revenue sources: Federal grant and State appropriations. The Department's permit application fees are based on the actual total cost of all phases of application review.

The readopted chapter will have several types of economic impact on prospective coastal permit applicants. Property owners within the coastal area will continue to be subject to regulation, which may continue to adversely affect the development value of their property. For those developments requiring approval from the Department, applicants may incur engineering, consulting and legal fees in addition to the required application fees. These application preparation fees may vary widely depending on the complexity of the development.

The proposed amendments will have a positive economic impact on persons seeking to construct minor developments under CAFRA and the Waterfront Development Law. With the creation of the coastal general permit for the placement of geotechnical survey borings at N.J.A.C. 7:7-7.27, the coastal general permit for the development of three or fewer residential units at N.J.A.C. 7:7-7.28, and the coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29 the application process for these activities will be streamlined and the costs associated with the preparation and submission of these applications should be reduced since currently these activities would required the higher fee associated with an individual CAFRA or waterfront development permit.

The long-term effect of the Coastal Permit Program rules has been to lessen the adverse economic impacts of poorly planned development upon waterfront commerce, tourism,

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recreation, public access to the coast, the coastal ecosystem, and the fishing and shellfishing industries. Losses in specific property value and the compliance costs associated with the Coastal Permit Program rules have been offset by the economic loss avoided as a result of regulating uses of the coastal area and the associated environmental benefits.

Federal Standards Analysis

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

The Federal Coastal Zone Management Act (P.L. 92-583) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather it provides broad guidelines for states developing coastal management programs. The State's Coastal Management Program meets the guidelines established under the Federal Coastal Zone Management Program, and the State of New Jersey has obtained approval from the National Oceanic and Atmospheric Administration to implement its program under the Federal Coastal Zone Management Act. These guidelines are found at 15 C.F.R. Part 923. They include the basic components that must be included in a state's coastal zone management plan but do not set forth procedures by which individual activities within a State's coastal zone are to be regulated. Therefore, the Department has concluded that the rules proposed for re-adoption and the proposed amendments do not exceed any Federal standards or requirements.

Environmental Impact

Through the integration of the Coastal Zone Management rules, N.J.A.C. 7:7E, with the Coastal Permit Program rules, N.J.A.C. 7:7, the Department has implemented a number of provisions designed to mitigate the adverse environmental impacts that would otherwise be caused by development activities in the coastal area. Readopting this chapter with the amendments described above will continue to minimize the adverse environmental impacts of activities in the coastal areas.

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In general, the Coastal Permit Program rules preserve the most ecologically sensitive and fragile areas along the coast from inappropriate development and provide appropriate environmental safeguards for construction that does occur in the coastal area.

The proposed amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, will continue to minimize impacts to coastal resources, since a majority of the amendments address administrative and jurisdictional issues associated with CAFRA and the Waterfront Development Law. The proposed coastal general permits and amendments to the existing coastal general permits contain specific acceptability standards and conditions that will ensure that the environmental impact of new developments authorized under the coastal general permits is minimized. The Department has determined that the regulated development affected by these proposed amendments will cause only minimal adverse environmental impacts when performed separately, and will have only minimal cumulative adverse impacts on the environment. The Department has further determined that this proposal is in keeping with the legislative intent to protect and preserve the coastal area from inappropriate development.

The proposed amendments will enable the Department to implement the coastal management program as effectively and efficiently as possible. The coastal management program, through the coastal rules, steers development away from naturally hazardous and sensitive areas, protects estuarine and marine environments from adverse impacts, and promotes resource conservation and designs sensitive to the environment. Thus, to the extent that these amendments improve the administration of CAFRA, the Wetlands Act of 1970 and Waterfront Development Law, the environment will benefit.

Jobs Impact

Failure to readopt the Coastal Permit Program Rules would have a significant adverse impact on jobs. Many of the environmentally sensitive areas that are protected by these rules are associated with recreation and tourism. Failure to protect resources such as beaches, wetlands, and public access to the waterfront would result in the disappearance of these areas and therefore, the disappearance of many recreational activities related industries such as boating, fishing and tourism. In addition, while construction activities would still continue without these

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rules, many of the jobs associated with application preparation and submittal would be eliminated.

The proposed amendments are not expected to have an adverse impact on jobs, since the amendments focus primarily on administrative processes and jurisdictional clarifications. Essentially all the same areas and developments will remain regulated, but the permit application process will be streamlined and simplified for certain activities. It is expected that there will be a slight reduction in the level of consulting and legal services required to apply for a coastal permit for certain activities. This reduction, however, is not expected to result in any significant impact to the legal and consulting professions.

Agricultural Industry Impact

The readoption of the Coastal Permit Program Rules are not expected to have an impact on agricultural activities, since the jurisdiction under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law does not change as a result of the amendments. As stated previously, the amendments focus primarily on clarification of existing jurisdiction and permit application processes, and are unrelated to agriculture. Therefore, no adverse effect on agricultural activities is expected.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant number of builders and property owners affected by the proposed amendments will be “small businesses” as defined in the Act. However, these proposed amendments, along with the creation of the coastal general permit for the placement of geotechnical survey borings at N.J.A.C. 7:7-7.27 and the coastal general permit for the development of three or fewer residential units at N.J.A.C. 7:7-7.28, are intended to simplify and streamline the permit application process for prospective applicants, particularly those proposing small developments of three or fewer units. These amendments will therefore reduce the burden on small businesses imposed by regulation under CAFRA and the Waterfront Development Law. Failure to readopt the Coastal Permit Program Rules would negatively impact property owners since development could proceed unchecked affecting property values and scenic aspects associated with coastal communities. Many “small businesses” would be affected since

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application preparation and submittal would no longer be required, forcing several individuals and small consulting firms out of business. The Department believes that the proposed amendments will also continue to protect and enhance coastal resources while promoting public health and safety.

Smart Growth Impact

The Coastal Permit Program rules overall are consistent with the law and policy of New Jersey to promote smart growth and to reduce the negative effects of sprawl and disinvestments in older communities, as described in Executive Order No. 4 (2002). The proposed readoption with amendments is consistent with smart growth policy since it discourages incompatible development of environmentally sensitive features, which are vital to the health and well being of the present and future citizens of the State. The coastal regulatory programs ensure that development in environmentally sensitive areas, which is likely to have a greater environmental impact and related economic costs than development outside these areas, is closely scrutinized and, as appropriate, discouraged. Therefore, the proposed amendments comport with the goals of smart growth and implementation of the State Plan described in Executive Order No.4.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:7.

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

CHAPTER 7. COASTAL PERMIT PROGRAM RULES

SUBCHAPTER 1. GENERAL PROVISIONS

7:7-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

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“Beach berm” means the nearly horizontal part of the beach lying between the crest of the berm and the toe of the primary dune or first paved public right-of way, whichever is more waterward. The berm is the sloping portion of the beach profile from the upper limit of wave up-rush to the lower limit of wave run-down at low tide.

•••

“Charitable conservancy” means a corporation or trust that meets the definition of a charitable conservancy at N.J.S.A. 13:8B-2 as amended.

•••

“Seasonal or temporary structures related to the tourism industry” means lifeguard stands and associated temporary equipment storage containers, picnic tables, benches and canopies, beach badge sheds, wooden walkways, stage platforms, and portable restrooms, which remain in place only during the period from May 1 through [September 30] October 31, and provided that the placement of such structures does not involve the excavation, grading or filling of a beach or dune.

•••

7:7-1.5 Permits and permit conditions

(a) No person shall undertake or cause, suffer, allow or permit any regulated activity without a permit issued by the Department in accordance with this chapter.

1. Potential applicants may request a written jurisdictional determination from the Department to determine the applicability of the Coastal Area Facility Review Act (CAFRA, N.J.S.A. 13:19-1 et seq.), the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.) and the Waterfront Development Law (N.J.S.A. 12:5-3 et seq.) to a proposed project. A jurisdictional determination is optional. If a potential applicant is unsure whether a particular activity is regulated, the Department encourages the potential applicant to obtain a written jurisdictional determination prior to commencing work since unauthorized regulated activities may result in substantial fines or other penalties.

2. An application for a jurisdictional determination shall contain the following:

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i. A completed jurisdictional determination/preapplication request form including a written description of the site and the proposed development including the dimensions, number, and uses of proposed structures; the length of proposed linear development; and the number of parking spaces proposed;

ii. A copy of the site plan or survey for the proposed project; and

iii. A copy of a USGS quad map or local street map with the project site clearly outlined.

(b) – (e) (No change.)

7:7-2.1 CAFRA

(a) (No change.)

(b) The Department interprets its obligation and responsibility to regulate development as defined by CAFRA to include review of the potential impacts of any development, if at least part of that development is located within the area in which a CAFRA permit is required. Therefore, if any development requires a CAFRA permit, the Department will review all of the components of the development, not just those that triggered the regulatory thresholds of CAFRA. In addition, the Department will review all the components of a development that spans the zones in (a) above if the total development exceeds a regulatory threshold. The Department interprets the statutory intent as excluding developments with relatively minor impacts. In addition, the repair and maintenance of utilities within rights-of-way on beaches and dunes are not regulated development as defined at N.J.A.C. 7:7-1.3 provided that all disturbed areas are restored to their pre-disturbance condition. To that end, the following statutory terms are interpreted to mean the following, for the purposes of this section.

1-7 (No change.)

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

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general access roadway or other right-of-way, including waterways, or those land areas which are part of a subdivision existing and under common ownership on or after September 19, 1973.

i (No change.)

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

iii-vi. (No change.)

(b) 9-12. (No change.)

(c) - (f) (No change.)

7:7-2.3 Waterfront development

(a) The waterfront area regulated under this subchapter is divided into three sections, and will vary in width in accordance with the following rules:

1 – 2. (No change.)

[3. In all other areas of the State (that is in those areas outside of the "coastal area" defined by CAFRA and outside of the Hackensack Meadowlands Development District), the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line, and an adjacent upland land areas extending landward of the mean high water line to the first paved public road, railroad or surveyable property line existing on September 26, 1980 generally parallel to the waterway, provided that the landward boundary of the upland area shall be no less than 100 feet and no more than 500 feet landward of the mean high water line.]

3. In those areas of the State outside both the "coastal area" defined by CAFRA and outside of the New Jersey Meadowlands District, the regulated waterfront area shall include:

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

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

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

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

A. Existed on September 26, 1980; and

B. Generally parallels the waterway.

(b) - (c) (No change.)

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

1 - 3. (No change.)

4. The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in three dimensions (length, width and height), of the preexisting structure, of any legally existing dock, wharf, pier, bulkhead or building that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978) or that appears on the applicable New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972) or that received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction, in the same location and size of the preexisting structure, and does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of or servicing of pleasure vessels;

5. The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in three dimensions (length, width and height), of the preexisting structure, of any legally existing floating dock, mooring raft or similar temporary or seasonal improvement or

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structure that appears on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978), or that appears on the applicable New Jersey Coastal Wetlands photographs promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972), or received a Waterfront Development permit subsequent to the date of the photograph provided that the repair, replacement, renovation, or reconstruction is in the same location and size of the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

6. (No change.)

(e) (No change.)

(f) Any person proposing to undertake or cause to be undertaken any development or activity in or near the waterfront area may request in writing a determination that the proposal is not subject to the requirements of this subchapter on the basis that the proposed development site is located outside the waterfront area, or that the proposed development does not require a permit under (d) above.

1. For a written determination of exemption pursuant to (d)1 and 2 above, the following shall be submitted:

i. – ii. (No change.)

iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map;

[iii] iv. The fee specified at N.J.A.C. 7:7-10.2; and

[iv] v. (No change in text.)

2. For a written determination of exemption pursuant to (d)3 above, the following shall be submitted:

i. – ii. (No change.)

iii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map

[iii - iv] iv – v. (No change in text.)

3. For a written determination of exemption pursuant to (d)4 and 5 above, the following shall be submitted:

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i. – vi. (No change.)

vii. Photograph(s) of the existing structures labeled as to orientation; [and]

viii. The general site location of the development, which shall be identified on a county or local road map or an insert from a U.S. Geological Survey topographic quadrangle map; and

[viii] ix. (No change in text)

4. (No change.)

(g) – (h) (No change.)

7:7-6.2 Formats and contents

(a) – (b) (No change.)

(c) For CAFRA permit applications, the EIS or Compliance Statement shall demonstrate, as required by the Coastal Area Facility Review Act at N.J.S.A. 13:19-10 and in accordance with N.J.A.C. 7:7E-1.5(b), that the proposed development:

1.– 7. (No change.)

7:7-7.14 Coastal general permit for reconstruction of a legally existing functioning bulkhead

[(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead in-place or upland of the existing bulkhead. This coastal general permit also authorizes the reconstruction of a legally existing bulkhead within 18 inches outshore of the existing bulkhead when a timber bulkhead is used. This coastal general permit also authorizes the construction of a legally existing bulkhead up to a maximum of 24 inches outshore of the existing bulkhead when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead. The distance outshore is measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead.

1. Reconstruction of certain bulkhead structures in place located below the mean high water line may be exempt from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d)4.]

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(a) This coastal general permit authorizes the reconstruction of a legally existing functioning bulkhead provided:

1. For project sites which are located on a lagoon lot, the reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead.

2. For project sites which are not located on a lagoon lot:

i. the reconstruction of a legally existing bulkhead is located in-place or upland of the existing bulkhead; or

ii. the reconstruction of a legally existing bulkhead is:

(1) Located Within 18 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a timber bulkhead is used; or

(2) Located up to a maximum of 24 inches outshore of the existing bulkhead (measured from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the proposed bulkhead) when a vinyl bulkhead is used, provided the vinyl bulkhead abuts the pilings of the existing bulkhead.

3. For all project sites, reconstruction of certain bulkhead structures in place located below the mean high water line may be exempt from the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d)4.

(b) – (c) (No change.)

7:7-7.19 Coastal general permit for the construction of piers, docks including jet ski ramps, pilings and boatlifts in man-made lagoons

(a) This coastal general permit authorizes the construction of piers, docks (including jet ski ramps), pilings and boatlifts in man-made lagoons provided that:

1. (No change.)

2. The structures, including mooring area and mooring piles, shall not extend beyond a distance of 20 percent of the width of a man-made lagoon;

3 - 5. (No change.)

6. The proposed structure, including mooring areas and mooring piles, does not hinder

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navigation or access to adjacent docks, piers, moorings or water areas;

7 –11. (No change.)

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

1. Three copies of a site plan(s) showing the following:

i - iii. (No change.)

iv. The opposite side of the lagoon with the width of the lagoon indicated; and

v. (No change.)

2. (No change.)

7:7-7.26 Coastal general permit for the construction of certain structures related to the tourism industry at hotels and motels, commercial developments and multi-family residential developments over 75 units

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

1. The structure remains in place only from May 1 through [September 30] October 31;

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

3 – 4. (No change.)

5. The structure is located a minimum of 50 feet landward of the mean high water line, except on beaches where the development is located on the most landward portion of the beach.

Development on beaches shall additionally be subject to the following:

i. the development shall occupy a maximum of 33% of the total width of the beach berm area within the limits of the project; and

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

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6. (No change.)

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

8. If the structure is proposed on a beach, the beach is open to the public[.];

9. Public access shall be maintained or provided in accordance with the public access to the waterfront rule, N.J.A.C. 7:7E-8.11; and

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

i. The location of the beach berm area; and

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

(b) – (c). (No change.)

7:7-7.27 Coastal general permit for geotechnical survey borings

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

1. Borings and related site disturbance shall not be located in Shellfish Habitat (N.J.A.C. 7:7E-3.2), Submerged Vegetation Habitat (N.J.A.C. 7:7E-3.6) or Endangered or Threatened Wildlife or Plant Species Habitats (N.J.A.C. 7:7E-3.38).

2. Borings and related site disturbance shall comply with Wild and Scenic River Corridors, (N.J.A.C. 7:7E-3.46), Wetlands (N.J.A.C. 7:7E-3.27), and Wetlands Buffers (N.J.A.C. 7:7E-3.28).

3. Borings for remedial investigation shall be completed in accordance with the criteria found in Subchapter 3 of the Technical Requirements for Site Remediation (N.J.A.C. 7:26E-3.1 thru 3.13) as amended;

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

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

iii. Potential impact to existing monitoring wells shall be reported to the Department's Office of Site Remediation to coordinate appropriate measures required to protect or seal/replace the monitoring wells. Sealing of monitoring wells shall be done by a licensed New Jersey well driller who is also certified to seal wells;

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

i. Disturbance to vegetation shall, be limited to a maximum width of five (5) feet for access;

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

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

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

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

6. Any acid-producing soils encountered shall be managed in accordance with Projects Exposing Deposits of Acid-producing Soils (N.J.A.C. 7:13-3.7);

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

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

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

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

1. Three copies of a site plan(s) showing the following:

i. The mean and spring high water lines of the tidal waters at or in proximity to the site;

ii. For activities proposed at or upland of the mean high water line; existing features at the site including topography and structures, and the limits of wetlands, dune areas, beach areas, flood hazard areas, coastal bluffs and vegetation;

iii. For activities proposed at or waterward of the mean water line; existing features at the site including areas designated as shellfish habitat, submerged vegetation habitat, topography and structures, and the limits of wetlands;

iv. Existing roads and utilities immediately adjacent to the site;

v. Location of proposed activities, methods, equipment to utilized and limits and depth of all proposed borings; and

vi. All grading, clearing and limits of disturbance;

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed development complies with the criteria listed (a) above, including supplemental documents as appropriate such as maps or surveys.

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

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

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

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

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

1. The road, seawall or bulkhead is of sufficient size to be designated as the V-zone boundary on the municipal Flood Insurance Rate Map;
2. The road, seawall or bulkhead has eliminated the protective function of the isolated dune, by providing a significant barrier to coastal processes, including storm waves and flooding;
3. The road, seawall or bulkhead is functional and is currently maintained by a public entity;
4. The area of proposed construction is designated as an A-Zone, B-Zone or C-Zone on the municipal Flood Insurance Rate Map;
5. The site disturbance, including grading, excavation and vegetation removal, is limited to that necessary to develop the units and/or accessory structures; and
6. The proposed development does not include the construction of a shore protection structure.

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(e) On sites with a water dependent use as defined at N.J.A.C. 7:7:7E-1.8, existing at any time since July 31, 1977, development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.23, Filled Water's Edge.

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

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

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

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

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

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

1. On an oceanfront site with existing or proposed shore protection structures, the residential dwelling units and/or accessory structures (except decks) shall be set back a minimum of 25 feet from existing or proposed oceanfront shore protection structures. This distance shall be measured from the waterward face of a bulkhead or seawall and from the top of slope on the waterward face of a revetment. This setback shall not apply to below grade structures;

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

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

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

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

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

(a) This coastal general permit authorizes habitat creation and enhancement activities necessary to implement a plan for the restoration, creation, or enhancement of the habitat, water quality functions and values of wetlands, wetland buffers, and open water areas, which is sponsored or substantially funded by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a "sponsor" shall be an active participant in or substantial financial contributor to the activities, and shall endorse the activities in writing.

(b) The following habitat creation and enhancement plans are acceptable provided they demonstrate compliance with (c) through (g) below:

1. A fish and/or wildlife management plan created or approved by the Department's Division of Fish and Wildlife;
2. A project plan approved under the Partners for Fish and Wildlife program, administered by the U.S. Fish and Wildlife Service;

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3. A project plan created by the U.S. Department of Agriculture's Natural Resources Conservation Service under the Wetlands Reserve program, the Conservation Reserve program, the Conservation Reserve Enhancement program, the Wildlife Habitat Incentive program (WHIP), or a similar program, and approved by the local Soil Conservation District;

4. A plan approved by the Department's Office of Natural Resource Damages for the restoration, creation or enhancement of natural resources injured as the result of an oil spill or release of a hazardous substance;

5. A mitigation project required by and approved by a government agency, such as the U.S. Army Corps of Engineers;

6. A habitat creation or enhancement plan carried out by one of the Federal or State agencies at 1 through 5 above or by a government resource protection agency such as a parks commission;
or

7. A habitat creation or enhancement plan carried out by a charitable conservancy, as defined at N.J.A.C. 7:7-1.3, provided that the plan is part of a program listed at 2 through 5 above.

(c) Habitat creation and enhancement activities that are authorized by this coastal general permit include but are not limited to the following:

1. Altering hydrology to restore or create wetlands conditions, such as by blocking, removing, or disabling a human-made drainage ditch or other drainage structure such as a tile, culvert or pipe;

2. Breaching a structure such as a dike or berm in order to allow water into an area;

3. Placing habitat improvement structures such as:

i. Nesting islands;

ii. Fencing to contain, or to prevent intrusion by, livestock or other animals; and

iii. Fish habitat enhancement devices or fish habitat improvement structures such as placed boulders, stream deflectors, or brush piles;

4. Regrading to provide proper elevation or topography for wetlands restoration, creation, or enhancement; and

5. Cutting, burning or otherwise managing vegetation in order to increase habitat diversity or control nuisance flora.

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(d) To be eligible for authorization under this coastal general permit, an applicant shall demonstrate that the proposed project:

1. Is part of a comprehensive plan for the restoration, creation or enhancement of the habitat and water quality functions and values of wetlands, wetland buffers, and/or State open waters;

2. Is sponsored or partially funded by an appropriate entity in accordance with (b) above;

3. Is consistent with the requirements of the Wetlands Act of 1970, the Waterfront Development Law, the Coastal Area Facility Review Act and the Coastal Zone Management rules;

4. Will improve the values and functions of the ecosystem; and

5. Will have a reasonable likelihood of success.

(e) Activities under this coastal general permit shall comply with the following:

1. If the proposed habitat creation or enhancement activity is to take place in Special Areas, as defined at N.J.A.C. 7:7E-3, the coastal general permit authorization shall be issued only if the Department finds that there are no practicable alternatives that would involve less or no disturbance or destruction of Special Areas;

2. The activities shall disturb the minimum amount of Special areas as defined at N.J.A.C. 7:7E 3 necessary to successfully implement the project plan;

3. The activities shall not decrease the total combined area of Special Areas on a site. However, the Department may approve a decrease if the Department determines that the activities causing the decrease are sufficiently environmentally beneficial to outweigh the negative environmental effects of the decrease. In addition, the Department may approve conversion of one Special Area to another Special Area if the Department determines that such conversion is environmentally beneficial;

4. If the activities involve the removal of a dam, the activities shall be conducted in accordance with a permit issued pursuant to N.J.A.C. 7:20 by the Department's Dam Safety Section in the Division of Engineering and Construction; and

5. A conservation restriction for the habitat creation or enhancement area is recorded in accordance with N.J.A.C. 7:7-1.5(b)18.

(f) This coastal general permit does not authorize an activity unless the sole purpose of the activity is habitat creation or enhancement. For example, this coastal general permit does not

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authorize construction of a detention basin in wetlands for stormwater management, even if the detention basin or the project of which the basin is a part will also result in habitat creation or enhancement.

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

1. Three copies of a site plan(s) showing the following:

i. The mean high and spring high tide lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands and wetlands buffers, beaches, dunes, and coastal bluff areas;

iii. Limits of all intertidal and subtidal shallows, submerged vegetation, and shellfish habitat areas;

iv. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkheads, other retaining structures, and culverts;

v. Existing roads and utilities immediately adjacent to the site; and

vi. The limits and depth of all proposed excavation, proposed grading or fill

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed project complies with (a) through (g) above, including supplemental documents as appropriate, such as maps and survey.

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

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Date

Bradley M. Campbell, Commissioner
Department of Environmental Protection