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## **ENVIRONMENTAL PROTECTION**

### **LAND USE MANAGEMENT**

#### **Coastal Zone Management and Coastal Permit Program Rules**

**Proposed Recodifications with Amendments: N.J.A.C. 7:7-1.3 as 1.5; 1.6 as 20.1; 1.10 as 19; 2.1 as 2.2; 2.2 as 2.3; 2.3 as 2.4; 7.1 as 3.2; 7.2 as 4.1 through 4.20; 7.4 as 7; 7.5 through 7.36 as 6; 8 as 29; and 10 as 25; and 7:7E-1.1 as 7:7-1.1; 7:7E-1.2 as 7:7-1.2; 7:7E-1.4 as 7:7-1.3; 7:7E-1.5 as 7:7-1.4(b); 7:7E-3 as 7:7-9; 7:7E-3A as 7:7-10; 7:7E-3C as 7:7-11; 7:7E-4 as 7:7-12; 7:7E-5.1 and 5B.1 as 7:7-13.1; 7:7E-5.2 through 5.5 as 7:7-13.2 through 13.5; 7:7E-5A.2 through 5A.10 as 7:7-13.6 through 13.14; 7:7E-5B.2 through 5B.6 as 7:7-13.15 as 13.19; 7:7E-6 as 7:7-14; 7:7E-7 as 7:7-15; 7:7E-8 as 7:7-16; 7:7E Appendix 3 as 7:7 Appendix H; and 7:7E Appendix 5 as 7:7 Appendix I**

**Proposed Amendments: N.J.A.C. 7:7-1.4 and 7:7 Appendices A, B, and C**

**Proposed Repeals: N.J.A.C. 7:7-1.1, 1.5, 1.7, 1.8, 1.9, 1.11, 3, 4, 5, 6, 7.3, 7.3A, 8.8, 8.9, 8.10, 8.11, 8.12, and 8.15; and 7:7E-1.3, 1.6, 1.7, 1.8, 3B, 5A.1, and 7.3A, and 7:7E Appendix 1**

**Proposed New Rules: N.J.A.C. 7:7-1.6, 1.7, 1.8, 2.1, 2.5, 3.1, 3.3 through 3.8, 4.21, 4.22, 5, 6.32, 8, 9.49, 12.8, 17, 18, 21 through 28, and 29.9, and 7:7 Appendices D, E, F, G, and J**

Authorized By: Bob Martin, Commissioner, Department of Environmental Protection.

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

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

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DEP Docket Number: 03-14-04.

Proposal Number: PRN 2014-060.

**Public hearings** concerning this proposal will be held as follows:

Wednesday, June 25, 2014, at 5:30 P.M.

Long Branch Council Chambers, 2nd floor

344 Broadway

Long Branch, New Jersey

Thursday, June 26, 2014, at 1:00 P.M.

NJ Department of Environmental Protection

Public Hearing Room

401 East State Street, 1st floor

Trenton, New Jersey

Wednesday, July 9, 2014, at 11:00 A.M.

Jacques Cousteau National Estuarine Research Reserve

Jacques Cousteau Coastal Education Center

130 Great Bay Blvd

Tuckerton, New Jersey

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Submit comments by August 1, 2014, electronically at

<http://www.nj.gov/dep/rules/comments>. The Department of Environmental Protection

(Department) encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Gary J. Brower, Esq.

Attn.: DEP Docket No. 03-14-04

Office of Legal Affairs

NJ Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L; P.O. Box 402

Trenton, NJ 08625-0402

This rule proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

### **Summary**

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

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The Department regulates the use and development of coastal resources under 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. 12:5-1 et seq., through the Coastal Permit Program Rules at N.J.A.C. 7:7 and the Coastal Zone Management rules at N.J.A.C. 7:7E.

In the late fall of 2012, New Jersey suffered extraordinary levels of damage to homes, businesses, infrastructure, bulkheads, waterways, and beaches as a result of Superstorm Sandy. In the aftermath of Sandy, the State immediately took steps to address redevelopment and reconstruction and to reduce risks to public safety, health, and the environment while rebuilding a more resilient coastal community. The Department undertook emergency rulemaking to amend the Flood Hazard Areas Control Act (FHACA) rules (N.J.A.C. 7:13) to ensure that structures are constructed at appropriate elevations taking into account the best available flood elevation data (see 45 N.J.R. 360(a) and 1104(a)), and to amend the Coastal Permit Program rules and the Coastal Zone Management (CZM) rules to facilitate the expeditious rebuilding of residential and commercial developments; the reconstruction of existing marinas and construction of new marinas; the restoration of the shellfish aquaculture industry; the maintenance of engineered beaches and dunes; the establishment of living shorelines; and the removal of sand and other materials while encouraging the rehabilitation of dredged material disposal/placement areas (see 45 N.J.R. 1141(a) and 1696(a)). The Department is now proposing to consolidate the Coastal Permit Program Rules and the Coastal Zone Management rules into one chapter and to make other changes intended to further encourage appropriate redevelopment of more resilient coastal communities. The proposal reflects the Department's knowledge and

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experience concerning coastal development issues accumulated over decades as well as specific lessons learned from the impact of and rebuilding from Superstorm Sandy and other weather events.

### Stakeholder outreach

In developing this rulemaking, the Department conducted extensive stakeholder outreach. The Department sought input from local governments, the development community, the environmental community, and State and Federal agencies through seven stakeholder meetings held in the spring of 2011 and three more held in the spring of 2012. The stakeholder meetings focused on changes to the permitting process rules as well as the standards governing the use and development of coastal resources, such as beach and dune maintenance activities, expansion of existing single-family homes on dunes, protecting existing and encouraging development of new marinas, filled water's edge areas, living shorelines, and special area rules. Many of the amendments proposed herein reflect the suggestions and recommendations of the stakeholders. After Superstorm Sandy, the Department held many formal and informal meetings with representatives from the planning, environmental, business, development, government, and academic communities to discuss the rebuilding of more resilient coastal communities and coastal ecosystems. These discussions informed both the prior emergency rulemakings noted above and this proposal. Most recently, the Department made presentations regarding the rules to the Commerce and Industry Association of New Jersey, the New Jersey Builders Association, and the League of Municipalities.

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The consolidation of all the coastal rules in a single chapter is part of the Department's effort to transform the operations of the land use permitting programs administered by the Division of Land Use Regulation. The Division administers three permitting programs, each with its own chapter of rules: the coastal permitting program, the freshwater wetlands permitting program implemented through the Freshwater Wetland Protection Act (FWPA) rules, N.J.A.C. 7:7A, and the flood hazard area permitting program is implemented through the Flood Hazard Area Control Act (FHACA) rules, N.J.A.C. 7:13. With this proposal and through anticipated rulemaking to amend the FWPA and FHACA rules, the Department intends to align the rules governing the permitting processes of all three programs to the extent the respective enabling statutes allow. The rules governing the process for obtaining a permit will be standardized across all three chapters and will be organized in a uniform order and format.

In this proposal, the effort to align the permitting process rules involves the following topics: emergency authorizations, pre-application conferences, application requirements, requirements for an applicant to provide public notice, application review, permit conditions and changes to issued permits, and requests for adjudicatory hearings.

The transformation of the operations of the land use permitting programs also involves streamlining functions, re-engineering business processes, and leveraging technology to eliminate unnecessary paperwork, share applications and forms across the Department, and increasing the use of electronic submittals. This proposal includes amendments intended to facilitate these efforts, including rules establishing general permits-by-certification for activities that will cause only minimal adverse environmental impacts when performed separately or cumulatively (when considered in combination with other projects), are in keeping with

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legislative intent to protect and preserve the coastal area from inappropriate development, and are in conformance with the purposes of the applicable statutes. The Department is proposing two general permits-by-certification, for the reconstruction of a legally existing functioning bulkhead in-place or upland of the existing bulkhead; and the construction of piers, docks, pilings, and boatlifts in man-made lagoons. An applicant for a general permit-by-certification will electronically submit a certification that the activity to be undertaken meets the specific requirements of the rule governing that permit, enabling an automated application and issuance process. Electronic permitting simplifies the application process for persons proposing activities subject to the general permits-by-certification. As with the use of electronic permitting by other Department programs, this also benefits the environment by allowing Department resources and personnel to focus on activities that pose the most significant impacts to the environment.

To further the effort to prioritize and refocus its permitting efforts on the activities posing the most risk to the coastal environment, the Department is proposing to establish additional permits-by-rule and a new general permit. The Department is proposing permits-by-rule for the construction of a swimming pool, spa, or hot tub and decking and the application of pesticide in coastal wetlands to control invasive plant species on an area of 0.25 acres or less in size. The Department is proposing a new general permit for the application of pesticide in coastal wetlands to control invasive plant species on an area greater than 0.25 acres in size.

The Department is also proposing to modify several existing general permits. The general permit for the construction of a single-family or duplex dwelling is proposed to be amended to apply to one or two single-family or duplex dwellings. The general permits for the construction or reconstruction of bulkheads are proposed to be amended to allow the beneficial

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use of the dredged material as fill and to modify the requirements for bulkheads constructed in V zones. The general permits for investigation, cleanup, removal or remediation of hazardous substances and geotechnical soil borings are proposed to be amended to reflect changes to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and the Department's organizational structure. The general permit for the construction of piers, docks (including jet ski ramps), pilings, and boatlifts in man-made lagoons is proposed to be modified to allow for alternative design rather than the currently prescribed plank spacing requirements. The general permit for dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency is proposed to be amended to provide that the Department will make an acceptable use determination for the beneficial use of the dredged material.

#### Changes to the standards for use and development of coastal resources

The Department is proposing various amendments to the standards in the rules for the use and development of the State's coastal resources, specifically those relating to marina development and expansion and dredging and dredged material management.

As a water-dependent use, marinas are an essential component of the State's waterfront communities, providing necessary infrastructure and services to the boating public. However, over the last several years the State has seen a decrease in the money spent on recreational boating as well as a decrease in the number of boat registrations. This in turn has resulted in a loss of jobs, revenue, and services at marina facilities, as well as the conversion of some marinas to non-water dependent uses. The proposed amendments relating to marinas would allow the

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expansion of existing marinas and the construction of new marinas in infill situations within shellfish habitat. The proposed amendments would also allow for the construction of a restaurant at certain new or existing marina facilities. These amendments are intended to help maintain the economic viability of existing marinas and encourage the development of new ones in appropriate circumstances while minimizing environmental impacts.

Dredging is necessary to provide and maintain adequate water depths for the safe passage and berthing of recreational and commercial vessels. The proposed amendments relating to dredging and dredged material management are intended to provide clarity and flexibility, as well as promote the State's policy of encouraging the beneficial use of dredged material. The definition of maintenance dredging is proposed to be modified to provide flexibility in demonstrating that a proposed dredging activity qualifies as maintenance dredging. The proposed amendments also recognize a new type of dredging, environmental dredging, which is dredging to remove contaminated sediments from a waterbody for remediation purposes that is undertaken in accordance with State and Federal requirements. In addition, a new special area rule addressing existing dredged material management areas is being proposed in recognition that these areas serve a critical function as management areas for sediments removed from existing navigation channels and marinas to maintain recreational and commercial boating and marine commerce in the State's waters.

#### General amendments

The Department is proposing certain amendments that occur throughout the rules. These are: (1) amendments deleting the statutory citation for CAFRA, since CAFRA is a defined term

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in the definitions section at proposed N.J.A.C. 7:7-1.5 and the statutory citation is in the definition; (2) amendments replacing the statutory citation for the coastal areas defined by CAFRA with the term “CAFRA area” since the CAFRA area is proposed to be a defined term in the definitions section at N.J.A.C. 7:7-1.5; (3) amendments deleting the phrase “as defined at” with reference to particular terms defined in the existing definitions section (existing N.J.A.C. 7:7-1.3 or existing N.J.A.C. 7:7E-1.8), since it would be expected that readers look to the definitions section for meanings of terms used in the rules; only when a term is defined in a rule other than the definitions section will the rules provide a cross-reference; (4) amendments to delete reference to the statute establishing the criteria for a “qualifying municipality” since the term is defined with reference to that statute in proposed N.J.A.C. 7:7-1.5; (5) amendments removing the unnecessary hyphen in the terms “A-Zone,” “B-Zone,” “C-Zone,” and “V-zone”; and (6) amendments replacing, for clarity, the adjectives “below” and “above” with “waterward” and “landward” when describing a location in relation to the mean high water line. These amendments are not further noted or explained in the summary below.

#### Organization of the new CZM rules, N.J.A.C. 7:7

The following table summarizes the relocation and recodification of the sections in the existing Coastal Permit Program Rules at N.J.A.C. 7:7 and the existing Coastal Zone Management rules at N.J.A.C. 7:7E within the new, consolidated CZM rules at N.J.A.C. 7:7. As part of this recodification of subchapters in N.J.A.C. 7:7, numerous changes to internal cross-

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references are proposed and additional internal cross-references added for clarity; these changes are not further noted or explained in the summary below.

**TABLE OF CITATIONS AND RECODIFICATIONS, N.J.A.C. 7:7**

| <b>Subject matter</b>                              | <b>Current citation<br/>(N.J.A.C.)</b> | <b>Proposed citation<br/>(N.J.A.C.)</b> | <b>Proposed<br/>changes(s)</b>                              |
|--|--|---|---|
| Purpose and scope                                  | 7:7-1.1                                | Repealed                                | Repealed  |
| Reserved   | 7:7-1.2                                | Repealed                                | Repealed  |
| Definitions  | 7:7-1.3                                | 7:7-1.5                                 | Clarified; amended;<br>added and deleted<br>new definitions |
| Standards for<br>evaluating permit<br>applications | 7:7-1.4                                | 7:7-1.4                                 | Reflect combining<br>of chapters;<br>reworded               |
| Permits and permit<br>conditions                   | 7:7-1.5                                | 7:7-2.1(a), 2.5, 3, 8,<br>and 27.2      | Clarified and<br>expanded                                   |
| Provisional permits                                | 7:7-1.6                                | 7:7-20.1                                | No change   |
| Emergency permit<br>authorization                  | 7:7-1.7                                | Repealed                                | Substance moved to<br>N.J.A.C. 7:7-21                       |

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| Procedure where more than one permit is required  | 7:7-1.8  | Repealed                | Substance addressed at N.J.A.C. 7:7-23.2 and 25.5   |
| Permit fees   | 7:7-1.9  | Repealed                | Repealed  |
| Construction; relaxation of procedures or reconsideration of application of substantive standards | 7:7-1.10 | 7:7-1.7 and 19          | Substance of N.J.A.C. 7:7-1.10(a) moved to N.J.A.C. 7:7-1.7; Substance of N.J.A.C. 7:7-1.10(b) moved to N.J.A.C. 7:7-19 |
| Severability  | 7:7-1.11 | 7:7-1.7                 | Reworded  |
| CAFRA   | 7:7-2.1  | 7:7-2.2                 | Reflect combining of chapters; reworded   |
| Wetlands  | 7:7-2.2  | 7:7-2.3; 7:7 Appendix D | Clarified; coastal wetlands map listing moved to Appendix D   |
| Waterfront Development  | 7:7-2.3  | 7:7-2.4                 | Clarified   |

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| Pre-application review  | 7:7-3   | Repealed             | Substance moved to N.J.A.C. 7:7-22                 |
| Permit review procedures  | 7:7-4   | Repealed             | Substance moved to N.J.A.C. 7:7-23, 24, 26, and 27 |
| Requests for adjudicatory hearings                                | 7:7-5   | Repealed             | Substance moved to N.J.A.C. 7:7-28                 |
| Environmental impact statements and compliance statements         | 7:7-6   | Repealed             | Substance moved to N.J.A.C. 7:7-23.5 and 23.6      |
| General standards for issuing general permits and permits-by-rule | 7:7-7.1 | 7:7-3.2              | Clarified and amended                              |
| Permits-by-rule   | 7:7-7.2 | 7:7-4.1 through 4.22 | Reorganized; minor amendments for clarity          |
| Application procedure for a                                       | 7:7-7.3 | 7:7-23, 24, and 26   | Clarified and expanded                             |

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| general permit authorization                  |                      |   |   |
| Requests for modification of a general permit | 7:7-7.3A             | Repealed  | Substance moved to N.J.A.C. 7:7-27.5 and 27.6   |
| Long Branch Redevelopment Zone Permit         | 7:7-7.4              | 7:7-7   | Reorganized   |
| General permits                               | 7:7-7.5 through 7.36 | 7:7-6.1 through 6.31                              | Amended eight existing general permits; deleted application requirements                              |
| Enforcement                                   | 7:7-8                | 7:7-29; Repealed<br>7:7-8.8 through 8.12 and 8.15 | Amended to incorporate and implement the Environmental Enforcement Enhancement Act, P.L. 2007, c. 246 |
| Reserved                                      | 7:7-9                | Repealed  | Repealed  |

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| Permit application fees  | 7:7-10         | 7:7-25         | Modified to reflect changes to permit modifications; added fees for general permits-by-certification and requests for permit extensions |
| Illustration of the waterward side of development ,<br>N.J.A.C. 7:7-1.3  | 7:7 Appendix A | 7:7 Appendix A | Updated citations   |
| Illustration of intervening development for proposed development other than a single-family home or duplex pursuant to N.J.A.C. 7:7-2.1(b) | 7:7 Appendix B | 7:7 Appendix B | Updated citations   |

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| Illustration of intervening development for proposed single-family home or duplex pursuant to N.J.A.C. 7:7-2.1(b)1 | 7:7 Appendix C | 7:7 Appendix C | Updated citations |
|--|----------------|----------------|-------------------|

**TABLE OF CITATIONS AND RECODIFICATIONS, N.J.A.C. 7:7E**

| <b>Subject matter</b>            | <b>Current citation (N.J.A.C.)</b> | <b>Proposed citation (N.J.A.C.)</b> | <b>Proposed changes(s)</b> |
|----------------------------------|------------------------------------|-------------------------------------|----------------------------|
| Purpose and scope                | 7:7E-1.1                           | 7:7-1.1                             | Clarified and streamlined  |
| Jurisdiction                     | 7:7E-1.2                           | 7:7-1.2                             | Clarified and streamlined  |
| Severability                     | 7:7E-1.3                           | Repealed                            | Repealed                   |
| Review, revision, and expiration | 7:7E-1.4                           | 7:7-1.3                             | Clarified                  |
| CAFRA findings                   | 7:7E-1.5                           | 7:7-1.4(b)                          | Reworded                   |

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|-----------------------------------|----------|-------------|---|
| Mitigation                        | 7:7E-1.6 | 7:7-17.2(a) | Modified to reflect concepts of FWPA rules  |
| Correspondence with Department    | 7:7E-1.7 | Repealed    | Substance moved to N.J.A.C. 7:7-1.6   |
| Definitions                       | 7:7E-1.8 | Repealed    | Substance moved to N.J.A.C. 7:7-1.5   |
| Purpose and scope (Special Areas) | 7:7E-3.1 | 7:7-9.1     | Updated citations   |
| Shellfish habitat                 | 7:7E-3.2 | 7:7-9.2     | Clarified; expanded acceptable activities; mitigation provisions moved to N.J.A.C. 7:7-17 |
| Surf clams                        | 7:7E-3.3 | 7:7-9.3     | Rationale only  |
| Prime fishing areas               | 7:E7-3.4 | 7:7-9.4     | Rationale only  |
| Finfish migratory pathways        | 7:7E-3.5 | 7:7-9.5     | Updated terminology   |
| Submerged vegetation habitat      | 7:7E-3.6 | 7:7-9.6     | Updated terminology; clarified; mitigation  |

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|   |           |          | provisions moved to<br>N.J.A.C. 7:7-17   |
| Navigation channels                           | 7:7E-3.7  | 7:7-9.7  | Added standards for<br>maintenance and<br>new dredging of<br>navigation channels |
| Canals  | 7:7E-3.8  | 7:7-9.8  | Updated<br>terminology   |
| Inlets  | 7:7E-3.9  | 7:7-9.9  | No change  |
| Marina moorings                               | 7:7E-3.10 | 7:7-9.10 | Rationale only   |
| Ports   | 7:7E-3.11 | 7:7-9.11 | Updated citations<br>and terminology   |
| Submerged<br>infrastructure                   | 7:7E-3.12 | 7:7-9.12 | No change  |
| Shipwrecks and<br>artificial reef<br>habitats | 7:7E-3.13 | 7:7-9.13 | Updated references;<br>rationale   |
| Wet borrow pits                               | 7:7E-3.14 | 7:7-9.14 | Clarified; addressed<br>beneficial use of<br>dredged material                    |
| Intertidal and                                | 7:7E-3.15 | 7:7-9.15 | Mitigation   |

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| subtidal shallows            |           |          | provisions moved to<br>N.J.A.C. 7:7-17                                  |
| Dunes                        | 7:7E-3.16 | 7:7-9.16 | Updated citations<br>and terminology                                    |
| Overwash areas               | 7:7E-3.17 | 7:7-9.17 | Updated<br>terminology and<br>citations; deleted<br>reference to figure |
| Coastal high hazard<br>areas | 7:7E-3.18 | 7:7-9.18 | Updated<br>terminology and<br>citations; deleted<br>reference to figure |
| Erosion hazard<br>areas      | 7:7E-3.19 | 7:7-9.19 | Updated<br>terminology<br>citations, and<br>rationale                   |
| Barrier island<br>corridor   | 7:7E-3.20 | 7:7-9.20 | Updated<br>terminology and<br>citations                                 |
| Bay islands                  | 7:7E-3.21 | 7:7-9.21 | Updated<br>terminology,   |

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|                       |           |          | citations, and rationale  |
| Beaches               | 7:7E-3.22 | 7:7-9.22 | Updated citations and terminology   |
| Filled water's edge   | 7:7E-3.23 | 7:7-9.23 | Refined definition and clarified how to determine filled water's edge; addressed construction of restaurants at new or existing marina facilities; updated terminology, citations, and rationales |
| Existing lagoon edges | 7:7E-3.24 | 7:7-9.24 | Updated terminology and citations   |
| Flood hazard areas    | 7:7E-3.25 | 7:7-9.25 | Clarified; updated terminology,   |

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|                              |           |          | citations, and rationale   |
| Riparian zones               | 7:7E-3.26 | 7:7-9.26 | Amended to address construction of restaurants at new or existing marina facilities; updated citations and terminology |
| Wetlands                     | 7:7E-3.27 | 7:7-9.27 | Clarified; mitigation provisions moved to N.J.A.C. 7:7-17; updated citations and terminology                           |
| Wetland buffers              | 7:7E-3.28 | 7:7-9.28 | Updated citations  |
| Reserved                     | 7:7E-3.29 | Repealed | Repealed   |
| Reserved                     | 7:7E-3.30 | Repealed | Repealed   |
| Coastal bluffs               | 7:7E-3.31 | 7:7-9.29 | Updated citations  |
| Intermittent Stream Corridor | 7:7E-3.32 | 7:7-9.30 | Clarified; updated citations and terminology   |

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| Farmland conservation area                                  | 7:7E-3.33 | 7:7-9.31 | Updated citations and terminology  |
| Steep slopes  | 7:7E-3.34 | 7:7-9.32 | Updated citations  |
| Dry borrow pits   | 7:7E-3.35 | 7:7-9.33 | Clarified; addressed beneficial use of dredged material; updated citations |
| Historic and archeological resources                        | 7:7E-3.36 | 7:7-9.34 | Reworded and updated citations and terminology                             |
| Specimen trees  | 7:7E-3.37 | 7:7-9.35 | No change  |
| Endangered or threatened wildlife or plant species habitats | 7:7E-3.38 | 7:7-9.36 | Updated citations cross-references and Department's mailing address        |
| Critical wildlife habitats                                  | 7:7E-3.39 | 7:7-9.37 | No change  |
| Public open space   | 7:7E-3.40 | 7:7-9.38 | Updated citations and terminology  |
| Special hazard areas  | 7:7E-3.41 | 7:7-9.39 | Updated references   |
| Excluded Federal  | 7:7E-3.42 | 7:7-9.40 | No change  |

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| lands  |           |          |  |
| Special urban areas                                      | 7:7E-3.43 | 7:7-9.41 | Updated citations, terminology, and mailing address  |
| Pinelands National Reserve and Pinelands Protection Area | 7:7E-3.44 | 7:7-9.42 | Updated mailing address                              |
| Hackensack Meadowlands District                          | 7:7E-3.45 | 7:7-9.43 | Updated mailing address                              |
| Wild and scenic river corridors                          | 7:7E-3.46 | 7:7-9.44 | Updated citations                                    |
| Geodetic control reference marks                         | 7:7E-3.47 | 7:7-9.45 | No change  |
| Hudson River Waterfront Area                             | 7:7E-3.48 | 7:7-9.46 | Updated citations and terminology                    |
| Atlantic City  | 7:7E-3.49 | 7:7-9.47 | Addressed pedestrian walkways; updated citations and |

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|  |           |          | terminology                       |
| Lands and waters subject to public trust rights                | 7:7E-3.50 | 7:7-9.48 | Updated citations and terminology |
| Purpose and scope (standards for beach and dune activities)    | 7:7E-3A.1 | 7:7-10.1 | Updated citations and terminology |
| Standards applicable to routine beach maintenance              | 7:7E-3A.2 | 7:7-10.2 | Updated citations                 |
| Standards applicable to emergency post storm beach restoration | 7:7E-3A.3 | 7:7-10.3 | Updated citations and terminology |
| Standards applicable to dune creation and maintenance          | 7:7E-3A.4 | 7:7-10.4 | Updated citations and terminology |
| Standards applicable to the construction of boardwalks         | 7:7E-3A.5 | 7:7-10.5 | No change                         |
| Information  | 7:7E-3B   | Repealed | Substance moved to                |

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| required in wetland and intertidal and subtidal shallows mitigation proposals   |          |          | N.J.A.C. 7:7-17  |
| Purpose and scope (Standards for conducting and reporting endangered or threatened wildlife or plant species habitat impact assessment and/or habitat evaluation) | 7:7E-3C  | 7:7-11   | Clarified; updated citations and terminology                     |
| Purpose and scope (General Water Areas)   | 7:7E-4.1 | 7:7-12.1 | Deleted references to figures; updated citations and terminology |
| Shellfish aquaculture   | 7:7E-4.2 | 7:7-12.2 | Updated citations  |
| Boat ramps  | 7:7E-4.3 | 7:7-12.3 | No change  |

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| Docks and piers for cargo and commercial fisheries | 7:7E-4.4 | 7:7-12.4  | Updated citations and terminology                                   |
| Recreational docks and piers                       | 7:7E-4.5 | 7:7-12.5  | Amended acceptability conditions; updated citations and terminology |
| Maintenance dredging                               | 7:7E-4.6 | 7:7-12.6  | Refined definition; clarified; updated citations and terminology    |
| New dredging                                       | 7:7E-4.7 | 7:7-12.7  | Clarified; updated citations and terminology                        |
| Dredged material disposal                          | 7:7E-4.8 | 7:7-12.9  | Clarified; updated citations and terminology                        |
| Solid waste or sludge dumping                      | 7:7E-4.9 | 7:7-12.10 | Updated terminology   |

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| Filling                           | 7:7E-4.10 | 7:7-12.11 | Mitigation provisions moved to N.J.A.C. 7:7-17; updated citations and terminology |
| Mooring                           | 7:7E-4.11 | 7:7-12.12 | No change   |
| Sand and gravel mining            | 7:7E-4.12 | 7:7-12.13 | Updated citations and terminology   |
| Bridges                           | 7:7E-4.13 | 7:7-12.14 | No change   |
| Submerged pipelines               | 7:7E-4.14 | 7:7-12.15 | Updated citations and terminology   |
| Overhead transmission lines       | 7:7E-4.15 | 7:7-12.16 | Updated citations   |
| Dams and impoundments             | 7:7E-4.16 | 7:7-12.17 | Updated citations   |
| Outfall and intakes               | 7:7E-4.17 | 7:7-12.18 | Updated terminology   |
| Realignment of water areas        | 7:7E-4.18 | 7:7-12.19 | No change   |
| Vertical wake or wave attenuation | 7:7E-4.19 | 7:7-12.20 | Updated citations   |

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| structures         |           |           |  |
| Submerged cables   | 7:7E-4.20 | 7:7-12.21 | Updated citations and terminology  |
| Artificial reefs   | 7:7E-4.21 | 7:7-12.22 | Added provision allowing one estuarine reef in Delaware Bay constructed by Department; updated citations and terminology |
| Miscellaneous uses | 7:7E-4.22 | 7:7-12.24 | Updated citations and terminology  |
| Purpose and scope  | 7:7E-5.1  | 7:7-13.1  | Expanded list of activities to which subchapter does not apply; amended; updated citations and terminology               |
| Definitions        | 7:7E-5.2  | 7:7-13.2  | Clarified; relocated definitions of  |

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|  |          |          | “electrical substation,”<br>“tidelands map,”<br>and “upland waterfront development area”<br>to N.J.A.C. 7:7-1.5;<br>updated citations |
| Impervious cover requirements that apply to sites in the upland waterfront development and CAFRA areas | 7:7E-5.3 | 7:7-13.3 | Amended to reflect N.J.S.A. 13:19-5.4;<br>updated citations<br>and terminology  |
| Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas | 7:7E-5.4 | 7:7-13.4 | Updated citations   |
| Determining if a site  | 7:7E-5.5 | 7:7-13.5 | Amended   |

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| is forested or unforested  |           |          | methodology for determining a forest      |
| Purpose and scope (Impervious cover limits and vegetative cover percentages in the upland waterfront development area) | 7:7E-5A.1 | Repealed | Redundant with proposed N.J.A.C. 7:7-13.1 |
| Upland waterfront development area region growth ratings   | 7:7E-5A.2 | 7:7-13.6 | Updated citations                         |
| Environmental sensitivity  | 7:7E-5A.3 | 7:7-13.7 | Clarified                                 |
| Development potential  | 7:7E-5A.4 | 7:7-13.8 | Updated citations                         |
| Development potential for a residential or minor commercial  | 7:7E-5A.5 | 7:7-13.9 | Updated citations and clarified           |

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| development site   |            |           |  |
| Development potential for a major commercial or industrial development site  | 7:7E-5A.6  | 7:7-13.10 | Updated citations and clarified              |
| Development potential for a campground development site                      | 7:7E-5A.7  | 7:7-13.11 | Updated citations and clarified              |
| Development intensity  | 7:7E-5A.8  | 7:7-13.12 | Updated citations and clarified              |
| Impervious cover limits for a site in the upland waterfront development area | 7:7E-5A.9  | 7:7-13.13 | Updated citations and terminology; clarified |
| Vegetative cover percentages for a site in the upland waterfront             | 7:7E-5A.10 | 7:7-13.14 | Updated citations and terminology; clarified |

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| development area   |           |           |  |
| Purpose and scope<br>(Impervious cover<br>limits and<br>vegetative cover<br>percentages in the<br>CAFRA area)                          | 7:7E-5B.1 | Repealed  | Substance moved to<br>N.J.A.C. 7:7-13.1            |
| Coastal Planning<br>Areas  | 7:7E-5B.2 | 7:7-13.15 | Updated citations<br>and terminology;<br>clarified |
| Boundaries for<br>Coastal Planning<br>Areas, CAFRA<br>centers, CAFRA<br>cores, and CAFRA<br>nodes; Non-<br>mainland coastal<br>centers | 7:7E-5B.3 | 7:7-13.16 | Updated citations<br>and terminology;<br>clarified |
| Impervious cover<br>limits for a site in<br>the CAFRA area   | 7:7E-5B.4 | 7:7-13.17 | Updated citations<br>and terminology;<br>clarified |

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| Vegetative cover percentages for a site in the CAFRA area       | 7:7E-5B.5 | 7:7-13.18 | Updated citations and terminology; clarified   |
| Mainland coastal centers  | 7:7E-5B.6 | 7:7-13.19 | Amended to reflect Permit Extension Act of 2008 as amended through September 19, 2012; updated citations and terminology |
| Rule on location of linear development (General location rules) | 7:7E-6.1  | 7:7-14.1  | Clarified; Updated citations and terminology   |
| Basic location rule   | 7:7E-6.2  | 7:7-14.2  | Updated citations  |
| Secondary impacts   | 7:7E-6.3  | 7:7-14.3  | Updated citations and terminology  |
| Purpose and scope (use rules)                                   | 7:7E-7.1  | 7:7-15.1  | Updated citations  |
| Housing use   | 7:7E-7.2  | 7:7-15.2  | Updated citations  |

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|                             |           |          | and terminology;<br>amended for<br>consistency with<br>proposed<br>amendments to<br>general permit 4<br>(N.J.A.C. 7:7-6.4)   |
| Resort /recreational<br>use | 7:7E-7.3  | 7:7-15.3 | Amended standards<br>relevant to marinas<br>to allow for the<br>construction of<br>restaurants at new or<br>existing marina<br>facilities; updated<br>citations and<br>terminology;<br>clarified |
| Marina<br>Development       | 7:7E-7.3A | Repealed | Repealed   |
| Energy facility use         | 7:7E-7.4  | 7:7-15.4 | Updated citations<br>and terminology   |

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| Transportation use                 | 7:7E-7.5  | 7:7-15.5  | Updated citations and terminology   |
| Public facility use                | 7:7E-7.6  | 7:7-15.6  | Updated citations and terminology   |
| Industry use                       | 7:7E-7.7  | 7:7-15.7  | Updated citations   |
| Mining use                         | 7:7E-7.8  | 7:7-15.8  | Updated citations and terminology   |
| Port use                           | 7:7E-7.9  | 7:7-15.9  | Updated citations   |
| Commercial facility use            | 7:7E-7.10 | 7:7-15.10 | Amended; updated citations  |
| Coastal engineering                | 7:7E-7.11 | 7:7-15.11 | Amended standards for construction of bulkheads in V zones; updated citations   |
| Dredged material placement on land | 7:7E-7.12 | 7:7-15.12 | Updated citations and terminology; addressed beneficial use of dredged material |
| National defense                   | 7:7E-7.13 | 7:7-15.13 | Updated citations;  |

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| use                                |           |           | reflect combining of chapters   |
| High rise-structures               | 7:7E-7.14 | 7:7-15.14 | Updated terminology; refined definition; exempted Atlantic City from rule |
| Purpose and Scope (Resource Rules) | 7:7E-8.1  | 7:7-16.1  | No change   |
| Marine fish and fisheries          | 7:7E-8.2  | 7:7-16.2  | Clarified; updated citations and terminology                              |
| Reserved                           | 7:7E-8.3  | Repealed  | Repealed  |
| Water quality                      | 7:7E-8.4  | 7:7-16.3  | Updated citations   |
| Surface water use                  | 7:7E-8.5  | 7:7-16.4  | No change   |
| Groundwater Use                    | 7:7E-8.6  | 7:7-16.5  | Updated terminology   |
| Stormwater management              | 7:7E-8.7  | 7:7-16.6  | No change   |
| Vegetation                         | 7:7E-8.8  | 7:7-16.7  | No change   |
| Reserved                           | 7:7E-8.9  | Repealed  | Repealed  |

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| Air quality                             | 7:7E-8.10       | 7:7-16.8  | Updated citations                    |
| Public access                           | 7:7E-8.11       | 7:7-16.9  | Updated citations                    |
| Scenic resources<br>and design          | 7:7E-8.12       | 7:7-16.10 | Updated citations                    |
| Buffers and<br>compatibility of<br>uses | 7:7E-8.13       | 7:7-16.11 | Updated citations<br>and terminology |
| Traffic                                 | 7:7E-8.14       | 7:7-16.12 | Clarified; updated<br>citations      |
| Reserved                                | 7:7E-8.15       | Repealed  | Repealed                             |
| Reserved                                | 7:7E-8.16       | Repealed  | Repealed                             |
| Reserved                                | 7:7E-8.17       | Repealed  | Repealed                             |
| Reserved                                | 7:7E-8.18       | Repealed  | Repealed                             |
| Reserved                                | 7:7E-8.19       | Repealed  | Repealed                             |
| Reserved                                | 7:7E-8.21       | Repealed  | Repealed                             |
| Subsurface sewage<br>disposal systems   | 7:7E-8.22       | 7:7-16.13 | Updated citations                    |
| Solid and<br>Hazardous waste            | 7:7E-8.23       | 7:7-16.14 | No change                            |
| Design Standards<br>and Specifications  | 7:7E Appendix 1 | Repealed  | Repealed                             |

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| Reserved   | 7:7E Appendix 2 | Repealed       | Repealed                                   |
| Boundaries of Non-mainland coastal centers in the CAFRA area | 7:7E Appendix 3 | 7:7 Appendix H | Updated citations and terminology          |
| Reserved   | 7:7E Appendix 4 | Repealed       | Repealed                                   |
| CAFRA Centers  | 7:7E Appendix 5 | 7:7 Appendix I | Amended; updated citations and terminology |

## **N.J.A.C. 7:7 Coastal Zone Management Rules**

### **Subchapter 1. General Provisions**

N.J.A.C. 7:7-1, General Provisions, sets forth general provisions including purpose, scope, and definitions.

#### **N.J.A.C. 7:7-1.1 Purpose**

The Department is proposing to repeal existing N.J.A.C. 7:7-1.1, Purpose and scope, and to recodify, with amendments, existing N.J.A.C. 7:7E-1.1 as N.J.A.C. 7:7-1.1, Purpose. At N.J.A.C. 7:7-1.1(a), which explains that the chapter establishes the Department's rules regarding the use and development of coastal resources, the Department is proposing minor language changes that do not affect meaning. However, the provision within current N.J.A.C. 7:7E-1.1(a)

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relating to the review of water quality certificates is proposed to be recodified at N.J.A.C. 7:7-1.2(e) where the Department is proposing to consolidate all provisions relating to Federal consistency determinations and water quality certificates. At N.J.A.C. 7:7-1.1(b), the Department is proposing to delete the historical information regarding New Jersey's Coastal Management Program. The last sentence in the subsection is continued because it is important to the purpose of the CZM rules that the Department interprets the public health, safety, and welfare clause in CAFRA and in the Wetlands Act of 1970 as providing for full consideration of the national interest in the wise use of coastal resources under the Federal Coastal Zone Management Act (Federal CZMA), 16 U.S.C. §§ 1451 et seq. At N.J.A.C. 7:7-1.1(c), the Department is proposing to insert "New Jersey" with reference to the Coastal Management Program for consistency within the subsection.

### **N.J.A.C. 7:7-1.2 Scope**

The Department is proposing to recodify N.J.A.C. 7:7E-1.2, Jurisdiction, as N.J.A.C. 7:7-1.2, Scope, with amendments. In N.J.A.C. 7:7-1.2(a), (b), and (d) through (h), the Department is proposing to delete as unnecessary the opening word or phrase that introduces the content of the respective subsections.

N.J.A.C. 7:7-1.2(a) describes the actions and decisions to which the chapter applies. The Department is proposing to simplify the subsection by deleting reference to the categories of actions and decisions, since the actions and decisions are those described in N.J.A.C. 7:7-1.2(d) through (h). Consistent with N.J.A.C. 7:7-1.1(a), the Department is proposing an amendment at N.J.A.C. 7:7-1.2(a) to reference development as well as the use of coastal resources as being the

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subject of the noted actions and decisions. At N.J.A.C. 7:7-1.2(b), minor amendments that do not affect meaning are proposed.

N.J.A.C. 7:7-1.2(c) is new. The subsection explains New Jersey's riparian jurisdiction as to the Delaware River under the Compact of 1905 between the states of New Jersey and Delaware (N.J.S.A. 52:28-34 et seq.), specifically Article VII, Riparian jurisdiction (N.J.S.A. 52:28-41). This provision is being proposed in response to the ruling by the U.S. Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008), regarding New Jersey's jurisdiction over certain activities within the 12-mile circle, which encompasses certain land and water within the boundary of the State of Delaware on the eastern shore of the Delaware River. As interpreted by the U.S. Supreme Court, New Jersey may grant and thereafter exercise governing authority over ordinary and usual riparian rights for the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River within the 12-mile circle and extending outshore of the mean low water line. The activities requiring a permit under these rules within this area are described at proposed N.J.A.C. 7:7-2.4, Waterfront development.

The subsection describing "program management actions" at existing N.J.A.C. 7:7E-1.2(d) is proposed for deletion as DEP's program management actions are subsumed in the management actions identified at N.J.A.C. 7:7-1.2(g) and the planning actions identified at N.J.A.C. 7:7-1.2(h). Proposed N.J.A.C. 7:7-1.2(d) provides that the chapter applies to all coastal permits, and is recodified from N.J.A.C. 7:7E-1.2(c) with amendments to delete the list of coastal permits since they are encompassed by the definition of coastal permit at N.J.A.C. 7:7-1.5.

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Proposed N.J.A.C. 7:7-1.2(e) addresses consistency determinations and water quality certificates and is recodified from existing N.J.A.C. 7:7E-1.2(e) with an amendment deleting the opening descriptive phrase as noted earlier. In addition to applications for coastal permits, this chapter is used to review the consistency of certain activities performed by a Federal agency; a license, permit, or other approval issued by a Federal agency; and Federal financial assistance to State and local governments under Section 307 of the Federal CZMA, 16 U.S.C. § 1456, or a license or permit issued by a Federal agency for a discharge to waters of the United States under Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. The Department is therefore proposing to include at N.J.A.C. 7:7-1.2(e) Department decisions on water quality certificates and is proposing to relocate the existing provisions at N.J.A.C. 7:7-1.4(a) and 1.5(c)4 and 5 relating to Federal consistency determinations and water quality certificates to this subsection. Also, as described in the summary of N.J.A.C. 7:7-1.5 below, the Department is proposing to define “Federal consistency determination” and “water quality certificate.”

The provision in existing N.J.A.C. 7:7-1.1(a), which provides that requests for water quality certificates are also reviewed in accordance with all applicable statutes and regulations administered by the Department including the Surface Water Quality Standards at N.J.A.C. 7:9B, is proposed to be recodified at N.J.A.C. 7:7-1.2(e).

Proposed N.J.A.C. 7:7-1.2(e)1 explains that an activity requiring a Federal consistency determination may also require a coastal permit and that, where this is the case, the coastal permit issued by the Department is the Federal consistency determination. For example, the construction of a marina requires a waterfront development individual permit from the Department and also requires a permit from the United States Army Corps of Engineers

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(USACE) under Sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. §§ 403 and 404. In accordance with the Federal CZMA, the USACE cannot issue its permit until the Department issues a Federal consistency determination. In this case, the waterfront development permit is also the Federal consistency determination, as the Department has reviewed the proposed marina under its CZM rules and determined the activity to meet all applicable rules.

Similarly, proposed N.J.A.C. 7:7-1.2(e)2 provides that an activity requiring a water quality certificate may also require a coastal permit. For example, the dredging of an access channel to a recreational dock and the disposal or beneficial use of the dredged material requires a waterfront development permit. These activities also require a water quality certificate because dredging and dredged material disposal are activities that will result in a discharge to waters of the United States and require a Section 404 permit from the USACE. In this case, the waterfront development permit would include a water quality certificate for the discharge of the dredged material demonstrating that the proposed activity complies with the applicable CZM rules and Surface Water Quality Standards.

Proposed N.J.A.C. 7:7-1.2(e)3 through 5 set forth the duration of Federal consistency determinations and water quality certificates. Proposed N.J.A.C. 7:7-1.2(e)3 sets forth the duration of a water quality certificate not issued in conjunction with a coastal permit and is relocated from existing N.J.A.C. 7:7-1.5(c)5 with wording changes for clarity that do not change meaning. Existing N.J.A.C. 7:7-1.5(c)4 provides that all water quality certificates and Federal consistency determinations issued in conjunction with a State permit will be in effect for the lifetime of the associated State permit. The Department at proposed N.J.A.C. 7:7-1.2(e)4 and 5 is clarifying this existing provision. Specifically, proposed N.J.A.C. 7:7-1.2(e)4 provides that

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the duration of a Federal consistency determination or water quality certificate issued in conjunction with an authorization under a general permit-by-certification or general permit is valid for the duration of that authorization. For example, the duration of an authorization under a general permit-by-certification as set forth at proposed N.J.A.C. 7:7-3.5 is five years from the date of issuance. Accordingly, the Federal consistency determination or water quality certificate is also valid for five years. Proposed N.J.A.C. 7:7-1.2(e)5 sets forth the duration of a Federal consistency determination issued in conjunction with an individual coastal permit. In this case, the Federal consistency determination is valid for the duration of the coastal individual permit. For example, proposed N.J.A.C. 7:7-8.2 provides that regulated activities located landward of the mean high water line that are commenced within five years of the date of issuance of the individual coastal permit can continue thereafter provided there are no cumulative lapses in construction of more than one year. The Federal consistency determination issued in conjunction with the individual coastal permit in this instance would be valid as long as the individual coastal permit remains valid.

Proposed N.J.A.C. 7:7-1.2(f) is recodified from N.J.A.C. 7:7E-1.2(f) with an amendment deleting the opening descriptive phrase as noted earlier.

N.J.A.C. 7:7-1.2(g) explains that the CZM rules apply to Department management actions in or affecting the coastal zone and is recodified from N.J.A.C. 7:7E-1.2(g) with amendments. The Department is proposing to include compliance activities because the Department is responsible for managing compliance with permits issued for projects throughout the coastal zone, investigating potential violations, and seeking remedies for such violations. The Department is proposing to delete as superfluous the list at existing N.J.A.C. 7:7E-1.2(g)1

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through 11 of individual management actions identified by their respective statutory authorities because the rules necessarily apply to any management action in or affecting the coastal zone, whether or not the particular Department element responsible for a management action is identified in this list and whether or not the type of action and statutory authority is shown in this list.

N.J.A.C. 7:7-1.2(h) explains that the CZM rules provide the basic policy direction for certain planning actions undertaken in the coastal zone by the Department, and is recodified from N.J.A.C. 7:7E-1.2(h) with amendments. As with the itemized list of management actions at N.J.A.C. 7:7-1.2(g), the Department is proposing to delete as superfluous the itemized list of various planning actions at paragraphs (h)1 through 8.

### **N.J.A.C. 7:7-1.3 Review, revision, and expiration**

N.J.A.C. 7:7-1.3 provides that the Department will, as provided by the Federal CZMA, periodically review the CZM rules in consideration of the various national, State, and local interests in coastal resources, and will promulgate appropriate revisions to the rules in accordance with the New Jersey Administrative Procedure Act. The rule is recodified from N.J.A.C. 7:7E-1.4 with amendments that collapse two sentences into a single statement and remove the obsolete reference to the five-year review period under Executive Order No. 66 (1978) as well as the reference to an expected annual review of the rules since the Federal statute does not establish a specific timeframe for this review.

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

N.J.A.C. 7:7-1.4 sets forth the standards for evaluating permit applications. Existing N.J.A.C. 7:7-1.4(a) provides that all coastal permits, water quality certificates, and Federal consistency determinations are approved or denied in accordance with N.J.A.C. 7:7E. The references to water quality certificates and Federal consistency determinations are proposed to be deleted because while these authorizations are reviewed under the CZM rules as explained above with regard to N.J.A.C. 7:7-1.2(e), they are not coastal permits within the definition of that term as it is proposed to be amended at N.J.A.C. 7:7-1.5. In addition, the Department is proposing to delete the statement that applications for water quality certificates will be reviewed in consideration of all applicable State laws as it is duplicative of the similar provision in N.J.A.C. 7:7-1.2(e) as proposed to be amended.

Proposed N.J.A.C. 7:7-1.4(b) sets forth the findings that, pursuant to N.J.S.A. 13:19-10, the Department is required to make before issuing a CAFRA permit, and is recodified from N.J.A.C. 7:7E-1.5(a), without amendment other than to delete the spelled-out title of the statute, which is unnecessary because CAFRA is a defined term at N.J.A.C. 7:7-1.5, Definitions. Existing N.J.A.C. 7:7-1.4(b) is deleted because it cross-references the CAFRA findings at N.J.A.C. 7:7E-1.5(a), which are being recodified here.

#### **N.J.A.C. 7:7-1.5 Definitions**

Existing N.J.A.C. 7:7-1.5, Permits and permit conditions, which addresses written jurisdictional determinations, permit conditions applicable to all coastal permits, and permit duration, is proposed for repeal. As described earlier in discussing proposed N.J.A.C. 7:7-1.2(e),

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provisions regarding Federal consistency determinations and water quality certificates are proposed to be incorporated there from existing N.J.A.C. 7:7-1.5. As discussed later in this Summary, the remaining substance of existing N.J.A.C. 7:7-1.5 is proposed to be incorporated into several new sections: N.J.A.C. 7:7-2.1, When a permit is required; N.J.A.C. 7:7-2.5, Obtaining an applicability determination; N.J.A.C. 7:7-3.6 and 3.7, relating to the duration of general permit authorizations; N.J.A.C. 7:7-8, Individual permits; and N.J.A.C. 7:7-27.2, Conditions that apply to all permits.

As discussed below, existing N.J.A.C. 7:7-1.3, which contains the definitions of terms used in existing N.J.A.C. 7:7, is recodified as N.J.A.C. 7:7-1.5, and the definitions in existing N.J.A.C. 7:7E-1.8, which contains the definitions of terms used in existing N.J.A.C. 7:7E, are relocated to, N.J.A.C. 7:7-1.5 with amendments. In addition, certain definitions from existing N.J.A.C. 7:7E-5.2 have been incorporated into proposed N.J.A.C. 7:7-1.5. The Department is also proposing new definitions at N.J.A.C. 7:7-1.5. The lead-in language of the section is proposed to be amended to make it clear that, in addition to the definitions at N.J.A.C. 7:7-1.5, definitions specific to Subchapter 13, Requirements for Non-Porous Cover and Vegetative Cover for General Land Areas and Certain Special Areas, are set forth at N.J.A.C. 7:7-13.2 and definitions specific to Subchapter 17, Mitigation, are set forth at N.J.A.C. 7:7-17.1.

The following definitions from existing N.J.A.C. 7:7-1.3 continue with no changes or with minor changes that do not affect meaning: “beach berm,” “CAFRA,” “city of the fourth class,” “Commissioner,” “deck,” “Department,” “filling,” “floodway,” “governmental agency,” “grace period,” “grading,” “man-made lagoon,” “pesticide,” “porch,” “property as a whole,” “public accessway,” “public highway,” “Public Trust Doctrine,” “qualifying municipality,”

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“regulated activity or activity,” “regulated wetland,” “rotor swept area,” “seasonal or temporary structures related to the tourism industry,” “site preparation,” “structure,” “tidelands instrument,” and “waterward side of development.”

The following definitions are relocated from existing N.J.A.C. 7:7E-1.8 with no changes or with minor changes that do not affect meaning: “acceptable,” “area,” “CAFRA area,” “conditionally acceptable,” “critical infrastructure,” “discouraged,” “encouraged,” “engineered beach,” “engineered dune,” “homeland security facility,” “location,” “major commercial development,” “minor commercial development,” “parcel,” “prohibited,” “reconstruction,” “redevelopment,” “spring high water line,” “spring tide,” “State Aid Agreement,” “water dependent,” and “water oriented.”

The definition of “navigable” is being relocated from N.J.A.C. 7:7E-1.8 with an amendment to include “kayaks” as another type of watercraft which must be afforded passage at high tide for a watercourse to be considered navigable. A kayak is a watercraft that is similar to a canoe.

The Department is not proposing to relocate from N.J.A.C. 7:7E-1.8 the definitions of “‘action,’ ‘activity,’ ‘project,’ ‘proposal’ or ‘use,’” “11-digit hydrologic unit code area,” “natural area,” and “watershed management area.” The definition of “‘action,’ ‘activity,’ ‘project,’ ‘proposal’ or ‘use’” is not proposed to be recodified because the terms “activity and project” are incorporated into the existing definition of “regulated activity” and the meaning of the terms “action,” “proposal,” and “use” are clear from the context when they are used in the rules. The definitions of the terms “11-digit hydrologic unit code area” and “watershed management area” are not proposed to be recodified because the terms are not used in the new CZM rules at

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N.J.A.C. 7:7 as proposed to be consolidated and amended. The definition of “natural area” is not proposed to be recodified. This term was originally defined as part of N.J.A.C. 7:7E-8.11, Public trust rights, (subsequently amended and renamed “Public access”) solely for the purposes of that section since natural areas helped determine the scope of public access along certain tidal waterways and their shores, with public access in natural areas required to be designed to minimize impacts to the natural area’s habitat value, vegetation, and water quality (see 38 N.J.R. 4570(a), 4576; November 6, 2006). This and other definitions specific to public access were subsequently relocated to N.J.A.C. 7:7E-1.8 with the intention that all definitions relating to public access be contained in the chapter definitions section rather than as part of the public access rule (see 43 N.J.R. 772(a), 776; April 4, 2011). However, subsequent amendments to the public access rule discontinued use therein of the term “natural area” and this definition of the term is therefore no longer necessary.

Several of the same terms are defined in both existing N.J.A.C. 7:7-1.3 and existing N.J.A.C. 7:7E-1.8. Where the definitions for such terms are identical in both existing sections, the Department is proposing to recodify the definitions from existing N.J.A.C. 7:7-1.3 without change, or with minor changes that do not affect meaning, to N.J.A.C. 7:7-1.5. This applies to the following: “amusement pier,” “bulkhead,” “conservation restriction,” “footprint of development,” “gabion,” “industrial development,” “linear development,” “living shoreline,” “non-polluting material,” “public development,” “pumpout facility,” “residential development,” “revetment,” and “site.” In other cases, the definitions for the same terms vary from each other in ways that do not affect meaning. In those cases, the Department is proposing to recodify the

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definitions from existing N.J.A.C. 7:7E-1.8, with minor amendments that do not affect meaning, because those versions of the definitions are worded most clearly. This applies to the following: “mean high water” and “mean high water line.” Finally, two terms, “commercial development” and “development,” are defined in existing N.J.A.C. 7:7-1.3 and in existing N.J.A.C. 7:7E-1.8 with substantive differences between the definitions. In both cases, the Department is proposing to recodify the definitions from existing N.J.A.C. 7:7E-1.8 because the definition of “commercial development” makes it clear that commercial development includes retail uses, and the definition of “development” makes it clear that the enlargement of any structure or building refers to the enlargement of the footprint of the development.

The Department is proposing to replace the definition of “habitable structure” which is defined at existing N.J.A.C. 7:7-1.3 and existing N.J.A.C. 7:7E-1.8 with the definition of “habitable.” The term “habitable” is used in both existing coastal rules and the CZM rules as proposed to be consolidated and amended in describing both structures and development. This term is used to distinguish between lawfully occupied or constructed structures or development and derelict structures or development for the purpose of determining the applicable standards for reconstruction or expansion. Under the emergency rulemaking and subsequent readoption to address the impacts of Superstorm Sandy, the Department modified the existing permit-by-rule for the reconstruction of a legally constructed residential or commercial development within the same footprint at existing N.J.A.C. 7:7-7.2(a)7 (proposed N.J.A.C. 7:7-4.6) and adopted a new permit-by-rule for the expansion or relocation (with or without expansion) of the footprint of a residential or commercial development landward or parallel to the mean high water line at N.J.A.C. 7:7-7.2(a)8 (proposed N.J.A.C. 7:7-4.7). To qualify for approval under these permits-

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by-rule, the development must have either been legally occupied or been capable of being legally occupied in the most recent five-year period. This requirement is intended to limit the applicability of these permits-by-rule to only development that is or could be used in the recent past while taking into account that, after a storm or other event rendering the structure inhabitable, there may be some period before construction begins when the structure is not inhabited. In contrast, development that has not been recently occupied or is derelict is more appropriately subject to Department review. The Department has determined that it is appropriate to apply this standard when describing whether a structure or development is “habitable.” Accordingly, the Department is proposing to replace the definition of “habitable structure” with the definition of “habitable” for consistency and to make clear that a structure need not be legally occupied for the entire five-year period to be considered habitable under the rules. The proposed new definition does not include the demonstration requirement currently contained in the definition of “habitable structure.” This change recognizes that, in the context of the above-referenced permits-by-rule, there is no application to the Department within which the applicant would be required to demonstrate occupancy during this period. Instead, the person acting under the permits-by-rule need only demonstrate that they qualify for the permit-by-rule if requested.

The Department is proposing to amend the definition of “Coastal Permit,” which is identical at both existing N.J.A.C. 7:7E-1.8 and existing N.J.A.C. 7:7-1.3. The definition had been amended in December 2007 (see 39 N.J.R. 5222(a); December 17, 2007) to include Federal consistency determinations under the Federal CZMA and water quality certificates subject to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. The Department is proposing to

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delete authorizations under these Federal acts from the definition and amend the scope of the definition to apply only to authorizations and permits issued under New Jersey statutes. As discussed later, “Federal consistency determination” and “water quality certificate” are defined separately under this section and, as discussed earlier, their scope and duration are set forth at N.J.A.C. 7:7-1.2.

The definition of “dwelling unit,” which is identical at both existing N.J.A.C. 7:7E-1.8 and existing N.J.A.C. 7:7-1.3, is proposed to be recodified at N.J.A.C. 7:7-1.5 and amended to update the statutory citation for the definition of “vessel.”

The definitions of “electrical substation,” “stormwater management facility,” “Tidelands Map,” and “upland waterfront development area” currently found at existing N.J.A.C. 7:7E-5.2 are proposed to be relocated to N.J.A.C. 7:7-1.5. The definition of “Tidelands Map” is proposed to be amended to make it clear that the base map photography is dated 1977/78. The definition of “upland waterfront development area” is proposed to be amended to simply cross-reference N.J.A.C. 7:7-2.4(a)3ii which describes the upland area subject to regulation under the Waterfront Development Law. No changes to the definitions of “electrical substation,” and “stormwater management facility.”

The Department is proposing to delete the definition of “Program,” which appears in both existing N.J.A.C. 7:7-1.3 and existing N.J.A.C. 7:7E-1.8, because the Department is instead proposing a definition for “Division.” The Division of Land Use Regulation is currently the element in the Department that administers the coastal permitting program.

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The following definitions are recodified from existing N.J.A.C. 7:7-1.3 with amendments described below: “beach,” “coastal bluff,” “charitable conservancy,” “excavation,” “floating home,” and “person.”

The definitions of “beach,” “coastal bluff,” and “dune” at existing N.J.A.C. 7:7-1.3 are proposed to be amended to simply cross-reference the respective special area rules describing and defining these areas.

The definition of “charitable conservancy” is proposed to be recodified from existing N.J.A.C. 7:7-1.3 and amended to include, as a help to users of the rule, a note that provides the current text of the definition of charitable conservancy from the referenced statute. This is consistent with the treatment of this definition in the FWPA rules, N.J.A.C. 7:7A-15.1.

The definition of “excavation” is proposed to be recodified from existing N.J.A.C. 7:7-1.3 and amended by replacing the phrase “extraction of sand, gravel, earth, or any other material” with “removal of soil or any other material located above the spring high water line.” This is intended to distinguish excavation from dredging, which removes sediment located below the spring high water line. A new definition of “dredging” is proposed as discussed below.

The definition of “floating home” is proposed to be recodified from existing N.J.A.C. 7:7-1.3 and amended to clarify that whether a waterborne structure, which is designed and intended primarily as a permanent or seasonal dwelling, is a floating home is based on the number of “consecutive” days it remains stationary.

The definition of “person” is proposed to be recodified from existing N.J.A.C. 7:7-1.3 and amended to add “corporate official” to clarify that the Department may impose liability for

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violations of CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970 upon corporate officials.

The Department is proposing to delete the definition of “educational facility” from existing N.J.A.C. 7:7-1.3. Educational facilities are expressly excluded from “public development” as that term is defined in CAFRA, and the statute does not separately define educational facility. Rather than try to identify all types of educational facilities in a definition, the Department will apply the term in accordance with its generally understood meaning, as referring to elementary and secondary schools, as well as colleges, universities, and specialized schools. If a potential applicant has a question as to whether a proposed development is considered an educational facility and therefore exempt from CAFRA, the applicant may submit a request for an applicability determination.

The Department is also proposing to delete the definition of “LURP (Land Use Regulation Program) application form” because the term is not used in the CZM rules as proposed to be consolidated and amended.

The Department is proposing new definitions, described further below, at N.J.A.C. 7:7-1.5 for the following terms: “administratively complete,” “coastal zone,” “complete for public comment,” “complete for public hearing,” “complete for review,” “dredged material,” “dredging,” “duplex,” “Federal consistency determination,” “FEMA,” “FIRM,” “invasive plant species,” “mitigation area,” “mitigation bank,” “mooring,” “NOAA,” “non-porous cover,” “non-waterward side of development,” “sewer service area,” “site plan” or “plan,” “solar panel,” “technically complete,” “USACE,” “USEPA,” “USFWS,” “USGS quad map,” “water quality certificate,” “waters of the State,” “waters of the United States,” and “working day.”

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The term “coastal zone” is used throughout the rules and is proposed to be defined with reference to N.J.A.C. 7:7-1.2(b), which explains the geographic scope of the rules.

New definitions of terms “administratively complete,” “complete for public comment,” “complete for public hearing,” “complete for review,” and “technically complete” are proposed for purposes of reviewing permit applications. “Administratively complete” is a new term used in the CZM rules that means all information required on the application checklist has been submitted to the Department.

“Complete for public comment” and “complete for public hearing” are terms currently used in existing N.J.A.C. 7:7. The proposed definitions refer to the point in the review of an application for a CAFRA individual permit at which the application is both administratively and technically complete and, therefore, ready for either a public hearing and comment period pursuant to proposed N.J.A.C. 7:7-26.5 or, if no public hearing is held, a public comment period pursuant to proposed N.J.A.C. 7:7-26.4.

The term “complete for review” is used in existing N.J.A.C. 7:7. This term means that the application is administratively and technically complete and is ready for evaluation by the Department for compliance with the standards applicable to the permit applied for. An application for a CAFRA individual permit is complete for review once the public hearing and public comment process, or if no public hearing is held, the public comment process has been completed.

“Technically complete” is a new term used in the CZM rules to mean that each item included in the application for a coastal permit other than a CAFRA individual permit provides sufficient information for the Department to declare the application complete for review. For a

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CAFRA individual permit, technically complete means that each item included in the application provides sufficient information for the Department to determine that application complete for public comment or complete for public hearing.

A definition of “dredged material” is proposed. Consistent with the proposed definition of “dredging” discussed below, dredged material is defined as sediment removed from below the spring high water line. Consistent with the Department’s Solid Waste rules at N.J.A.C. 7:26-1.6, the proposed definition expressly provides that dredged material is not a solid waste under the Solid Waste rules at N.J.A.C. 7:26-1.6. This facilitates the beneficial use of dredged material for landscape restoration, enhancing farming areas, capping and remediating landfills and brownfields, transportation projects, beach protection, creating marshes, capping contaminated dredged material disposal areas, and creating new wildlife habitats as provided at proposed N.J.A.C. 7:7-15.12(d) and 7:7 Appendix G, The Management and Regulation of Dredging Activities and Dredged Material in New Jersey’s Tidal Waters.

A definition of “dredging” is proposed to identify activities subject to the provisions in the CZM rules pertaining to dredging. In the proposed definition, dredging is distinguished from excavation.

A definition of “duplex” is proposed to make it clear that a duplex is a residential structure of two attached units in which the interior living space of one unit directly abuts the interior living space of the other unit, either in a side-by-side arrangement sharing a common wall or in a lower unit-upper unit arrangement. In implementing the permit-by-rule for the construction of a single-family home or duplex on a bulkheaded lagoon lot, the general permit for the construction of a single-family home or duplex (expanded to development of one or two

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single-family homes or duplexes elsewhere in this proposal), and the housing use rule, the Department has determined that a definition is necessary so that applicants will understand what type of structures are governed by these permits.

Definitions are proposed for “Federal consistency determination” and “water quality certificate.” As explained earlier with regard to proposed N.J.A.C. 7:7-1.2(e), in addition to reviewing applications for coastal permits, the CZM rules are used by the Department to review the consistency of certain activities performed by a Federal agency: a license, permit, or other approval issued by a Federal agency; Outer Continental Shelf (OCS) Plans, which are the Department of the Interior, Bureau of Ocean Energy Management approvals of OCS plans, pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq.; and applications for Federal financial assistance to State and local government under Section 307 of the Federal CZMA, 16 U.S.C. § 1456, or a license or permit issued by a Federal agency for the discharge to waters of the United States, subject to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341.

The Federal consistency provision of the Federal CZMA provides states that have Federally-approved coastal management programs with a tool to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies. Under the Federal CZMA, Federal agency activities that have reasonably foreseeable coastal effects are required to be consistent with a state’s enforceable policies to the maximum extent practicable and require non-Federal applicants for Federal permits, licenses, or other approvals and funding to be consistent with the state’s enforceable policies. Enforceable policies under the Federal CZMA are state policies that are legally binding and by which a state exerts control over coastal

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uses and resources. In New Jersey, the current enforceable policies are contained in the existing Coastal Permit Program Rules (N.J.A.C. 7:7), the existing Coastal Zone Management rules (N.J.A.C. 7:7E) being consolidated with this proposal in one chapter at N.J.A.C. 7:7, the Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A), the Stormwater Management rules (N.J.A.C. 7:8), the New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A, Subchapters 1, 2, 5, 6, 11, 12, 13, 15, 16, 18, 19, 20, 21, 24, and 25), and the Hackensack Meadowlands District Zoning Regulations, N.J.A.C. 19:4 (portions of Subchapters 2, 3, 4, 5, 7, 8, and 9). In addition to these regulations, New Jersey's enforceable policies also include six statutes: the Waterfront Development Law, the Wetlands Act of 1990, CAFRA, the Hackensack Meadowlands Reclamation and Development Act (N.J.S.A. 13:17-1 et seq.), the Freshwater Wetlands Protection Act, and the law concerning the transport of dredged materials containing polychlorinated biphenyls (PCBs) in State waters (N.J.S.A. 13:19-33). The Department's dredging technical manual titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters" and the NJMC Master Plan are also enforceable policies (see <http://www.nj.gov/dep/cmp/> for a description of each enforceable policy and a link to each policy). There are four types of Federal actions under the Federal CZMA that must be consistent with these enforceable policies: Federal agency activities; issuance of Federal permits, licenses, and other approvals; approval of Outer Continental Shelf Plans (OCS); and Federal financial assistance to state and local governments.

The water quality certification process under Section 401 of the Clean Water Act, 33 U.S.C. § 1341, provides states with a tool to protect water quality by providing an opportunity to address aquatic resource impacts of Federally-issued permits and licenses. Under Section 401 of

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the Federal Clean Water Act, a Federal agency cannot issue a permit or license for an activity that may result in a discharge to waters of the United States until the state where the discharge originates has granted or waived Section 401 certification. Examples of Federal licenses and permits subject to Section 401 certification include Clean Water Act Section 402 NPDES permits issued by the United States Environmental Protection Agency, Clean Water Act Section 404 permits for discharge of dredged or fill material issued by the USACE, permits issued by the USACE under Sections 9 and 10 of the Rivers and Harbors Act for activities which have a potential discharge in navigable waters, and Federal Energy Regulatory Commission hydropower licenses.

The proposed definitions for “FEMA,” “NOAA,” “USACE,” “USEPA,” and “USFWS” spell out the acronyms for these entities. The proposed definition of FIRM, which is the acronym for Federal Insurance Rate Map, explains that the FIRM is the map established by FEMA for a particular community for purposes of the National Flood Insurance Program that shows, among other things, flood hazard areas. FEMA’s regulations regarding insurance and hazard mitigation include a definition of FIRM at 44 CFR 59.1.

A definition of “invasive plant species” is proposed for purposes of proposed permit-by-rule 21 for the application of pesticide within coastal wetlands to control invasive plant species at N.J.A.C. 7:7-4.21 and for proposed general permit 32 for the application of pesticide within coastal wetlands to control invasive plant species at N.J.A.C. 7:7-6.32. The proposed definition is adapted from the definition of invasive species adopted by the New Jersey Invasive Species Council. See NJ Invasive Species Council 2009, New Jersey Strategic Management Plan for

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Invasive Species, [http://www.nj.gov/dep/njisc/docs/Final NJ Strategic Management Plan for Invasive Species 11.09.pdf](http://www.nj.gov/dep/njisc/docs/Final%20NJ%20Strategic%20Management%20Plan%20for%20Invasive%20Species%2011.09.pdf).

Definitions of “mitigation area” and “mitigation bank” are proposed for purposes of Subchapter 17, Mitigation, and Subchapter 18, Conservation Restrictions. The proposed definitions are similar to those for these terms in the FWPA rules except that the proposed definition of “mitigation area” does not include rights-of-way because a conservation restriction, which is a requirement for mitigation, cannot be placed on a right-of-way, and the proposed definition of “mitigation bank” is modified so that the bank can provide for mitigation for wetlands, uplands, and/or other aquatic resources rather than for impacts only to freshwater wetlands and State open waters.

A definition of “mooring” is proposed. A mooring is the structure to which boats or jet skis are secured and/or the water area adjacent to such structure. The Department is proposing this definition to make it clear that a mooring is both the structure and the water area where the boat is moored.

The Department is proposing to delete the definition of “impervious cover” from existing N.J.A.C. 7:7-1.3 as recodified at N.J.A.C. 7:7-1.5. The definition also appears in existing N.J.A.C. 7:7E-1.8, but it is not being relocated. The term “impervious cover” is used in existing N.J.A.C. 7:7E-5, 5A, and 5B, which, as explained later in this Summary, are being proposed to be recodified as N.J.A.C. 7:7-13, with amendments. In the existing rules, “impervious cover” is the term used to define the amount of allowable non-porous cover, that is, buildings, structures, and certain types of surfaces, that may be placed on a site. However, the term as used and defined in the existing rules has caused some confusion because other Department rules define

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terms using “impervious” to mean a different set of surfaces. To avoid this confusion, the Department is proposing to replace the term “impervious cover” in the CZM rules, as proposed to be consolidated and amended, with the term “non-porous cover” and is proposing to define “non-porous cover” at N.J.A.C. 7:7-1.5. The proposed definition of “non-porous cover” is the existing definition of “impervious cover” (which, as noted, is being deleted).

A definition of “non-waterward side of development” is proposed for purposes of describing the area in which an existing single-family home or duplex may be expanded under the permit-by-rule at proposed N.J.A.C. 7:7-4.1, the general permit for the expansion or reconstruction (with or without expansion) of a single-family home or duplex at proposed N.J.A.C. 7:7-6.5, and the standards for the expansion or reconstruction (with or without expansion) of a single-family home or duplex at proposed N.J.A.C. 7:7-15.2(f). The non-waterward side of a development is the area of the site located landward of the line(s) drawn through point(s) of the footprint of the building closest to the water, and parallel to the water body, which line extends to the property boundaries.

The Department is proposing a definition of “sewer service area.” This term is used at existing N.J.A.C. 7:7-2.1(b) and existing N.J.A.C. 7:7E-5B.2, 5B.4, and 5B.5, which are proposed to be recodified at N.J.A.C. 7:7-2.2(b), and N.J.A.C. 7:7-13.15, 13.17, and 13.18, respectively, and is defined in notes contained in Table H (at the end of existing N.J.A.C. 7:7E-5B.4; proposed to be recodified at N.J.A.C. 7:7-13.17) and Table I (at the end of existing N.J.A.C. 7:7E-5B.5; proposed to be recodified at N.J.A.C. 7:7-13.18). As such, these notes are proposed for deletion. The proposed definition of “sewer service area” is the same as that contained in the Water Quality Management Planning rules, N.J.A.C. 7:15. The proposed

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definition also includes reference to the Department's website where sewer service areas can be viewed.

A definition of "site plan" or "plan" is proposed. This term is proposed to replace the terms "plans," "development plans," and "site plans," which currently are used throughout existing N.J.A.C. 7:7 and N.J.A.C. 7:7E. The proposed definition of "site plan" or "plan" is not the same as the definition of "site plan" in the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-7, because the MLUL definition is specific to the types of plans that municipalities require for applications subject to the MLUL. The type of graphic depiction the Department requires to determine compliance with the CZM rules is broader than that which is subject to the MLUL. For example, applicants are required to provide architectural and construction details, cross-sections and grading plans. Further, the MLUL definition of site plan would preclude single-family homeowners from preparing graphic depictions for their own use on their own property. Also, for the purposes of consistency with the FHACA rules, the proposed definition of site plan is the same as the definition of "drawing" at N.J.A.C. 7:13-1.2.

A definition of "solar panel" is proposed. The definition is the same as the definition of the term in the Waterfront Development Law at N.J.S.A. 12:5-3.c and in CAFRA at N.J.S.A. 13:19-3. The Waterfront Development Law and CAFRA were amended in 2010 (see P.L. 2010, c. 4) to define solar panel and to provide that the Department shall not as a condition of any approval issued under these statutes include solar panels in any calculation of impervious surface or impervious cover. See N.J.S.A. 12:5-3.c and 13:19-5.4. The statutory restriction on counting solar panels in the calculation of impervious cover or, for purposes of the CZM rules as proposed to be consolidated and amended, "non-porous cover" is proposed to be incorporated at N.J.A.C.

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7:7-13.3(c). Because the definition of solar panel in the statutes and as proposed at N.J.A.C. 7:7-1.5 expressly excludes the base or foundation of the solar panel, plate, canopy, or array, that base or foundation will be included in the calculation of non-porous cover under the CZM rules.

A new definition of “USGS quad map” is proposed. USGS quad maps are required to be submitted with applications and as part of mitigation monitoring reports to identify the location of the site.

Definitions of “waters of the State” and “waters of the United States” are proposed. These terms are used in the geographic description of the coastal zone at proposed N.J.A.C. 7:7-1.2; the definition of water quality certificate at proposed N.J.A.C. 7:7-1.5, the permit-by-rule for the construction and/or installation of a boat wash wastewater system at a marina, boatyard, or boat sales facility at proposed N.J.A.C. 7:7-4.11; the permit-by-rule for the application of pesticide within coastal wetlands to control invasive plant species at proposed N.J.A.C. 7:7-4.21; permit-by-rule for the construction of a swimming pool, spa, or hot tub and decking on a bulkheaded lagoon lot without wetlands at proposed N.J.A.C. 7:7-4.22; the general permit for the application of pesticide within coastal wetlands to control invasive plant species at N.J.A.C. 7:7-6.32; and the additional application requirements specific to an application for an individual permit at proposed N.J.A.C. 7:7-23.6. The definitions are the same as the definitions for these terms in the FWPA rules at N.J.A.C. 7:7A-1.4. The addition of these terms is necessary because development in wetlands located outside of the Hackensack Meadowlands District and north of the Raritan River is subject to the permitting requirements of the FWPA rules, which apply in “waters of the State” and “waters of the United States.” Where these activities are located within the coastal zone as defined at proposed N.J.A.C. 7:7-1.2(b), a Federal consistency determination

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is required, and as explained earlier, the CZM rules are used in reviewing such determinations.

In addition, water quality certificates are required for activities that propose a discharge to waters of the United States which require a Federal license or permit and which are subject to Section 401 of the Federal Clean Water Act.

A definition of “working day” is proposed to clarify provisions that set deadlines and time periods consisting of a number of working days (as opposed to calendar days). A working day is a day on which Department offices are open for business. This term is also used in the FWPA rules and defined therein at N.J.A.C. 7:7A-1.4.

#### **N.J.A.C. 7:7-1.6 Forms, checklists, information; Department address and website**

Existing N.J.A.C. 7:7-1.6, Provisional permits, which provides that the Department may issue a provisional permit if it finds that construction must begin prior to completion of the full permit review process to meet regulatory or funding requirements of a Federal or State agency, is proposed to be recodified as N.J.A.C. 7:7-20.1, with no changes in text. Proposed new N.J.A.C. 7:7-1.6, Forms, checklists, information; Department address and website, contains information as to where forms, checklists, and other information related to this chapter can be obtained; the addresses to which applications, fees, and other correspondence is to be submitted; contact information for the Division of Land Use Regulation’s Technical Support Center for questions concerning the CZM rules; and the website to be used for submitting applications for authorization under a general permit-by-certification. This kind of information is currently found at N.J.A.C. 7:7E-1.7, which is proposed to be repealed.

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#### **N.J.A.C. 7:7-1.7 Liberal construction**

Existing N.J.A.C. 7:7-1.7, Emergency permit authorization, is proposed to be repealed.

As discussed previously, the Department is proposing to align the rules governing the permitting processes of these rules with the FWPA and FHACA rules; reflecting that effort, proposed new N.J.A.C. 7:7-21 contains revised rules regarding emergency authorizations. Proposed new N.J.A.C. 7:7-1.7, Liberal construction, provides that the chapter is to be liberally construed to effectuate the purpose of the Acts under which it was adopted, and is recodified from N.J.A.C. 7:7-1.10(a), with no changes in text.

#### **N.J.A.C. 7:7-1.8 Severability**

Existing N.J.A.C. 7:7-1.8, which addresses situations where more than one coastal permit is required for a development or project, is proposed for repeal. Existing N.J.A.C. 7:7-1.8(a) provides that, where a development requires more than one coastal permit, only one application needs to be submitted provided it complies with the requirements of each applicable permit program. The content of existing N.J.A.C. 7:7-1.8(a) is proposed at N.J.A.C. 7:7-23.2(l) with changes described later in this Summary.

Existing N.J.A.C. 7:7-1.8(b) provides that the Department shall assess a single permit fee for a project that requires multiple land use permits and the applications are submitted simultaneously. This provision is unnecessary, as existing N.J.A.C. 7:7-10.5, which is proposed to be recodified at N.J.A.C. 7:7-25.5 with minor amendments that do not affect meaning, addresses single permit fees and how they are to be calculated.

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Existing N.J.A.C. 7:7 contains two severability sections, N.J.A.C. 7:7-1.11 and 8.15.

Both are proposed to be repealed and a more comprehensive severability rule is proposed at N.J.A.C. 7:7-1.8. The severability section provides that if any subchapter, section, subsection, provision, clause, or portion of this chapter, or application thereof, is found unconstitutional or invalid by a court, such finding is confined to the subchapter, section, subsection, provision, clause, or portion of this chapter, or application in which the finding was made and does not affect or impair the remainder of the chapter or the application thereof to other persons.

#### **N.J.A.C. 7:7-1.9 Permit fees**

Existing N.J.A.C. 7:7-1.9, Permit fees, provides that permit fees are established by the Department pursuant to the 90-Day Construction Permit Law, N.J.S.A. 13:1D-29 et seq., are published in the subchapter regarding fees, and that the Department will maintain a printed fee schedule. This section is informative but unnecessary and is proposed to be repealed.

#### **N.J.A.C. 7:7-1.10 Construction; relaxation of procedures or reconsideration of application of substantive standards**

Existing N.J.A.C. 7:7-1.10 addresses construction of the rules, relaxation of procedures, and reconsideration of the application of substantive standards of the CZM rules. As noted above, existing N.J.A.C. 7:7-1.10(a) regarding the liberal construction of the rules is proposed to be relocated at N.J.A.C. 7:7-1.7 without amendment. The provisions at existing N.J.A.C. 7:7-1.10(b) and (c) through (n) regarding relaxation of procedures and reconsideration of the

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application of CZM rules are proposed to be relocated at N.J.A.C. 7:7-19 with amendments, as described in the summary of that subchapter.

### **N.J.A.C. 7:7-1.11 Severability**

As discussed previously, the existing severability section at N.J.A.C. 7:7-1.11 is proposed to be repealed, and replaced by proposed new N.J.A.C. 7:7-1.7.

## **Subchapter 2. Applicability and Activities for which a Permit Is Required**

N.J.A.C. 7:7-2, Applicability and activities for which a Permit Is Required, explains the applicability of the rules and when a coastal permit is required under the rules for activities in the coastal zone regulated under the three enabling statutes: the Waterfront Development Law, CAFRA, and the Wetlands Act of 1970.

### **N.J.A.C. 7:7-2.1 When a permit is required**

Proposed N.J.A.C. 7:7-2.1, When a permit is required, is new. Proposed N.J.A.C. 7:7-2.1(a) provides that anyone undertaking a regulated activity subject to the CZM rules must do so in accordance with a coastal permit. This provision is similar to existing N.J.A.C. 7:7-1.5(a). As noted previously, existing N.J.A.C. 7:7-1.5 is proposed to be repealed, with its substance incorporated into various sections of the CZM rules as proposed to be consolidated and amended. In addition, proposed N.J.A.C. 7:7-2.1(a) provides that undertaking a regulated activity without a coastal permit is a violation of these rules, and that the person or persons

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responsible for the regulated activity will be subject to enforcement action in accordance with proposed N.J.A.C. 7:7-29, Enforcement.

Proposed N.J.A.C. 7:7-2.1(b) lists the types of coastal permits the Department issues under these rules and the subchapters where the requirements for the respective types of coastal permits are found.

Proposed N.J.A.C. 7:7-2.1(c) explains that certain activities are exempt from the requirement of obtaining a permit under CAFRA and the Waterfront Development Law and identifies the CZM rules that set forth the exemptions and process for obtaining such exemptions under these statutes.

#### **N.J.A.C. 7:7-2.2 CAFRA**

The Department is proposing to recodify existing N.J.A.C. 7:7-2.1 as N.J.A.C. 7:7-2.2, with amendments. N.J.A.C. 7:7-2.2 defines the types of development for which a CAFRA permit is required, the types of development for which a CAFRA permit is not required, and the process for obtaining a written determination that a development is exempt from CAFRA.

N.J.A.C. 7:7-2.2(b) provides the Department's interpretations of the statutory intent as it applies to particular forms of development. At N.J.A.C. 7:7-2.2(b), in the provision regarding the repair and maintenance of utilities in rights-of-way on beaches and dunes, the Department is proposing to delete the qualifier "regulated" with respect to "development" because "development" is the term in CAFRA to which the explanatory provisions of N.J.A.C. 7:7-2.2 are directed.

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At N.J.A.C. 7:7-2.2(c)1 the Department is proposing to delete reference to the Public Law establishing the Municipal Land Use Law as the reference is not necessary in addition to the statutory citation. At N.J.A.C. 7:7-2.2(f)1 through 3, the Department is proposing to cross-reference the rule that describes the contents of the application form and the rule that sets forth the address from which the application form may be obtained.

### **N.J.A.C. 7:7-2.3 Coastal wetlands**

Existing N.J.A.C. 7:7-2.2 identifies the activities for which a coastal wetlands permit is required and the activities that are prohibited in coastal wetlands, which are those wetlands delineated and mapped pursuant to the Wetlands Act of 1970. The section is proposed to be recodified as N.J.A.C. 7:7-2.3, with amendments at N.J.A.C. 7:7-2.3(c) that delete the reference to the Wetlands Order promulgated by the Commissioner of Environmental Protection in 1972, identify the maps as coastal wetlands maps for clarity, relocate the maps to proposed new N.J.A.C. 7:7 Appendix D, and add the dates of the base map photography, 1971 and 1972. The Department is proposing to delete the reference to the Wetlands Order because the content of the Order has been incorporated into this rule and subsequently refined over the years. The listing of the coastal wetlands maps is proposed to be relocated to Appendix D to avoid interrupting the flow of the rules with a lengthy recitation of map numbers. For clarity, the Department is proposing to specify the dates of the coastal wetlands map base photography, 1971 and 1972.

### **N.J.A.C. 7:7-2.4 Waterfront development**

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Existing N.J.A.C. 7:7-2.3 identifies the activities for which a waterfront development permit is required, the activities for which a waterfront development is not required, and the process for obtaining a written determination that a development is exempt from the Waterfront Development Law. The section is proposed to be recodified as N.J.A.C. 7:7-2.4 with amendments.

At N.J.A.C. 7:7-2.4(a) and throughout N.J.A.C. 7:7-2.4, the Department is proposing to replace the reference to “subchapter” with “chapter” since the CZM rules that would apply to a particular development are not limited to those in Subchapter 2.

The introductory language of N.J.A.C. 7:7-2.4(a) is proposed to be amended to clarify that the width of the waterfront area regulated under the CZM rules varies depending on location in the Hackensack Meadowlands, in the CAFRA area, or outside those two areas, as specified in the subsequent paragraphs. Proposed N.J.A.C. 7:7-2.4(a)3ii, existing N.J.A.C. 7:7-2.3(a)3ii, which describes the regulated waterfront development are upland of the mean high water line, is proposed to be amended to make it clear that the distance is measured inland from the mean high water line.

A new paragraph is proposed at N.J.A.C. 7:7-2.4(a)4 to reflect that the regulated waterfront area within the 12-mile circle is distinct from that within the other areas. Proposed new N.J.A.C. 7:7-2.4(a)4 references back to N.J.A.C. 7:7-1.2(c), which, as discussed previously, explains New Jersey’s riparian jurisdiction as to the Delaware River under the Compact of 1905 between New Jersey and Delaware, as interpreted by the U.S. Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008). Proposed N.J.A.C. 7:7-2.4(a)4 provides that within the 12-mile circle, the regulated waterfront area includes the area at or

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waterward of the mean high water line, consistent with the decree of the U.S. Supreme Court in the 2008 ruling.

At N.J.A.C. 7:7-2.4(a)1 and 3, the Department is proposing to amend references to the Hackensack Meadowlands District to reflect the correct name of this area as established by statute (see N.J.S.A. 13:17-4), and to correct the statutory citation. At N.J.A.C. 7:7-2.4(a)2 and 3, the Department is proposing to replace reference to the “coastal area” as defined in section 4 of CAFRA with reference to the “CAFRA area,” which is defined at N.J.A.C. 7:7-1.5 and means the area described at N.J.S.A. 13:19-4.

N.J.A.C. 7:7-2.4(c) identifies development activities that require a coastal permit in the portion of the waterfront area that is located at or waterward of the mean high water line. Consistent with the U.S. Supreme Court’s decree in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008), noted previously, the Department is proposing to amend this subsection to make it clear that, in accordance with proposed N.J.A.C. 7:7-1.2(c), when the activities identified at N.J.A.C. 7:7-2.4(c)1 through 4 are conducted within the 12-mile circle, a permit is required only if the activity is an improvement appurtenant to the eastern shore of the Delaware River and extending outshore of the mean low water line or the activity, such as dredging, will maintain access from the navigable water to such improvement.

At N.J.A.C. 7:7-2.4(c)1, the Department is proposing to delete excavation from the examples of the removal or deposition of sub-aqueous materials because the definition of “excavation” as it is proposed to be amended at N.J.A.C. 7:7-1.5 refers to removal of soil or material located above the spring high water line and is, therefore, not the removal of sub-aqueous material.

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N.J.A.C. 7:7-2.4(c)3, which provides that a coastal permit is required for the mooring of a floating home for more than 10 consecutive days, is proposed to be amended to delete reference to the definition of floating home at existing N.J.A.C. 7:7-2.1(b) because specific reference to the location of the definition is not necessary. However, with this proposal, the definition of “floating home” is included in N.J.A.C. 7:7-1.5 (see summary above regarding the recodification and amendments to the definitions section).

N.J.A.C. 7:7-2.4(d) identifies those activities within the waterfront area for which a permit is not required under the CZM rules. Consistent with the proposed amendments at N.J.A.C. 7:7-2.4(c) described above, the Department is proposing new N.J.A.C. 7:7-2.4(d)6, which provides that in accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, a development activity that is not an improvement appurtenant to the eastern shore of the Delaware River and extending outshore of the mean low water line or that is not an activity, such as dredging, that will maintain access from the navigable water to such improvement, does not require a permit under these rules.

At N.J.A.C. 7:7-2.4(d)7 and 8, the Department is proposing to delete the reference to the adoption of the Tidelands Map and the date of the base map photography since this information is included in the definition of “Tidelands Map” at N.J.A.C. 7:7-1.5. Consistent with the clarifying amendment proposed at N.J.A.C. 7:7-2.3(c), the Department is replacing reference to the “New Jersey Coastal Wetlands maps promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972)” with a cross-reference to the coastal wetlands maps identified pursuant to N.J.A.C. 7:7-2.3(c) and Appendix D. The Department is also proposing to amend N.J.A.C. 7:7-2.4(d)7 and 8 to clarify that the activities

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described in these paragraphs will be exempt if a waterfront development permit for the activities was received after the date of the Tidelands Map or the date of the coastal wetlands map, as applicable.

At N.J.A.C. 7:7-2.4(e), the Department is proposing to update the citations for the permits-by-rule which apply to the construction of the portion of a dock or pier located landward of the mean high water line in the coastal zone.

N.J.A.C. 7:7-2.4(f) sets forth the process for requesting a written determination from the Department that a specific activity is exempt from the Waterfront Development Law and the requirements of the CZM rules. For consistency, the Department is proposing to replace the introductory language of this provision with introductory language similar to that at N.J.A.C. 7:7-2.2(f), which sets forth the process for requesting a written determination that a development is exempt from CAFRA and these rules.

The Department is proposing new N.J.A.C. 7:7-2.2(f)3 through 5 to establish submission requirements for an exemption request pursuant to N.J.A.C. 7:7-2.4(d)4 through 6, respectively. A request for a determination of exemption pursuant to N.J.A.C. 7:7-2.4(d)4, for the installation of certain wind turbines, must include a completed application form; a description of the proposed development; the application fee; the total height and rotor swept area of the proposed wind turbine(s); and a site plan depicting the location of the proposed wind turbines, the height of the wind turbine(s) in relation to the ground surface elevation, and details of the wind turbine monopole. A request for a determination of exemption pursuant to N.J.A.C. 7:7-2.4(d)5, for the installation of certain solar panels, must include a completed application form; a written description of the proposed development; the application fee; a site plan depicting the location of

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the proposed solar panels and the floodway, if appropriate; and if proposed to be located on a sanitary landfill, a copy of the Closure and Post-Closure Plan or modified plan as approved by the Department in accordance with the Solid Waste Management rules. A request for a determination of exemption pursuant to N.J.A.C. 7:7-2.4(d)6, for development activity that is not an improvement appurtenant to the eastern shore of the Delaware River and extending outshore of the mean low water line or will maintain access from the navigable water to such improvement, must include a completed application form; a written description of the proposed development; the application fee; and a site plan depicting the location of the proposed development activity and the mean high water line.

Similar to the amendments proposed at N.J.A.C. 7:7-2.2(f)1 through 3, at N.J.A.C. 7:7-2.4(f)1 through 7 the Department is proposing to cross-reference the rule that describes the contents of the application form and the rule that sets forth the address from which the application form may be obtained. Also, the Department is correcting a typographical error at N.J.A.C. 7:7-2.4(f)7iv.

At N.J.A.C. 7:7-2.4(f)1iii, 2iii, and 6viii, the term “U.S. Geological Survey topographic quadrangle map” is replaced with the term “USGS quad map” as that is the defined term proposed at N.J.A.C. 7:7-1.5. At N.J.A.C. 7:7-2.4(f)6vi, the Department is deleting the reference to the adoption of the Tidelands Map and the date of the base map photography since this information is included in the definition of “Tidelands map” at N.J.A.C. 7:7-1.5. Further, the term “New Jersey Coastal Wetlands Map” is replaced with coastal wetlands map for consistency with N.J.A.C. 7:7-2.3(c).

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### **N.J.A.C. 7:7-2.5 Obtaining an applicability determination**

Proposed new N.J.A.C. 7:7-2.5 establishes the requirements for seeking a written determination from the Department as to whether CAFRA, the Wetlands Act of 1970, and/or the Waterfront Development Law applies to a particular proposed project, and therefore is regulated under the CZM rules. The section replaces existing N.J.A.C. 7:7-1.5(a)1 and 2 regarding jurisdictional determinations.

### **Subchapter 3. General Provisions for Permits-by-Rule, General Permits-by-Certification, and General Permits**

Existing N.J.A.C. 7:7-3, Pre-application review, is proposed to be repealed and the substance of it is proposed, with amendments, at new N.J.A.C. 7:7-22, Pre-application conferences.

Proposed new N.J.A.C. 7:7-3, General Provisions for Permits-by-Rule, General Permits-by-Certification, and General Permits, contains the general provisions that apply to all permits-by-rule, general permits-by-certification, and general permits. As explained below, parts of proposed N.J.A.C. 7:7-3 are recodified, with amendments, from elsewhere in existing N.J.A.C. 7:7.

#### **N.J.A.C. 7:7-3.1 Purpose and scope**

Proposed N.J.A.C. 7:7-3.1 is new, and explains the purpose and scope of the subchapter.

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**N.J.A.C. 7:7-3.2 Standards for issuance, by rulemaking, of permits-by-rule, general permits-by-certification, and general permits**

Proposed N.J.A.C. 7:7-3.2 contains the procedures governing the Department's issuance by rulemaking of permits-by-rule and general permits and is recodified from N.J.A.C. 7:7-7.1, with amendments. The rule is proposed to be amended to include general permits-by-certification, a new type of authorization explained in more detail in the summary of proposed N.J.A.C. 7:7-5, General Permits-by-Certification.

Existing N.J.A.C. 7:7-7.1(a), which explains the scope of the existing rule, is proposed to be deleted because proposed new N.J.A.C. 7:7-3.1 serves that purpose. Existing N.J.A.C. 7:7-7.1(b) through (f) are proposed to be recodified at N.J.A.C. 7:7-3.2(a) through (e), respectively, with amendments to clarify terminology related to rulemaking, and to include general permits-by-certification.

At N.J.A.C. 7:7-3.2(b)3, the Department is proposing to replace reference to providing an opportunity for a public hearing when it proposes rule changes regarding permits-by-rule, general permits, and general permits-by-certification with reference to providing an opportunity for public comment. Consistent with the rulemaking provisions of the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., the public will be able to submit written comments on any proposed changes to the rules governing these permits, and the Department will have the flexibility to hold a public hearing in the appropriate circumstance.

Existing N.J.A.C. 7:7-7.1(e)1, which provides that the Department may add special conditions in an authorization to ensure a specific proposed development qualifies for

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authorization under a particular general permit, is proposed to be deleted because proposed N.J.A.C. 7:7-3.8(b), explained below, incorporates this requirement.

Existing N.J.A.C. 7:7-7.1(g) and (h), which link the review and reissuance by rulemaking of permits-by-rule and general permits to the five-year sunset and readoption timeframes in the APA, are proposed to be deleted because the 2011 amendments to the APA lengthened the sunset period to seven years and also established that rules can be readopted in certain circumstances without full rulemaking. Consistent with the flexibility regarding readopting rules that was incorporated into the APA, proposed N.J.A.C. 7:7-3.2 will ensure that the rules governing permits-by-rule, general permits, and the new general permits-by-certification are amended as necessary based on the Department's experience administering the coastal permitting program as well as in consideration of ongoing feedback from the public.

Existing N.J.A.C. 7:7-7.1(i), which describes the structure of existing N.J.A.C. 7:7-7, is proposed to be deleted because it is unnecessary given the reorganization of the CZM rules.

**N.J.A.C. 7:7-3.3 Use of a permit-by-rule, or an authorization pursuant to a general permit-by-certification or a general permit to conduct regulated activities**

Proposed N.J.A.C. 7:7-3.3 is new. As explained below, provisions currently found at N.J.A.C. 7:7-7.2 and 7.3 are proposed to be incorporated here with amendments. Proposed N.J.A.C. 7:7-3.3(a) replaces existing N.J.A.C. 7:7-7.2(b), and provides that, except for the construction of the upland portion of a dock or pier or boat ramp under the permits-by-rule at N.J.A.C. 7:7-4.4, 4.5, and 4.9, respectively, activities that meet the requirements of a permit-by-rule may be conducted without prior Department approval. However, as set forth in these three

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specific permits-by-rule, a person can undertake the activities covered by these permits-by-rule only after the Department has issued a waterfront development permit for the portion of the associated dock, pier or boat ramp located waterward of the mean high water line.

Proposed N.J.A.C. 7:7-3.3(b) provides that activities that meet the requirements of a general permit-by-certification may be conducted once the applicant has received the automatic authorization resulting from completion of the application submission through the Department's electronic permitting system. Proposed N.J.A.C. 7:7-3.3(c) provides that activities that meet the requirements of a general permit may be conducted upon receipt of an authorization from the Department in accordance with N.J.A.C. 7:7-26.

Proposed N.J.A.C. 7:7-3.3(d) provides that a permit-by-rule or an authorization under a general permit-by-certification or general permit does not relieve the person conducting the regulated activities from obtaining all other applicable permits or approvals required by law.

#### **N.J.A.C. 7:7-3.4 Use of more than one permit on a single site**

Proposed N.J.A.C. 7:7-3.4 is new and sets forth the requirements for combining authorizations under this chapter and for undertaking multiple activities under multiple permits on a single site.

Proposed N.J.A.C. 7:7-3.4(a) explains that a person may undertake a given regulated activity more than once on a single site, and that the activity may be authorized each time under a single permit-by-rule, or a single authorization under a general permit-by-certification or general permit, provided the individual limits and conditions of the permit are not exceeded. To illustrate, under the permit-by-rule at existing N.J.A.C. 7:7-7.2(a)1, which is proposed to be

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recodified at N.J.A.C. 7:7-4.1, a person is authorized to construct a 400-square-foot addition on the non-waterward side of an existing single-family home or duplex provided the cumulative surface area of the addition does not exceed 400-square-feet since July 19, 1994, and the other requirements of the permit-by-rule are met. Two separate 200-square-foot expansions could be built under the permit-by-rule at different times for the same home or duplex because the cumulative total surface area of both expansions does not exceed the 400-square-foot limitation of the permit-by-rule as applied to that site. However, where a 300-square-foot expansion had already been constructed pursuant to this permit-by-rule, an additional 200-square-foot expansion could not be constructed under the permit-by-rule because the cumulative total surface area of both expansions would be greater than 400-square-feet, and would exceed that limitation in the permit-by-rule as applied to that site.

Under proposed N.J.A.C. 7:7-3.4(b), a person may undertake more than one regulated activity on a site, and the activities may be authorized under one or more permits-by-rule, or authorizations under general permits-by-certification or general permits, so long as the individual limits and conditions of each permit are not exceeded. To illustrate, a person could construct a single family home or duplex on a bulkheaded lagoon lot under the permit-by-rule at existing N.J.A.C. 7:7-7.2(a)3, which is proposed to be recodified at N.J.A.C. 7:7-4.2, and on the same site concurrently seek authorization under the general permit-by-certification at proposed N.J.A.C. 7:7-5.2 for the reconstruction of the existing bulkhead in-place, since combining these regulated activities does not exceed a limit or condition of either the permit-by-rule or the general permit-by-certification.

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Proposed N.J.A.C. 7:7-3.4(c) provides that, on a single site, once the limits and conditions of a given permit-by-rule, or of a general permit-by-certification, or a general permit have been met, no additional activities may be authorized under that particular permit on that site, regardless of how much time passes or whether the site is subdivided or transferred to a new owner. A person intending to seek authorization to undertake a regulated activity under a permit-by-rule, general permit-by-certification, or general permit where any limit or condition of the permit would be exceeded by doing so on that site must therefore obtain an individual permit in order to undertake the activity. This requirement is necessary to ensure that the cumulative total of any adverse environmental impacts on a given site as a result of the use of the permit is minimal as required under N.J.A.C. 7:7-3.2(b)1 and to ensure that a person does not exceed or circumvent a particular limit or condition of a given permit when various authorizations that pertain to one site are considered collectively.

Proposed N.J.A.C. 7:7-3.4(d) addresses the use of permits-by-rule, or authorizations under general permits-by-certification or general permits in combination with an individual permit, on a single site. Any permit-by-rule or authorization under any general permit-by-certification may be used in combination with an individual permit on a single site. However, authorizations under only three general permits may be combined with an individual permit on a single site. It is appropriate to combine the general permits referenced at N.J.A.C. 7:7-3.4(d)3i and ii with an individual permit as it facilitates the streamlining of permit reviews for single family homes and because the activities covered by these general permits are often associated with other activities on the site that require an individual permit, such as the construction of a bulkhead waterward of the mean high water line. It is also appropriate to combine the general

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permit referenced at N.J.A.C. 7:7-3.4(d)3iii for the landfall of utility lines with an individual permit because the regulated activity on the land is associated with the installation of a utility line in the water that requires an individual permit.

#### **N.J.A.C. 7:7-3.5 Duration of an authorization under a general permit-by-certification**

N.J.A.C. 7:7-3.5 is new and addresses the duration of authorizations under general permits-by-certification.

Proposed N.J.A.C. 7:7-3.5(a) provides that an authorization under a general permit-by-certification is valid for five years from the issuance date of the authorization.

Proposed N.J.A.C. 7:7-3.5(b) provides that an authorization under a general permit by-certification cannot be extended. As discussed in the summary of N.J.A.C. 7:7-5, an authorization under a general permit-by-certification applies to a tightly circumscribed set of regulated activities that the Department has determined are simple and straightforward in nature and therefore easily able to be undertaken and completed within five years of the date of issuance of the authorization. If the activity is not completed within the five-year term of the authorization, the person must apply again for authorization.

Proposed N.J.A.C. 7:7-3.5(c) provides that where an authorization under a general permit-by-certification expires, all regulated activities authorized under the general permit-by-certification must cease.

Proposed N.J.A.C. 7:7-3.5(d) provides that where a person intends to commence or continue regulated activities that had been authorized under an authorization that expired, the

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person must obtain a new authorization under a permit under this chapter authorizing the regulated activities.

**N.J.A.C. 7:7-3.6 Duration of an authorization under a general permit for which an application was declared complete for review prior to (the effective date of these amendments)**

Proposed N.J.A.C. 7:7-3.6 addresses the duration of a general permit authorization for which the application is declared complete for review before the effective date of the new and amended CZM rules and where the application is subsequently approved. An application that is declared complete for review is both administratively and technically complete, and the Department staff is able to perform a detailed review and render a decision to approve or deny the application. Therefore, in fairness to these applicants, the duration of a general permit authorization issued based on an application that is declared complete for review prior to these new rules' taking effect will be the same as what it would have been under existing N.J.A.C. 7:7-7.3(k), the content of which is being continued at proposed N.J.A.C. 7:7-3.6. An application for a general permit authorization that is declared complete for review on or after the effective date of the new and amended CZM rules will be subject to the provisions governing duration at proposed N.J.A.C. 7:7-3.7, described below. It should be noted that an application submitted prior to the effective date of the new and amended CZM rules that is returned, rejected, or denied and subsequently resubmitted will be considered a new application subject to proposed N.J.A.C. 7:7-3.7 if the resubmitted application is declared complete for review on or after the effective date of the new and amended rules.

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Proposed N.J.A.C. 7:7-3.6(a) explains the scope of the section. Proposed N.J.A.C. 7:7-3.6(b) provides that an authorization under a general permit governed by this section is valid for five years from the issuance date of the authorization.

Proposed N.J.A.C. 7:7-3.6(c) provides that the term of an authorization under a general permit governed by this section cannot be extended. Because general permit authorizations under this section can continue valid for an indefinite period of time if construction is started and meets the conditions at proposed N.J.A.C. 7:7-3.6(e), there is no need to provide for the extension of the five-year term of the authorization.

Proposed N.J.A.C. 7:7-3.6(d) requires that, unless the conditions at N.J.A.C. 7:7-3.6(e) apply, all regulated activities authorized under the general permit must cease if the authorization expires.

Proposed N.J.A.C. 7:7-3.6(e) provides that, where construction is commenced before the authorization expires, construction can continue to completion provided there are no cumulative lapses in construction activity of greater than one year. At proposed N.J.A.C. 7:7-3.6(e)1, construction is defined for this limited purpose in the same way it is defined in existing N.J.A.C. 7:7-7.3(k)1.

Where a person intends to commence or continue regulated activities under an authorization that has expired, and where construction was not commenced as set forth in proposed N.J.A.C. 7:7-3.6(e), proposed N.J.A.C. 7:7-3.6(f) provides that the person must obtain a new authorization or permit under this chapter to once again authorize those activities.

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**N.J.A.C. 7:7-3.7 Duration of an authorization under a general permit for which an application is deemed complete for review on or after (the effective date of these amendments)**

Proposed N.J.A.C. 7:7-3.7 addresses the duration of a general permit authorization for which the application is declared complete for review on or after the effective date of the amended and new CZM rules. The duration of a general permit authorization for which the application is declared complete for review prior to the effective date of the CZM rules is subject to proposed N.J.A.C. 7:7-3.6, described above.

Proposed N.J.A.C. 7:7-3.7(a) explains the scope of the section. Proposed N.J.A.C. 7:7-3.7(b) provides that an authorization under a general permit governed by this section is valid for five years from the issuance date of the authorization, except as provided at proposed N.J.A.C. 7:7-3.7(c). Proposed N.J.A.C. 7:7-3.7(c) provides that the five-year term of an authorization under a general permit governed by this section may be extended one time for five years pursuant to N.J.A.C. 7:7-27.3. Proposed N.J.A.C. 7:7-3.7(d) requires that all regulated activities authorized under the general permit must cease if the authorization expires.

These requirements are similar to those at existing N.J.A.C. 7:7-7.3(k), except that the Department is not continuing the provision that allows a person to continue construction if it has been commenced. Instead, a person conducting regulated activities pursuant to an authorization or permit can obtain a one-time five-year extension of the authorization. Since the activities that can be authorized under general permits are limited in size and scope, it has been the Department's experience implementing the coastal permitting program that five years is usually a sufficient period of time to complete them. The proposed rules allow one five-year extension

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for a total of 10 years to complete the activity where the applicant demonstrates in accordance with N.J.A.C. 7:7-27.3 that the extension is warranted.

Proposed new N.J.A.C. 7:7-3.7(e) addresses the situation where the authorization under a general permit has expired, and the person conducting the regulated activities intends to commence or continue the regulated activities that had been authorized. If no regulated activities have occurred prior to expiration of the authorization, the Department will issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of the CZM rules in effect when the application for the new authorization is submitted. If any regulated activities have occurred, the Department will issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of the CZM rules in effect when the application for the new authorization is submitted. In determining the feasibility of compliance with the requirements of the rules in effect, the Department will consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on the environment.

**N.J.A.C. 7:7-3.8 Conditions applicable to a permit-by-rule, or to an authorization pursuant to a general permit-by-certification or a general permit**

Proposed N.J.A.C. 7:7-3.8(a) provides that a person conducting regulated activities pursuant to a permit-by-rule, or pursuant to an authorization under a general permit-by-

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certification or general permit, must comply with the conditions set forth in the respective permit-by-rule, general permit-by-certification, or general permit as well as the conditions that apply to all permits at proposed N.J.A.C. 7:7-27.2.

Proposed N.J.A.C. 7:7-3.8(b) provides that the Department may establish additional conditions in an authorization pursuant to a general permit as necessary on a case-by-case basis to ensure the authorized regulated activity meets the requirements of the CZM rules and its enabling statutes. Additional special conditions are not imposed on authorizations under general permits-by-certification because, as explained in the summary of N.J.A.C. 7:7-5, in order to obtain the authorization under the general permit-by-certification, the applicant must certify that its proposed project will not vary from the specific conditions established in the general permit-by-certification.

#### **Subchapter 4. Permits-by-Rule**

Existing N.J.A.C. 7:7-4, Permit Review Procedure, is proposed to be repealed and the substance of it divided among proposed new N.J.A.C. 7:7-23, Application Requirements; N.J.A.C. 7:7-24, Requirements for an Applicant to Provide Public Notice of an Application; N.J.A.C. 7:7-26, Application Review; and N.J.A.C. 7:7-27, Permit Conditions; Modification, Transfer, Suspension, and Termination of Authorizations and Permits.

Proposed new N.J.A.C. 7:7-4 contains permits-by-rule for activities in the coastal zone. The Department is proposing to structure the subchapter so that each permit-by-rule is located in a single section. The permits-by-rule at existing N.J.A.C. 7:7-7.2(a)1 and (a)3 through 21 are proposed to be recodified at N.J.A.C. 7:7-4.1 through 4.20 as permits-by-rule 1 through 20, with

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amendments. Existing N.J.A.C. 7:7-7.2(a)2 is reserved and thus not recodified. The amendments proposed to existing N.J.A.C. 7:7-7.2(a)4 and 5, recodified at proposed N.J.A.C. 7:7-4.3 and 4.4, respectively, are described below. The Department is proposing amendments to the other recodified permits-by-rule to facilitate the restructuring of the permits-by-rule as sections within the new subchapter that do not affect the substance of the existing provisions. The Department is also proposing two new permits-by-rule at proposed N.J.A.C. 7:7-4.21 and 4.22, as described below. Existing N.J.A.C. 7:7-7.2(b) and (c) are proposed to be deleted. The substance of these provisions, which identify the permits-by-rule reviewed by the Department in conjunction with a waterfront development permit and the permits-by-rule that do not require notification to the Department prior to commencement of regulated activities, is relocated at proposed N.J.A.C. 7:7-3.3(a) and explained in the summary of that rule.

**N.J.A.C. 7:7-4.3 Permit-by-rule 3 - placement of public safety or beach/dune ordinance signs on beaches or dunes and placement of signs on beaches or dunes at public parks**

The permit-by-rule at existing N.J.A.C. 7:7-7.2(a)4 for the placement of public safety or beach/dune ordinance signs on beaches or dunes and placement of signs on beaches or dunes at public parks is proposed to be recodified at N.J.A.C. 7:7-4.3. The Department is proposing to clarify that only governmental entities can install signs at public parks. Examples of signs that may be placed at public parks on beaches and dunes are restroom signs, speed limit signs, and rip current signs.

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**N.J.A.C. 7:7-4.4 Permit-by-rule 4 - construction of nonresidential docks, piers, boat ramps, and decks located landward of mean high water line**

The permit-by-rule at existing N.J.A.C. 7:7-7.2(a)5 for the construction of nonresidential docks, piers, boat ramps, and decks located landward of the mean high water line is proposed to be recodified at N.J.A.C. 7:7-4.4. The Department is proposing an amendment at proposed N.J.A.C. 7:7-4.4(c) clarifying that the construction of a nonresidential deck under this permit-by-rule must be located landward of the mean high water line. The Department is also proposing a new provision at N.J.A.C. 7:7-4.4(d) which provides that this permit-by-rule does not authorize the construction of a boat ramp within wetlands. If a person wishes to construct a boat ramp within wetlands, a coastal wetlands or freshwater wetlands permit would be required. While construction of a dock, pier or deck in accordance with the requirements applicable to those structures, including the required minimum height of the structure, will have limited impact to the wetlands, the construction of a boat ramp within wetlands can result in significant impacts to or loss of wetlands. Therefore, such impacts are more appropriately reviewed by the Department through an application for a coastal or freshwater wetlands permit.

**N.J.A.C. 7:7-4.9 Permit-by-rule 9 - previous filling of tidelands associated with an existing single family home or duplex**

The permit-by-rule at existing N.J.A.C. 7:7-7.2(a)10 for the previous filling of tidelands associated with an existing single family home or duplex is proposed to be recodified at N.J.A.C. 7:7-4.9. The Department is proposing an amendment at proposed N.J.A.C. 7:7-4.9(a) to delete the reference to the adoption of the Tidelands Map and the date of the base map photography

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since this information is included in the definition of “Tidelands Map” at proposed N.J.A.C. 7:7-1.5.

**N.J.A.C. 7:7-4.20 Permit-by-rule 20 – implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site**

The permit-by-rule at existing N.J.A.C. 7:7-7.2(a) for the implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site is proposed to be recodified at N.J.A.C. 7:7-4.20. The Department is proposing to amend proposed N.J.A.C. 7:7-4.20(a) to delete reference to the Department’s dredging technical manual and instead require that if a sampling plan is part of a dredging or dredged material management activity, the plan must be prepared in accordance with proposed new N.J.A.C. 7:7 Appendix G and approved by the Department. Chapter III of Appendix G addresses the development and implementation of sediment sampling plans and composting schemes.

**N.J.A.C. 7:7-4.21 Permit-by-rule 21 – application of pesticide within coastal wetlands to control invasive plant species**

The Department is proposing a new permit-by-rule at N.J.A.C. 7:7-4.21 for the application of pesticide within coastal wetlands to control invasive plant species. As indicated on the USFWS website at [www.fws.gov/invasives/faq.html](http://www.fws.gov/invasives/faq.html), invasive plant species are likely to cause harm to the economy, environment, or human health. Invasive plants reduce the amount of

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biodiversity on a site, changing the habitat and reducing or eliminating the food source for native wildlife within the habitat. In addition, invasive species disrupt the existing natural communities and ecological processes by out-competing the native plants within the area. Invasive plant species can cause a reduction in revenues to natural resource based businesses, thus creating an economic hardship. Finally, some invasive species may be poisonous and therefore hazardous to human health.

The management of invasive plant species in the coastal zone typically includes the application of pesticides in coastal wetlands, which are regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and therefore under the CZM rules as proposed to be consolidated and amended. Under existing N.J.A.C. 7:7-2.2(b)3, which is proposed to be recodified at N.J.A.C. 7:7-2.3(b)3, the application of any pesticide on areas in regulated coastal wetlands containing significant stands of high vigor saltmarsh cordgrass, wild rice, cattail, and common threesquare is prohibited. Consequently, to minimize impacts to coastal wetlands and to avoid the application of pesticides on significant stands of the above-noted coastal wetlands grasses, under proposed N.J.A.C. 7:7-4.13(a)1, the area in which pesticides can be applied to control invasive plant species is limited to a total of one-quarter acre or less on any given site. As discussed in the summary of Subchapter 6, the Department is also proposing a new general permit for the application of pesticide within coastal wetlands to control invasive plants in areas greater than one-quarter acre at proposed N.J.A.C. 7:7-6.32, General permit 32 – application of pesticide within coastal wetlands to control invasive plant species.

Proposed N.J.A.C. 7:7-4.21(a)2 requires that the activities must not adversely affect habitat for threatened or endangered wildlife or plant species.

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Under the Department's Pesticide Control regulations at N.J.A.C. 7:30-9.3, the application of pesticides in an aquatic environment requires an aquatic pesticide permit from the Department's Pesticide Control Program. Accordingly, proposed N.J.A.C. 7:7-4.21(a)3 requires that, if the application of pesticide within coastal wetlands to control invasive plant species is conducted in waters of the State or waters of the United States, they must be conducted pursuant to an aquatic pesticide permit.

**N.J.A.C. 7:7-4.22 Permit-by-rule 22 - construction of a swimming pool, spa or hot tub and associated decking on a bulkheaded lot without wetlands**

The Department is proposing a new permit-by-rule at N.J.A.C. 7:7-4.22 for the construction of a swimming pool, spa, or hot tub and any associated decking. To ensure that the pool, spa, or hot tub is not located within special areas, proposed N.J.A.C. 7:7-4.14(a) provides that this permit-by-rule is applicable only where the entire waterfront portion of the lot is legally bulkheaded and where there are no wetlands located landward of the bulkhead. Proposed N.J.A.C. 7:7-4.22(a)1 provides that the construction cannot involve the excavation, grading, or filling of a beach or dune. To facilitate any future replacement of the existing bulkhead, the pool, spa, or hot tub must be set back 15 feet from the waterward face of the bulkhead in accordance with proposed N.J.A.C. 7:7-4.22(a)2.

To ensure that the development of pools, spas, or hot tubs authorized under the permit-by-rule will cause only minimal adverse environmental impacts when performed separately, as well as have only minimal cumulative environmental impacts, the Department is proposing at N.J.A.C. 7:7-4.22(a)3 to limit the footprint of the pool, spa, or hot tub and associated decking to

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a cumulative total area of 750 square feet as of the effective date of this permit-by-rule which is the average size of a pool with associated decking and hot tub. The rule gives examples of how this limit is intended to work.

Proposed N.J.A.C. 7:7-4.22(a)4 through 6 address water quality concerns by requiring that the backwash system not discharge into the adjacent water body, that a silt fence be constructed prior to construction and remain in place until construction is completed, and that all subgravel liners be filter cloth or other permeable material.

#### **Subchapter 5. General Permits-by-Certification**

Existing N.J.A.C. 7:7-5, Procedures to request an adjudicatory hearing to contest a permit decision, is proposed to be repealed, with the substance moved to new N.J.A.C. 7:7-28, Requests for adjudicatory hearings.

As discussed earlier in the Summary, this proposal includes proposed amendments that are intended to facilitate the Department's transformation goal of evaluating all business operations in order to streamline functions, reengineer business processes, and leverage technology so that administrative paperwork is reduced, applications and other forms can be shared across multiple programs, and the number of electronic submittals can be increased. In line with that goal, in 2011, the Division of Land Use Regulation launched, on a pilot basis, an electronic permit application ("e-permitting") system. Modeled after the Department's air, water, and underground storage tank electronic permitting programs, the Division's system allows for the electronic submission and processing of certain applications. The electronic applications are for authorizations for a tightly circumscribed subset of activities that might be

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authorized under the general permits for the reconstruction of a legally existing and functioning bulkhead at existing N.J.A.C. 7:7-7.14 and for the construction of piers, docks, jet ski ramps, pilings, and boatlifts in man-made lagoons at existing N.J.A.C. 7:7-7.19. The tight limitations on the activity or activities that can be authorized enable the automated issuance of an approval or rejection because there is no need for a case-by-case evaluation of whether the particular proposed manner of conducting the activity meets the conditions of the general permit. The applicant has to certify that it does. Upon successfully completing the application and certifying the truth and accuracy of the information provided, the applicant has access to the authorization from their computer.

Although the response to the application is automated, the online submission process creates a complete and certified record by the applicant regarding the activity to be conducted, including the name, address, telephone number, and e-mail address of the person responsible for conducting the activity and the property owner (if different), the specific location of the activity, and the public notice of the proposed activity that the applicant is required to provide. Because these electronic authorizations address a subset of activities authorized under existing general permits and the electronic submission requires certification by the applicant as to the truth and accuracy of the information provided, the Department has termed this type of authorization as one under a “general permit-by-certification.”

The Department is proposing general provisions governing the issuance, duration, and conditions of general permits-by-certification in Subchapter 3, and is proposing the two above-mentioned general permits-by-certification that have been a part of the Division’s pilot program

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in Subchapter 5. The application requirements an applicant must meet when applying for an authorization under a general permit-by-certification are set forth in Subchapter 23.

**N.J.A.C. 7:7-5.1 General permit-by-certification 10 – reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead**

Proposed new N.J.A.C. 7:7-5.1 establishes general permit-by-certification 10 for the in-place or upland reconstruction of a legally existing bulkhead provided certain conditions are met. The proposed replacement bulkhead must be located upland of any wetlands. The construction of replacement bulkheads subject to wave run up forces (V zones, as described at N.J.A.C. 7:7-9.18) must be designed and certified by a professional engineer to withstand the forces of wave run-up. The proposed bulkhead cannot create net adverse shoreline movement downdrift, including erosion or shoaling and cannot adversely impact any special areas described at N.J.A.C. 7:7-9. Only clean fill from an upland source can be used for backfill. These conditions are the conditions required to be met for authorization of the described bulkhead reconstruction under the existing general permit at existing N.J.A.C. 7:7-7.14 (proposed as general permit 10 at N.J.A.C. 7:7-6.10). However, under the existing and the proposed amended general permit, an authorization can also be obtained for the reconstruction of a legally existing bulkhead that is located outshore of the existing bulkhead under certain circumstances, rip-rap can be used along the seaward toe of the replacement bulkhead if the Department approves, and, under a proposed amendment (see proposed N.J.A.C. 7:7-6.10(b)7), dredged material removed as part of the bulkhead installation can be used as backfill so long as

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the dredged material meets the criteria for structural or non-structural fill material and is managed in accordance with Appendix G.

**N.J.A.C. 7:7-5.2 General permit-by-certification 15 – construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons**

Proposed new N.J.A.C. 7:7-5.2 establishes general permit-by-certification 15 for the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons, provided certain conditions are met. The proposed structures must be located on a single-family or duplex lot and used for recreational or non-commercial purposes. The proposed structures, including mooring area and mooring piles, cannot extend beyond a distance of 20 percent of the width of a man-made lagoon. The width of the dock or pier cannot exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high water, except for floating docks. The proposed dock or pier cannot exceed eight feet in width, except when crossing wetlands, in which case the structure must be constructed perpendicular to the shoreline to access sufficient water depth and cannot exceed six feet in width and must be a minimum of four feet in height. Any wetlands disturbed during construction must be restored to pre-project conditions. The proposed project cannot hinder navigation or access to adjacent docks, piers, moorings or water areas. A minimum of eight feet of open water must be provided between any docks including jet ski ramps, if the combined width of any existing or proposed docks over the water exceeds eight feet. For docks proposed to be constructed perpendicular to the adjacent bulkhead or shoreline, the dock must be located a minimum of four feet from all property lines. The space between horizontal planking of the proposed dock or pier must be

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maximized and the width of horizontal planking minimized to the maximum extent practicable.

Jet ski ramps, which are inclined floating docks that are typically attached to existing docks for the purpose of docking jet skis, must not exceed eight feet in width. For sites that have existing docks or piers exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks, or piers, the existing oversized structures must be reduced to a maximum of eight feet in width.

The conditions in this general permit-by-certification are identical to the conditions required to be met for authorization under the existing general permit at existing N.J.A.C. 7:7-7.19 (proposed as general permit 15 at N.J.A.C. 7:7-6.15). However, the Department is proposing to amend general permit 15 at N.J.A.C. 7:7-6.15(a)9 to allow the applicant to propose an alternate dock design provided the design allows for equal or greater light penetration. Because, as discussed above, an application for an authorization under a general permit-by-certification does not involve a case-by-case evaluation by the Department of whether the particular proposed manner of conducting the activity meets the conditions of the general permit-by-certification, the provision being proposed in general permit 15 for docks in man-made lagoons that would allow an alternate dock design is not included in proposed general permit-by-certification 15.

## **Subchapter 6. General Permits**

Existing N.J.A.C. 7:7-6, Information Requirements for Environmental Impact Statements and Compliance Statements, which describes when an environmental impact statement (EIS) or

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compliance statement is required, the required format and content of the statement, and to whom the statement is distributed, is proposed for repeal. The requirement for a compliance statement or EIS and format/content of an EIS are addressed at proposed new N.J.A.C. 7:7-23.5, Compliance statement requirement for an application for authorization under a general permit, and N.J.A.C. 7:7-23.6, Additional requirements specific to an application for an individual permit.

Existing N.J.A.C. 7:7-7.5 through 7.36, which contain the substantive standards for general permits, are recodified at proposed N.J.A.C. 7:7-6.1 through 6.31. As part of the recodification of these sections, changes are proposed to reflect the consolidation of the coastal rules into one chapter and its new structure. For ease in identifying the various general permits, the title of each general permit is being amended to include a number for the general permit and to delete the modifier “coastal” as unnecessary. Further, the specific additional information required to be submitted for each general permit is proposed for deletion. Certain of these requirements, such as the requirement that a Compliance Statement be prepared as part of the application (see, for example, existing N.J.A.C. 7:7-7.6(b)4, proposed for recodification as N.J.A.C. 7:7-6.2 with subsection (b) deleted) are unnecessary as the requirement is covered elsewhere in the rules. Other information is more appropriately located on an application checklist (see summary of proposed N.J.A.C. 7:7-23.2(a) below) and will be addressed in that manner. While certain information will be relocated to application checklists, the proposed rules continue to specify all components of the checklist that are regulatory with the checklists, which are available from the Department and on the Department’s website, also including other types of information designed to assist applicants. The checklists do not include any new or additional

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requirements not included in the rules. Where changes proposed to a recodified section are limited to these types of change, no further section summary appears below. Other proposed amendments to the recodified sections are described below.

#### **N.J.A.C. 7:7-6.2 General permit 2 - beach and dune maintenance activities**

Proposed N.J.A.C. 7:7-6.2, which contains the general permit for beach and dune maintenance activities, is recodified from N.J.A.C. 7:7-7.6 with an amendment modifying the cross-reference to the rules regarding routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance. These standards are recodified at proposed N.J.A.C. 7:7-10.

#### **N.J.A.C. 7:7-6.4 General permit 4 - development of one or two single family homes or duplexes**

Existing N.J.A.C. 7:7-7.8, which contains the general permit for the development of a single family home or duplex, is recodified at N.J.A.C. 7:7-6.4, with amendments modifying the scope of the general permit to apply to one or two single-family homes or duplexes as described below.

It has been the Department's experience in reviewing residential developments that application for the construction of two dwelling units, usually associated with the subdivision of a single lot, is common. These lots are typically, but not always, bulkheaded small lots located within existing residential back bay areas and of a size that would preclude intense waterfront developments such as marinas. Typically, these lots are already disturbed and, in some

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instances, may have an existing single-family home on the lot which will be replaced with two single-family homes. While impacts are associated with any development, the impacts associated with the construction of two single-family or duplex homes, when constructed in accordance with the standards of the general permit described below, will be minimal.

To facilitate the change in the scope of this general permit from one to two single-family homes or duplexes, references in existing N.J.A.C. 7:7-7.8(a) and (b) (proposed N.J.A.C. 7:7-6.4(a) and (b)) to a single-family home or duplex are proposed to be replaced with language reflecting the proposal to make this general permit available for the construction of two single-family homes or duplexes.

Existing N.J.A.C. 7:7-7.8(c) identifies the specific special area rules with which a single-family home or duplex development must comply. The Department has determined that requiring compliance with the rules identified in this subsection is appropriate for both one and two single-family home or duplex developments. These rules concern beaches, flood hazard areas, riparian zones, wetlands, wetland buffers, and endangered or threatened species or vegetation species habitat.

With the expansion of this general permit to include two single-family homes or duplexes, the Department has determined that, in addition to the compliance with the above referenced special area rules, the development of two single-family homes or duplexes should also address historic water dependent uses of the site. While the Department's experience is that typically the lots subject to this rule are small in size and would preclude intense waterfront developments such as marinas, this is not always the case. Some lots may be larger in size and have pre-existing water-dependent uses. In addition to the resource rules listed above that would

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prevent negative environmental impacts from the development of two single-family homes or duplexes, the Department believes that water-dependent uses should also be protected where appropriate. Accordingly, proposed N.J.A.C. 7:7-6.4(d) requires that the development of two single-family homes or duplexes must also comply with the filled water's edge rule, at proposed N.J.A.C. 7:7-9.23(e) (existing N.J.A.C. 7:7E-3.23(e)), if the site has included a water-dependent use at any time since July of 1977.

Proposed N.J.A.C. 7:7-6.4 and the existing and proposed filled water's edge rule at N.J.A.C. 7:7E-3.23(e) (proposed N.J.A.C. 7:7-9.23(e)) focus on water dependent uses existing at any time since July of 1977 because Tidelands mapping, which is the baseline that is used to demonstrate that an area was formerly tidally flowed, was prepared based upon aerial photography taken during this time frame in 1977. The water's edge along New Jersey's ocean, bays, and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for waterborne commerce and recreational boating. Though an estimated 37 percent of the State's 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. Many existing water dependent uses are being lost, or more often, constricted by housing and other non-water related uses. As a result, few sites contain space sufficient for operation of businesses providing facilities for recreational and commercial boating. Accordingly, it is important to restrict redevelopment of sites currently or recently occupied by water dependent uses to attempt to preserve this diminishing, significant resource.

Existing N.J.A.C. 7:7-7.8(d), (e), and (f), proposed N.J.A.C. 7:7-6.4(e), (f) and (g), set forth the acceptability conditions for the development of a single-family home or duplex on a

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dune, coastal bluff or within a coastal high hazard area or erosion hazard area. The Department has reviewed these standards and determined that they are also appropriate for the construction of two single-family homes or duplexes.

Proposed N.J.A.C. 7:7-6.4(e)2 provides that development need not comply with the dune rule, proposed N.J.A.C. 7:7-9.16, if the development is located on a dune which is isolated from a beach and dune system by a public road, public seawall, or public bulkhead existing on July 19, 1993, and if the site and development meet certain criteria. At proposed N.J.A.C. 7:7-6.4(e)2i and iv, reference to the “municipal Flood Insurance Rate Map” is being replaced with the term “FIRM,” which is proposed to be defined at N.J.A.C. 7:7-1.5 as the Flood Insurance Rate Map prepared by FEMA for a community. In some instances, the FIRM may be on a municipal or county scale. Accordingly, reference to “municipal Flood Insurance Rate Map” is proposed for deletion.

Proposed N.J.A.C. 7:7-6.4(h) addresses public access. Under the existing general permit, public access is required in accordance with the public trust rights rule, N.J.A.C. 7:7E-3.50, and the public access rule, N.J.A.C. 7:7E-8.11. The Department has determined that this provision is also appropriate for the construction of two single-family homes or duplexes.

Proposed N.J.A.C. 7:7-6.4(i) through (l), which address landscaping, driveways, site clearing, development adjacent to surface waters and wetlands, and setbacks from coastal bluffs and shore protection structures, are also appropriate to the development of two single-family homes or duplexes. These standards are used for the construction of any single-family home or duplex, regardless of the scope of the proposed residential development.

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Proposed N.J.A.C. 7:7-6.4(n), which provides that this general permit does not apply to regulated activities under the Wetlands Act of 1970, is also applicable to the construction of two single-family homes or duplexes. Activities within wetlands subject to the Wetlands Act of 1970 must be reviewed under an individual permit.

**N.J.A.C. 7:7-6.5 General permit 5 - expansion, or reconstruction (with or without expansion) of a single family home or duplex**

Proposed N.J.A.C. 7:7-6.5, which contains the general permit for the expansion, or reconstruction (with or without expansion) of a single-family home, is recodified from N.J.A.C. 7:7-7.9 with an amendment. As discussed above in regards to N.J.A.C. 7:7-6.4(e)2ii(1) and (4), reference to the municipal Flood Insurance Rate Map at proposed N.J.A.C. 7:7-6.5(d)2i and iv are being replaced with the term “FIRM” which is proposed to be defined at N.J.A.C. 7:7-1.5. The FIRM is proposed to be defined as the Flood Insurance Rate Map prepared by FEMA for a community. In some instances, the FIRM may be on a municipal or county scale. Accordingly, reference to “municipal Flood Insurance Rate Map” is proposed for deletion.

**N.J.A.C. 7:7-6.6 General permit 6 - construction of a bulkhead and placement of associated fill on a man-made lagoon**

Proposed N.J.A.C. 7:7-6.6, which authorizes the construction of a bulkhead on a lot located on a substantially developed man-made lagoon, is recodified from N.J.A.C. 7:7-7.10, with amendments addressing the beneficial use of dredged material as fill. The rule at existing N.J.A.C. 7:7-7.10(a)6 requires that the backfill material be clean fill from an upland source. In

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some instances the installation of a bulkhead involves the removal of sediment (dredged material) from the waterway. Dredged material that meets the criteria for structural or non-structural fill set forth in Chapter V of Appendix G will be of the appropriate grain size and chemical composition to be used as backfill. Accordingly, the Department is proposing to amend N.J.A.C. 7:7-6.6(a)6 to also allow for the use of dredged material removed as part of the bulkhead installation as backfill for such installation. The dredged material removed as part of the bulkhead installation, after sufficient drying on the upland portion of a property, has the same geotechnical properties as most upland soils used as backfill material in bulkhead construction. Further, the management of the dredged material removed under this general permit must comply with the best management practices specified in proposed Appendix G to minimize any environmental impacts. Specifically, proposed Appendix G requires that any dredged material placed on the upland be stabilized and then capped with a minimum of six inches of top soil which is then vegetated. These measures serve to minimize the erosion of the dredged material to the adjacent waterway. The proposed addition of dredged material as an allowable backfill material will allow for its beneficial use on a given residential property where construction of the bulkhead includes the removal of sediments from the lagoon. The use of the dredged material as backfill reduces the high costs associated with the disposal of dredged material at an off-site location and also alleviates the need to import fill material for use as backfill.

**N.J.A.C. 7:7-6.9 General permit 9 - construction of support facilities at legally existing and operating marinas**

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Proposed N.J.A.C. 7:7-6.9, which contains the general permit for the construction of support facilities at legally existing and operating commercial marinas including marinas operated by public agencies, commissions and authorities, is recodified from N.J.A.C. 7:7-7.13, with the amendments described below.

The Department has determined that, based on its review of marina permit applications as well as stakeholder input, that the requirements at existing N.J.A.C. 7:7-7.13(b)2ii, which requires restrooms to provide both hot and cold water and be maintained in a sanitary, warm, dry, brightly-lit, and well-ventilated condition, and existing N.J.A.C. 7:7-7.13(c)3, which requires that trash receptacles along with adequate fish cleaning areas be provided, are not necessary. The condition of restrooms is subject to State and municipal requirements. Similarly, the provision of trash receptacles is addressed at the local level and the need for fish cleaning facilities is determined by the type of services provided by the marina. Accordingly, the Department is proposing to delete these requirements and, instead, is proposing at N.J.A.C. 7:7-6.9(d) that nothing in this section shall be construed to relieve a marina from compliance with applicable requirements of other State or local agencies.

**N.J.A.C. 7:7-6.10 General Permit 10 - reconstruction of a legally existing functioning bulkhead**

Proposed N.J.A.C. 7:7-6.10, existing N.J.A.C. 7:7-7.14, authorizes the reconstruction of a legally existing functioning bulkhead. Existing N.J.A.C. 7:7-7.14(b)3, proposed N.J.A.C. 7:7-6.10(b)3, requires that bulkheads subject to wave run-up forces (V zones) include a 10-foot wide splash pad, constructed of concrete, asphalt, or other erosion resistant material, on the landward

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site side of the bulkhead. The splash pad requirement was intended to ensure that the bulkhead would protect landward development by lessening the impact from waves overtopping the bulkhead because such impact could weaken the structure's support. However, based on its experience in reviewing applications for the construction of bulkheads and its discussions with licensed professional engineers, the Department has determined that the construction of a splash pad may not be structurally appropriate in all situations. Water can accumulate on the splash pad rather than infiltrate into the ground, thereby compromising the integrity of the bulkhead. Therefore, the Department is proposing to delete the requirement that the bulkhead construction in V zones include a splash pad on the landward side. While a splash pad will no longer be required for all bulkheads subject to wave run up forces, in appropriate circumstances an engineer can choose to incorporate a splash pad into the design provided that the engineer certifies the bulkhead can withstand V zone force wave run up. This amendment will allow engineers to design the bulkhead to fit the particular circumstances on the site, either including a splash pad or not as appropriate.

Proposed N.J.A.C. 7:7-6.10(b)7 sets forth the acceptability conditions for any fill associated with the reconstruction of an existing bulkhead. Currently, this general permit requires that the backfill material be clean fill from an upland source. Similar to the proposed amendment to general permit 6 – construction of a bulkhead and placement of associated fill on a man-made lagoon at proposed N.J.A.C. 7:7-6.6, the Department is proposing to modify this general permit to allow for the use of the material removed (dredged material) as part of the bulkhead installation as backfill, provided such material meets the criteria for structural or non-structural fill material and is managed in accordance with the best management practices set

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forth in Chapter V of proposed Appendix G. As discussed under the proposed changes to general permit 6 at proposed N.J.A.C. 7:7-6.6, dredged material removed as part of the bulkhead installation, when properly dewatered and managed, is appropriate for use as backfill and has minimal environmental impacts. The beneficial use of dredged material that is appropriate structural and non-structural fill material will reduce the costs associated with disposal of any material that is removed as part of the bulkhead construction and the need to find clean fill material from an upland source.

**N.J.A.C. 7:7-6.11 General permit 11 - investigation, cleanup, removal, or remediation of hazardous substances**

Proposed N.J.A.C. 7:7-6.11, which authorizes all regulated activities landward of the mean high water line that are undertaken, authorized, or otherwise expressly approved in writing by the Department for the investigation, cleanup, removal, or remediation of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants, as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is recodified from N.J.A.C. 7:7-7.15, with the amendments described below.

Pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., with limited exceptions, remediation of contaminated sites in New Jersey proceeds under the supervision of a licensed site remediation professional (LSRP), without Department approval. The Department is therefore proposing to amend the terms of the general permit for investigation, cleanup, removal, or remediation of hazardous substances to recognize that remediation activities conducted under this general permit may be approved by either the Department or an LSRP.

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The Department is also amending this general permit to reflect the consolidation of the mitigation requirements of this chapter into a single subchapter. Specifically, existing N.J.A.C. 7:7-7.15(a)2 and 3, proposed N.J.A.C. 7:7-6.11(a)2 and 3, address mitigation of impacts to special areas and wetlands, respectively. These sections are being amended to cross-reference the new mitigation subchapter, N.J.A.C. 7:7-17.

**N.J.A.C. 7:7-6.14 General permit 14 - bulkhead construction and placement of associated fill at a single-family home or duplex lot**

Proposed N.J.A.C. 7:7-6.14, existing N.J.A.C. 7:7-7.18, authorizes the construction of a bulkhead and placement of associated fill at a single-family home or duplex lot on a natural water body. Proposed N.J.A.C. 7:7-6.14(a)5 sets forth the requirements that must be met for any fill used in the construction of a bulkhead. Currently, this general permit requires that the backfill material be clean fill from an upland source. For the same reasons the Department is proposing to amend general permit 6 – construction of a bulkhead and placement of associated fill on a manmade lagoon at proposed N.J.A.C. 7:7-6.6, and general permit 10 - reconstruction of a legally existing functioning bulkhead at proposed N.J.A.C. 7:7-6.10, the Department is proposing to modify this general permit to allow for the use of the material removed as part of the bulkhead installation (dredged material) to be used as backfill, provided the material meets the criteria for structural or non-structural fill and is managed in accordance with the best management practices set forth in Chapter V of Appendix G.

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For the same reasons as discussed at proposed N.J.A.C. 7:7-6.10(b)3, the Department is proposing to amend existing N.J.A.C. 7:7-7.14(a)8, proposed N.J.A.C. 7:7-6.14(a)8, to delete the requirement that bulkhead construction in V zones include a splash pad on the landward side.

**N.J.A.C. 7:7-6.15 General permit 15 - construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons**

Proposed N.J.A.C. 7:7-6.15, existing N.J.A.C. 7:7-7.19, authorizes the construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons. Proposed N.J.A.C. 7:7-6.15(a)9 requires that the space between horizontal planking be maximized and the width of horizontal planking be minimized to the maximum extent practicable and specifies the spacing necessary between planking based on the width of planks used under normal circumstances. The intent of this provision is to allow the maximum amount of sunlight penetration to the water below. Docks and piers that maximize sunlight penetration into the water and onto the bottom allow continued photosynthesis by plants underneath the structure. In recognition that new materials have been developed that will allow docks to meet the intent of the rule, the Department is proposing to modify the spacing requirement to allow an alternative dock design, that is, alternative materials and/or configuration, provided the alternative design allows for equal or greater sunlight penetration as docks constructed of planking and configured as prescribed in this paragraph. Alternative designs include, for example, grate decking which is constructed of metal, wood, aluminum, or other similar materials which allow sunlight penetration through the grates within the dock or pier. This change is consistent with the changes proposed to the recreational docks and piers rule at proposed N.J.A.C. 7:7-12.5(b)6.

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**N.J.A.C. 7:7-6.20 General permit 20 - legalization of the filling of tidelands**

Proposed N.J.A.C. 7:7-6.20, existing N.J.A.C. 7:7-7.24, authorizes the legalization of the filling of any lands formerly flowed by the tide. The Department is proposing to delete at existing N.J.A.C. 7:7-7.24(a)2, proposed N.J.A.C. 7:7-6.20(a)2, the reference to the adoption of the Tidelands Map and the date of the base map photography since this information is included in the proposed definition of “Tidelands Map” at N.J.A.C. 7:7-1.5.

**N.J.A.C. 7:7-6.23 General permit 23 - geotechnical survey borings**

Proposed N.J.A.C. 7:7-6.23, existing N.J.A.C. 7:7-7.27, authorizes geotechnical survey borings for the purpose of obtaining information on subsurface conditions, determining the presence or extent of contamination in subsurface soils or groundwater, and for obtaining seismic information. The Department is proposing to update the cross-reference to the Department’s Technical Requirements for Site Remediation rules for conducting remedial investigations at existing N.J.A.C. 7:7-7.27(a)3, proposed N.J.A.C. 7:7-6.23(a)3. The Department is also proposing to require that soil borings for remedial investigation be permitted, constructed, and completed in accordance with the Department’s Well Construction and Maintenance; Sealing of Abandoned Well rules at N.J.A.C. 7:9D. N.J.A.C. 7:9D addresses the permitting, construction, and decommissioning of wells, including soil borings and monitoring wells.

At proposed N.J.A.C. 7:7-6.23(a)3iii, the Department is proposing to update the name of the site remediation program to reflect the current organization of the Department. The Department is also proposing to amend this subparagraph to make it clear that, any impact, either

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potential or actual, must be reported to the Department's Site Remediation Program and that this information additionally be reported to the licensed site remediation professional of record assigned to the case, if applicable. The licensed site remediation professional of record assigned to the case is responsible for overseeing the remediation at the site, and therefore needs to be made aware if the monitoring wells are, or might potentially be, impacted by the survey borings and related site disturbance. The Department is also proposing to use the term "decommissioning" rather than "sealing" throughout the paragraph because "decommissioning" is a more precise term. In addition, the Department is clarifying that the decommissioning of monitoring wells and drilling of regulated soil borings must be performed by a New Jersey licensed well driller of the proper class. Pursuant to N.J.A.C. 7:9D, there are several different license classes, each authorized to perform different regulated activities. For example, a driller that holds a master driller's license is authorized to drill and decommission any class of well regulated under N.J.A.C. 7:9D; while a monitoring well driller license is authorized to drill and decommission a much narrower list of well types. The proposed language is intended to emphasize that the licensed driller hired to perform the activities authorized pursuant to the general permit must be licensed appropriately.

**N.J.A.C. 7:7-6.24 General permit 24 - habitat creation, restoration, enhancement, and living shoreline activities**

Proposed N.J.A.C. 7:7-6.24, which contains the general permit for habitat creation, restoration, enhancement, and living shorelines, is recodified from N.J.A.C. 7:7-7.29 with the following amendments.

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Proposed N.J.A.C. 7:7-6.24(d)2 (existing N.J.A.C. 7:7-7.29(d)2), which requires the proposed project to be consistent with the Wetlands Act of 1970, the Waterfront Development Law, CAFRA, and the CZM rules, is being amended to replace the reference to the “Coastal Zone Management rules” with a reference to “this chapter.”

At N.J.A.C. 7:7-6.24(f)3, the Department is proposing to delete reference to the adoption of the Tidelands Map and the date of the base map photography since that information is included in the proposed definition of “Tidelands Map” at N.J.A.C. 7:7-1.5.

**N.J.A.C. 7:7-6.29 General permit 29 - dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency**

Proposed N.J.A.C. 7:7-6.29, which contains the general permit for dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency, is recodified from N.J.A.C. 7:7-7.34 with amendments to recognize the consolidation of coastal rules into one chapter. Proposed N.J.A.C. 7:7-6.29(e) (existing N.J.A.C. 7:7-7.34(e)), which addresses the final placement of the dredged material, is proposed to be amended to provide that the Department will make an acceptable use determination (AUD) for the beneficial use of the dredged material in accordance with Appendix G. An AUD is required for the beneficial use of dredged material. Under Appendix G, all persons producing structural or nonstructural fill, or manufactured soil, or using, processing, or transferring dredged materials in New Jersey must obtain an AUD prior to any use, processing, or transfer of the dredged material or products containing dredged material. An AUD is issued

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by the Department upon its finding that the dredged material admixture or product will be protective of human health and the environment and that all other necessary approvals have been obtained.

**N.J.A.C. 7:7-6.32 General permit 32 - application of pesticide within coastal wetlands to control invasive plant species**

In addition to the new permit-by-rule proposed at N.J.A.C. 7:7-4.21, the Department is proposing a new general permit for the application of pesticide within coastal wetlands to control invasive plant species at N.J.A.C. 7:7-6.32. Activities that may be accomplished under the permit-by-rule are limited to a total area of disturbance of one-quarter acre or less on a site. This general permit is applicable to proposed projects with a total area of disturbance greater than one-quarter acre that meets the criteria summarized below.

As previously stated, invasive species are detrimental to native habitats. The removal of invasive species allows native species to return to the area and increase the biodiversity of the site. The management of invasive plant species in the coastal zone typically includes the application of pesticides within coastal wetlands, which are regulated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and therefore under the CZM rules as proposed to be amended and consolidated. Therefore, the proposed new general permit is intended to allow the application of pesticide in coastal wetlands to control invasive plant species within coastal wetlands provided the activity meets specific criteria as discussed below. It is also common that an application to manage invasive plant species within a wetland habitat is associated with a larger habitat restoration or enhancement project that will significantly alter the existing habitat

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to a native habitat. The management of invasive plant species is often the first step to long-term management, restoration, and enhancement of a site.

For the same reasons the Department is proposing N.J.A.C. 7:7-4.21(a)2, proposed N.J.A.C. 7:7-6.32(a)1 requires that the activities do not adversely affect the habitat to which the pesticide is applied. Consistent with existing N.J.A.C. 7:7-2.2(b)3 (proposed N.J.A.C. 7:7-2.3(b)3), proposed N.J.A.C. 7:7-6.32(a)2 does not allow the application of pesticides on areas containing significant stands of certain coastal wetland species as identified on the coastal wetlands maps included in proposed Appendix D. This requirement ensures that large areas of native species with patches of invasive plant species are not destroyed by the application of pesticide. Finally, for the same reasons the Department is proposing N.J.A.C. 7:7-4.21(a)3, proposed N.J.A.C. 7:7-6.32(a)3 requires that when located within waters of the State or waters of the United States, the activities are conducted pursuant to an aquatic use permit issued by the Department's Pesticide Control Program.

### **Subchapter 7. Long Branch Redevelopment Zone Permit**

Existing N.J.A.C. 7:7-7, General Permits and Permits-by-Rule, contains the promulgated coastal general permits and permits-by-rule, and related provisions, as well as the Long Branch Redevelopment Zone Permit. The Department is proposing to recodify or relocate most of the content of existing N.J.A.C. 7:7-7 to other subchapters, as follows: general provisions for permits-by-rule, general permits-by-certification, and general permits are proposed at N.J.A.C. 7:7-3; permits-by-rule are proposed at N.J.A.C. 7:7-4; general permits are proposed at N.J.A.C. 7:7-6; application requirements for general permits are proposed at N.J.A.C. 7:7-23; public

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notice requirements for general permit applications are proposed at N.J.A.C. 7:7-24; application review provisions are proposed at N.J.A.C. 7:7-26; and permit conditions; modification, transfer, suspension, and termination of authorizations and permits are proposed at N.J.A.C. 7:7-27. The Long Branch Redevelopment Zone Permit at existing N.J.A.C. 7:7-7.4 is proposed to be continued, with amendments as described below, at N.J.A.C. 7:7-7 as the sole subject of the subchapter.

#### **N.J.A.C. 7:7-7.1 Applicability; permit conditions**

Existing N.J.A.C. 7:7-7.4(a) through (g) are proposed to be recodified as subsections (a) through (g) of N.J.A.C. 7:7-7.1, Applicability; permit conditions. N.J.A.C. 7:7-7.1(a) states that the Long Branch Redevelopment Zone Permit authorizes development regulated under N.J.A.C. 7:7-2.2, CAFRA, within the Redevelopment Zone of the City of Long Branch, provided the conditions at N.J.A.C. 7:7-7.1(b) through (g) and the notification requirements at N.J.A.C. 7:7-7.2 or 7.3, as applicable, are met. The Redevelopment Zone is defined in the city's Redevelopment Plan Ordinance and is described in the rule at N.J.A.C. 7:7-7.1(a)1. Minor amendments are proposed at N.J.A.C. 7:7-7.1(a) and (d) through (g) to modify wording, codification, and cross-references that do not affect meaning.

#### **N.J.A.C. 7:7-7.2 Notification to the Department regarding developments requiring planning board approval**

#### **N.J.A.C. 7:7-7.3 Notification to the Department regarding developments not requiring planning board approval**

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Existing N.J.A.C. 7:7-7.4(h) and (i) are proposed to be recodified as N.J.A.C. 7:7-7.2 and 7.3, respectively. The former explains the obligation of the Long Branch Planning Board to notify the Department regarding developments by private developers, which require City planning board approval. The latter explains the obligation of the Long Branch City Council or the Long Branch Redevelopment Agency to notify the Department regarding developments that do not require the Planning Board's approval, that is, public developments proposed by the City Council or the Redevelopment Agency. Minor amendments are proposed at N.J.A.C. 7:7-7.2 and 7.3 to modify wording, codification, and cross-references that do not affect meaning.

#### **N.J.A.C. 7:7-7.4 Publication of notice of Department's decision that Long Branch Redevelopment Zone Permit is or is not applicable to development**

Existing N.J.A.C. 7:7-7.4(j) provides that the Department will publish notice in the DEP Bulletin of its decision that the Long Branch Redevelopment Zone Permit is or is not applicable, pursuant to existing N.J.A.C. 7:7-7.4(h)5, to a development application submitted to the Planning Board by a private developer or, pursuant to existing N.J.A.C. 7:7-7.4(i)3, to a public development proposed by the City Council or Redevelopment Agency. The section is proposed to be recodified at N.J.A.C. 7:7-7.4, with amendments that reflect the restructuring of the subchapter.

#### **N.J.A.C. 7:7-7.5 Requests for adjudicatory hearings**

Existing N.J.A.C. 7:7-7.4(k) outlines the process for requesting an adjudicatory hearing to challenge the Department's decision that the Long Branch Redevelopment Zone Permit is or is

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not applicable to a development. This section is proposed to be recodified at N.J.A.C. 7:7-7.5, with amendments that delete the specific requirements for requesting a hearing for purposes of challenging the Department's decision under this Long Branch Redevelopment Zone Permit except for the requirement at N.J.A.C. 7:7-7.4(k)3, as recodified at N.J.A.C. 7:7-7.5(a)1, that notice of the hearing request must be submitted to the Monmouth County and Long Branch clerks. The proposed amendments replace the specific requirements with a cross-reference to the hearing request provisions proposed at N.J.A.C. 7:7-28, which apply generally to administrative appeals of Department decisions on permits or other approvals under the CZM rules as proposed to be consolidated and amended.

### **Subchapter 8. Individual Permits**

Existing N.J.A.C. 7:7-8, Enforcement, is proposed to be recodified at N.J.A.C. 7:7-29, with amendments. Proposed new N.J.A.C. 7:7-8 establishes the circumstances in which an individual coastal permit is required, and sets forth the provisions governing the duration of and the conditions applicable to an individual coastal permit. As explained below, parts of proposed N.J.A.C. 7:7-8 are relocated, with amendments, from rules in existing N.J.A.C. 7:7.

#### **N.J.A.C. 7:7-8.1 Requirement to obtain an individual permit**

Proposed N.J.A.C. 7:7-8.1 states that an individual permit must be obtained if the regulated activity does not meet the requirements for a permit-by-rule, an authorization under a general permit-by-certification, or an authorization under a general permit.

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#### **N.J.A.C. 7:7-8.2 Duration of an individual permit**

Proposed N.J.A.C. 7:7-8.2(a) establishes the duration of an individual permit for any activity waterward (below) of the mean high water line. As under existing N.J.A.C. 7:7-1.5(c)3, proposed N.J.A.C. 7:7-8.2(a) provides that an individual permit for activities waterward of the mean high water line is valid for five years from the date of issuance. Under the existing rules, these permits cannot be extended. However, based on the Department's experience with waterfront development permits for activities waterward of the mean high water line that have been extended pursuant to the Permit Extension Act of 2008 (P.L. 2008, c.78), as amended January 18, 2010, and September 19, 2012, the Department is proposing that these individual permits may be extended one time for five years.

Notwithstanding the dynamic nature of the aquatic environment, the Department has not observed significant changes in the overall conditions at the sites where activities waterward of the mean high water line have been authorized under the extended permits, including special areas such as shellfish habitat and submerged vegetation. Consequently, the Department has determined that providing for the extension of waterfront development individual permits for activities waterward of the mean high water line for an additional five-year period is appropriate. To obtain an extension, the permittee must submit a request for an extension and make the demonstration required by proposed N.J.A.C. 7:7-27.3 that significant changes in the overall conditions of the site, including special areas, have not occurred.

Proposed N.J.A.C. 7:7-8.2(b) through (e) establish the duration of an individual permit for any activity landward of the mean high water line. Because the coastal environment landward of the mean high water line is more stable than the aquatic environment located

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waterward of the mean high water line, an individual permit for activities landward of the mean high water line can, under the existing rules and under the rules as proposed, continue to be valid authority to conduct the authorized activities beyond the initial five-year term of the permit under certain circumstances.

Under existing N.J.A.C. 7:7-1.5(c), an individual permit for activities landward of the mean high water line is valid authority to commence construction within five years of the permit issuance and construction may continue until completion with written authorization from the Department, provided no less than 20 working days prior to the expiration of the permit the permittee submits a written request to continue construction beyond the expiration of the permit, and there are no lapses in construction for a cumulative period of one year or longer. Exceptions are made for large projects or projects delayed due to circumstances beyond the permittee's control.

Proposed N.J.A.C. 7:7-8.2(b) provides that an individual permit for activities landward of the mean high water line is valid for five years from the date of issuance. This provision is subject to exceptions, set forth at N.J.A.C. 7:7-8.2(c), (d), and (e), which are similar to those under the existing rule at N.J.A.C. 7:7-1.5(c).

Under proposed N.J.A.C. 7:7-8.2(c), if construction is commenced within five years from the date of issuance of the permit and must continue beyond those five years, then the permit is valid until the project is completed, provided no less than 20 working days prior to the expiration of the permit the permittee submits a written request to continue construction beyond the expiration of the permit, the Department provides written approval in response to that request,

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and construction beyond the original five-year period does not lapse for a cumulative period of one year or longer. While the request for approval is under review, construction may continue.

Proposed N.J.A.C. 7:7-8.2(d) enables the individual permit to continue valid for 10 years from issuance in two situations. The first is where construction has not commenced within five years of permit issuance due to circumstances that are beyond the permittee's control. The second is where construction has commenced within five years of permit issuance but will cease for a cumulative period of one year or longer due to circumstances that are beyond the permittee's control. In either situation, the permittee must obtain written approval from the Department. The request for approval to commence construction after the initial five years but before the 10-year period ends must be received by the Department no less than 20 working days before the five-year expiration date of the permit. The request for approval to cease construction that has already begun but that will re-commence before the 10-year period ends must be received by the Department no less than 20 working days before the date that the allowed cumulative one-year period of construction lapse would be exceeded. In either situation, construction may continue while the Department is reviewing the request for approval. Circumstances that could trigger the provisions of proposed N.J.A.C. 7:7-8.2(d) might be, for example, a delay in the financing of a public works project or a delay in obtaining necessary local approvals where the delay is beyond the control of the permittee.

Proposed N.J.A.C. 7:7-8.2(e) provides that if construction does not commence before the end of the 10-year period or does not, after ceasing, re-commence before the end of the 10-year period under a permit for which the Department issued written approval under N.J.A.C. 7:7-8.2(d), then the permit will expire. Where construction does commence or, after ceasing, does

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re-commence before the end of the 10-year period, the permit will continue to be valid until the project is completed, provided the permittee submits a written request no less than 20 working days prior to the date that is 10 years from the original permit issuance date, the Department provides written approval in response to that request, and construction beyond the 10 years from the date of issuance of the permit does not cease for a cumulative period of one year or longer. While the request for this approval is under review by the Department, construction may continue.

Proposed N.J.A.C. 7:7-8.2(f) addresses the situation where an individual permit has expired and the person conducting the regulated activities intends to commence or continue the regulated activities that had been authorized under the expired permit. If no regulated activities have occurred prior to expiration of the individual permit, the Department will issue a new individual permit only if the project is revised where necessary to comply with the requirements of the CZM rules in effect when the application for the new permit is submitted. If any regulated activities have occurred, the Department will issue a new individual permit only if the project is revised where feasible to comply with the requirements of the CZM rules in effect when the application for the new permit is submitted. In determining the feasibility of compliance with the requirements of the rules in effect, the Department will consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original permit, and whether continuing construction as approved under the original permit would have an adverse impact on the environment.

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### **N.J.A.C. 7:7-8.3 Conditions applicable to an individual permit**

Proposed N.J.A.C. 7:7-8.3(a) provides that a person conducting regulated activities pursuant to an individual permit must comply with the conditions set forth in the issued individual permit as well as the conditions that apply to all permits at proposed N.J.A.C. 7:7-27.2.

Proposed N.J.A.C. 7:7-8.3(b) provides that, in addition to the conditions at N.J.A.C. 7:7-27.2, the Department may establish conditions in an individual permit as required on a case-by-case basis to ensure the authorized regulated activity meets the requirements of the CZM rules and its enabling statutes.

### **Subchapter 9. Special Areas**

Special areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. Proposed N.J.A.C. 7:7-9 contains the Department's rules governing special areas and is recodified from N.J.A.C. 7:7E-3, with amendments. As part of the recodification of the sections making up this subchapter, changes are proposed to reflect the consolidation of the coastal rules into one chapter and its new structure. The Department is proposing to delete all references to figures located in Appendix 1, within the existing CZM rules, because the figures currently contained in that Appendix that are applicable to existing N.J.A.C. 7:7E-3 do not accurately reflect the scope and requirements of the rules as proposed to be amended. Where changes proposed to a recodified section are limited to these types of

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changes, no further section summary appears below. Other proposed amendments to the recodified sections are described below.

### **N.J.A.C. 7:7-9.2 Shellfish habitat**

Proposed N.J.A.C. 7:7-9.2, which contains the Department's rule protecting shellfish habitat, is recodified from N.J.A.C. 7:7E-3.2, with amendments. As summarized below, in addition to amendments reflecting codification changes as a result of this proposal, the Department is proposing to amend this rule to relocate the mitigation requirements to the new mitigation subchapter and allow for the expansion of an existing marina or construction of a new marina in certain limited "infill" situations.

The definition of shellfish habitat at N.J.A.C. 7:7-9.2(a) is proposed to be amended to make it clear that shellfish habitat includes both areas which currently support shellfish production and areas that have a history of production of shellfish.

Existing N.J.A.C. 7:7E-3.2(b) (recodified to proposed N.J.A.C. 7:7-9.2(b)) references the Final Short List prepared by the Department pursuant to the Federal Clean Water Act, 33 U.S.C. § 1313(c)1. The Department is updating the title of the document to reflect its current name, the List of Water Quality Limited Segments (also known as the 303(d) list) and also updating the citation for the section of the Federal Clean Water Act under which this list is prepared.

Existing N.J.A.C. 7:7E-3.2(c), proposed N.J.A.C. 7:7-9.2(c), prohibits development that would result in the destruction, condemnation, or contamination of shellfish habitat unless the proposed development is a dock, pier, or boat mooring, dredging, a living shoreline, or a development require for national security constructed in accordance with N.J.A.C. 7:7E-3.2(d)1

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and 3, (e), (f), (g), (h), and (k). The exceptions to the prohibition are proposed to be expanded to include the expansion of existing marinas and construction of new marinas in limited infill situations specified at proposed N.J.A.C. 7:7-9.2(d)4 and 5 (described below).

Proposed N.J.A.C. 7:7-9.2(d)3ii contains the standards for determining the length of a dock or pier, or the location of a boat mooring within shellfish habitat at a single family dwelling. The Department is proposing to clarify at N.J.A.C. 7:7-9.2(d)3ii to specify that, when drawing the straight line between the two nearest adjacent docks, the line is drawn from the outside corners of the outermost end of decking. The Department is proposing new N.J.A.C. 7:7 Appendix E, which illustrates how the maximum length of a single noncommercial dock or pier and the allowable location of a boat mooring in an infill situation is determined.

As part of combining the coastal rules into one chapter, the Department is proposing a new mitigation subchapter, N.J.A.C. 7:7-17, which consolidates the mitigation requirements that are currently located throughout existing N.J.A.C. 7:7E into one subchapter. See N.J.A.C. 7:7-17 for a detailed description of this new subchapter. The mitigation requirements for impacts to shellfish habitat and the marine ecosystem from the construction in shellfish habitat of a single noncommercial dock, pier, or boat mooring associated with a single family dwelling, currently codified at N.J.A.C. 7:7E-3.2(d)3vi, are being recodified at proposed new N.J.A.C. 7:7-17.9 with clarifying amendments. Accordingly, a cross-reference to the new mitigation subchapter is included at proposed N.J.A.C. 7:7-9.2(d)3vi.

Over the past several years, the State has seen a decrease in the number of marina facilities through their conversion to various non-water dependent uses. The Marine Trades Association of New Jersey has reported that as of 2011, over 500 boat slips and 17 marinas have

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been lost. Not only does this loss result in fewer boat slips available to the public, it results in a loss of jobs, revenue, and services at marina facilities. To preserve existing commercial marina facilities, encourage new facilities and ensure there are a sufficient number of boat slips available to the public, the Department is proposing to allow the expansion of commercial marinas within shellfish habitat and the construction of new commercial marinas in infill situations as described below.

The conditions that must be met for the expansion of an existing commercial marina to be allowed in shellfish habitat are set forth at proposed N.J.A.C. 7:7-9.2(d)4. This provision is being limited to legally existing, operating commercial marinas that are open to the general public for the mooring of vessels, including marinas operated by public agencies, commissions and authorities. The intention of this provision is to limit the expansion of marinas into shellfish habitat to only those that are open to the general public and not private operations such as condominium associations where membership is limited exclusively to condominium owners. Because this provision allows for the expansion of marinas into a public resource, it is appropriate to limit this provision to marinas that serve the public. Proposed N.J.A.C. 7:7-9.2(d)4i through v contain the conditions that must be satisfied to allow for the expansion of an existing commercial marina within shellfish habitat.

Proposed N.J.A.C. 7:7-9.2(d)4i requires that the expansion be designed and constructed in a manner that limits the area of shellfish habitat condemned, that is, downgrading of the shellfish growing water classification to “prohibited” for shellfish harvesting under N.J.A.C. 7:12-2.1(a)1ii and reduces the impacts to the marine ecosystem to the maximum extent practicable. This is to be achieved by expanding the marina into areas other than shellfish

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habitat if possible, reconfiguring the slips within the existing marina to provide for the desired expansion to the extent possible in that way, and adjusting the dimensions and locations of the expansion to minimize the total area of shellfish habitat covered by structures.

Proposed N.J.A.C. 7:7-9.2(d)4ii requires that the area in which the marina will be expanded must have sufficient water depths to accommodate the vessels to be moored within the area of expansion. At a minimum, water depth is required to be at least two feet at mean low water, with the depth to be greater than that if larger vessels are proposed to be moored in the area of expansion. This requirement is necessary to ensure that the area in which the marina will be expanded has adequate water depths so that dredging will not be required. Dredging destroys shellfish habitat by removing the substrate in which shellfish live. Accordingly, proposed N.J.A.C. 7:7-9.2(d)4iii prohibits dredging in conjunction with the construction or use of the marina expansion.

The rules at existing N.J.A.C. 7:7E-3.2(d)3i(1) and 7.3(d)10ii (proposed at N.J.A.C. 7:7-9.2(d)3i(1) and 15.3(d)8ii, respectively), require that a dock, pier, or mooring located within shellfish habitat at a single-family dwelling or the construction of a new, or expansion or renovation of an existing, marina located on any portion of the Navesink River, Shrewsbury River, Manasquan River (upstream of Route 35 Bridge) or St. Georges Thorofare be constructed of non-polluting materials to reduce impacts to the habitat. Consistent with the standards relevant to marinas at proposed N.J.A.C. 7:7-15.3(d)8ii, proposed N.J.A.C. 7:7-9.2(d)4iv requires that all structures associated with the marina expansion located at or waterward of the mean high water line be constructed of non-polluting materials, with the exception of pilings. Pilings are not required to be of a non-polluting material because treated pilings do not leach the

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chemicals to the same degree that sheathing and planking do. The difference in leaching is due to the fact that pilings consist primarily of “heartwoods” which better absorb chemicals used to treat wood. In addition, the surface area of pilings which come in contact with the water is much less than the surface area of bulkhead sheathing and dock planking that comes in contact with the water; therefore, pilings do not represent as great a concern in terms of chemical leaching.

Proposed N.J.A.C. 7:7-9.2(d)4v requires the expanded marina provide on-site restroom and pumpout facilities. This provision is intended to reduce impacts to water quality. The standards for development of marinas at proposed N.J.A.C. 7:7-15.3(d)2i requires the installation of restrooms, and, for marinas with dockage for 25 or more vessels or any vessel with live-aboard arrangements, pumpout facilities must be provided. Because proposed N.J.A.C. 7:7-9.2(d)4 allows for the expansion of a marina into a public resource, the Department is requiring that restroom and pumpout facilities be provided to ensure proper disposal of wastewater and to offset additional impacts to water quality.

Proposed N.J.A.C. 7:7-9.2(d)4vi requires that mitigation for the condemnation of shellfish habitat or other impacts to the marine ecosystem be provided in accordance with proposed N.J.A.C. 7:7-17. Mitigation will be required in the form of a monetary contribution to the Department’s dedicated account for shellfish habitat mitigation in accordance with proposed N.J.A.C. 7:7-17.9.

The conditions that must be met to allow for the construction of a new commercial marina within shellfish habitat in an infill situation are proposed at N.J.A.C. 7:7-9.2(d)5. Some areas of the coast have a concentration of commercial marinas such that the marine ecosystem within the surrounding area has been affected by their operation. While the construction of a

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new commercial marina within shellfish habitat in an infill situation will result in the downgrading of the shellfish growing water classification to “prohibited” for shellfish harvesting under N.J.A.C. 7:12-2.1(a)1ii where the structures are located and boats are moored, the habitat will continue to exist. The Department has determined that where there is a concentration of existing commercial marinas and the adverse impacts to the shellfish habitat of the development of the new marina are mitigated by minimizing the area covered by structures, providing adequate water depths, prohibiting dredging, using non-polluting materials, and providing a monetary contribution to the Department’s dedicated account for shellfish habitat mitigation, new commercial marinas within shellfish habitat in infill situations are acceptable as described below.

For the same reasons explained in the summary of N.J.A.C. 7:7-9.2(d)4 above, proposed N.J.A.C. 7:7-9.2(d)5 is limited to commercial marinas that are open to the general public for the mooring of vessels and marinas operated by public agencies, commissions, and authorities. Proposed N.J.A.C. 7:7-9.2(d)5i describes the infill situation for purposes of allowing a new commercial marina in shellfish habitat. The proposed marina must be located between two legally existing and operating commercial marinas where the distance between the two nearest adjacent existing legal docks or piers of the two marinas on either side of the proposed marina is no more than 500 feet as measured from the outside corner of the outermost end of decking of the two nearest adjacent legal docks or piers. Proposed new N.J.A.C. 7:7 Appendix F contains an illustration of how this distance is measured. To ensure that the proposed marina does not adversely affect the use of the existing marinas to each side of the proposed new marina,

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proposed N.J.A.C. 7:7-9.2(d)5ii requires that the marina not interfere with access to the existing marinas.

Similar to proposed N.J.A.C. 7:7-9.2(d)4i, proposed N.J.A.C. 7:7-9.2(d)5iii requires that the total area covered by structures be minimized. Proposed N.J.A.C. 7:7-9.2(d)5iv, v, and vi, which address water depths, dredging, and use of non-polluting materials, are proposed for the same reasons as described above in the summary of proposed N.J.A.C. 7:7-9.2(d)4ii through iv.

For the same reasons as discussed above at proposed N.J.A.C. 7:7-9.2(d)4v, the Department is proposing at N.J.A.C. 7:7-9.2(d)5vii to require that the new marina provide on-site restroom and pumpout facilities.

Similar to proposed N.J.A.C. 7:7-9.2(d)4v, proposed N.J.A.C. 7:7-9.2(d)5viii requires mitigation for the condemnation of shellfish habitat or other impacts to the marine ecosystem be provided in accordance with proposed N.J.A.C. 7:7-17.

The rule rationale at N.J.A.C. 7:7-9.2(m) is proposed to be amended to update cited statistics and include rationale concerning the expansion of existing marinas and construction of new marinas in limited infill situations within this special area.

### **N.J.A.C. 7:7-9.3 Surf clam areas**

Proposed N.J.A.C. 7:7-9.3, which sets forth the Department's rules to protect surf clam areas, is recodified from N.J.A.C. 7:7E-3.3 with amendments updating the rule rationale at proposed N.J.A.C. 7:7-9.3(c) to reflect information on 2011 surf clam landings and values.

### **N.J.A.C. 7:7-9.4 Prime fishing areas**

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Proposed N.J.A.C. 7:7-9.4, which sets forth the Department's rule protecting prime fishing areas, is recodified from N.J.A.C. 7:7E-3.4 with amendments updating the rule rationale at proposed N.J.A.C. 7:7-9.4(c) to reflect 2011 statistics.

#### **N.J.A.C. 7:7-9.6 Submerged vegetation habitat**

Proposed N.J.A.C. 7:7-9.6, which contains the Department's rule protecting submerged vegetation habitat, is recodified from N.J.A.C. 7:7E-3.6 with amendments. Specifically, the Department is modifying this rule to define new dredging and relocate the mitigation requirements to the new mitigation subchapter.

Proposed N.J.A.C. 7:7-9.6(b) identifies activities that are acceptable in submerged vegetation habitat. Proposed N.J.A.C. 7:7-9.6(b)2 sets forth the conditions that must be satisfied to allow new dredging of navigation channels maintained by the Federal or State government. A cross-reference to the definition of new dredging at N.J.A.C. 7:7-12.7 is being added at proposed N.J.A.C. 7:7-9.6(b)2 for the purposes of clarity. Existing N.J.A.C. 7:7E-3.6(b)3 contains the conditions that must be satisfied to allow for maintenance dredging of previously authorized, existing navigation channels maintained by the State and Federal government and associated disposal areas. The Department is proposing to recodify this paragraph at N.J.A.C. 7:7-9.6(b)3 and delete reference to associated disposal areas, as rules specific to the management or disposal of dredged material in water and on land are located at proposed N.J.A.C. 7:7-12.9 and 15.12.

Proposed N.J.A.C. 7:7-9.6(d) is recodified from existing N.J.A.C. 7:7E-3.6(d) with amendments that replace the mitigation requirements for impacts to submerged vegetation habitats with a cross-reference to the new mitigation subchapter, N.J.A.C. 7:7-17. The substance

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of the mitigation requirements at existing N.J.A.C. 7:7E-3.6(d) is proposed to be relocated to N.J.A.C. 7:7-17.10, Requirements for submerged vegetation habitat mitigation, with amendments as described in the summary of that section.

#### **N.J.A.C. 7:7-9.7 Navigation channels**

Proposed N.J.A.C. 7:7-9.7, which is the rule for the protection of navigation channels, is recodified from N.J.A.C. 7:7E-3.7 with amendments addressing the acceptability of maintenance and new dredging of navigation channels at proposed N.J.A.C. 7:7-9.7(b)5 and 6, respectively. Maintenance or new dredging of navigation channels is conditionally acceptable provided that the dredging operation and management of the dredged material meet the requirements of the maintenance dredging or new dredging rules at proposed N.J.A.C. 7:7-12.6 and 12.7 respectively, and Appendix G. Dredging to maintain or expand existing previously authorized navigation channels is supported by the Department as it provides for universal safe navigation and promotes commercial and recreational uses of the State's waters, consistent with the goals of New Jersey's Coastal Management Program at existing N.J.A.C. 7:7E-1.1(c) (proposed at N.J.A.C. 7:7-1.1(c)).

#### **N.J.A.C. 7:7-9.13 Shipwreck and artificial reef habitats**

Proposed N.J.A.C. 7:7-9.13, which addresses shipwreck and artificial reefs, is recodified from existing N.J.A.C. 7:7E-3.13 with amendments relating to known shipwreck and artificial reef sites. Specifically, the Department is proposing to update the listing of known shipwreck or artificial reef habitats at proposed N.J.A.C. 7:7-9.13 by deleting reference to the charts listed at

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existing N.J.A.C. 7:7E-3.7(a), the navigation channel rule. In February 2003, the Department amended the navigation channel rule to delete the list of specific NOAA/Ocean Service charts, eliminating the need to amend the rule when new charts are established and/or existing charts are deleted. (See 35 N.J.R. 632(a), February 3, 2003.) Accordingly, the Department is proposing to delete this outdated cross-reference. The Department is also proposing to add a reference to a book published in 2003 that identifies artificial reef sites that were created from shipwrecks.

In addition, the Department is proposing to update the rule rationale at proposed N.J.A.C. 7:7-9.13(d) to reflect the addition of a new artificial reef that was deployed in 2005.

#### **N.J.A.C. 7:7-9.14 Wet borrow pits**

Proposed N.J.A.C. 7:7-9.14, which contains the Department's standards for development of wet borrow pits, is recodified from N.J.A.C. 7:7E-3.14, with amendments relating to the use of dredged material.

Proposed N.J.A.C. 7:7-9.14(b), existing N.J.A.C. 7:7E-3.14(b), provides that all proposed dredging and filling activities must comply with any applicable FWPA rules and that such activities must also receive a water quality certificate pursuant to N.J.S.A. 58:10A-1 et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities. The Department is proposing to delete reference to Section 401 of the Federal Clean Water Act and replace it with the proposed defined term "water quality certificate." Information on the Federal origin of this certificate is contained in the proposed definition of this term at proposed N.J.A.C. 7:7-1.5. The Department is proposing to delete reference to N.J.S.A. 58:10A et seq., because the

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requirement to obtain a water quality certificate emanates from the Federal Clean Water Act and not the State act.

Existing N.J.A.C. 7:7E-3.14(f) discourages the disposal of dredged material within a wet borrow pit unless, among other things, the material is clean and non-toxic, of an appropriate particle size for the site, and will not disturb groundwater flow or quality. Existing N.J.A.C. 7:7E-3.14(g) addresses the filling of wet borrow pits for construction activities. Both existing N.J.A.C. 7:7E-3.14(f) and (g) run contrary to the State's policy concerning the beneficial use of dredged material. Dredged material that meets the acceptability conditions specified in Appendix G will be of the appropriate grain size and chemical composition (clean and non-toxic) to be used as fill for the purposes of construction. The Department is proposing to delete existing N.J.A.C. 7:7E-3.14(f), which was intended to discourage the use of wet borrow pits as dredged material disposal sites within the State. The Department is also proposing to amend existing N.J.A.C. 7:7E-3.14(g) (proposed N.J.A.C. 7:7-9.14(f)) to allow the use of dredged material as fill in the reclamation of wet borrow pits for the purposes of construction in certain circumstances. This change will allow dredged material that is excavated from dredged material management areas to be used as fill material in the reclamation of wet borrow pits. Removal of dredged material from these management areas will allow for renewable capacity of these areas for future dredging projects.

The rule rationale at proposed N.J.A.C. 7:7-9.14(j) is being amended to recognize the beneficial use of dredged material in the reclamation of wet borrow pits.

#### **N.J.A.C. 7:7-9.15 Intertidal and subtidal shallows**

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Proposed N.J.A.C. 7:7-9.15, which sets forth the Department's rule protecting intertidal and subtidal shallows, is recodified from N.J.A.C. 7:7E-3.15 with amendments. Specifically, the Department is proposing to modify this rule to relocate the mitigation requirements to the new mitigation subchapter.

Proposed N.J.A.C. 7:7-9.15(d) provides that new dredging of intertidal and subtidal shallows is discouraged unless there is a need for the proposed facility requiring the dredging, there is no feasible alternate location, and the proposed dredging and facility that requires the dredging are designed to minimize impacts to intertidal and subtidal shallows. A cross-reference to the definition of new dredging at N.J.A.C. 7:7-12.7 is being added at proposed N.J.A.C. 7:7-9.15(d) for the purposes of clarity.

Proposed N.J.A.C. 7:7-9.15(i) requires mitigation for the destruction of intertidal and subtidal shallows, and identifies the activities for which mitigation is not required. Because the mitigation requirements for the destruction of intertidal and subtidal shallows at existing N.J.A.C. 7:7E-3.15(j) are being relocated in proposed N.J.A.C. 7:7-17.11, Requirements for intertidal and subtidal shallows and tidal water mitigation, a cross-reference to the new mitigation subchapter at N.J.A.C. 7:7-17 is added.

#### **N.J.A.C. 7:7-9.22 Beaches**

Proposed N.J.A.C. 7:7-9.22, which sets forth the Department's standards for protecting beaches, is recodified from existing N.J.A.C. 7:7E-3.22 with amendments.

Proposed N.J.A.C. 7:7-3.22(b) prohibits development on beaches, except for development that has no prudent or feasible alternative in an area other than a beach, provided

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that the development will not cause significant adverse long-term impacts to the natural functioning of the beach and dune system. Examples of acceptable activities on beaches are provided at paragraphs (b)1 through 9. Proposed N.J.A.C. 7:7-9.22(b)7 provides that beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system and which do not preclude the development of a stable dune along the back beach area, are acceptable activities on a beach. A cross-reference to the standards for beach and dune maintenance activities at proposed N.J.A.C. 7:7-7.10 is being added for clarity since this subchapter contains the Department's standards for routine beach and dune maintenance activities and dune maintenance and creation.

#### **N.J.A.C. 7:7-9.23 Filled water's edge**

Proposed N.J.A.C. 7:7-9.23, which contains the Department's standards for development within filled water's edge areas, is recodified from N.J.A.C. 7:7E-3.23 with amendments clarifying the definition of a filled water's edge area and specifically describing how to determine the extent of these special areas.

Proposed N.J.A.C. 7:7-9.23(a) defines a filled water's edge area. The Department is clarifying that filled water's edge areas are existing filled water, wetland, or upland areas lying between wetlands or water areas and either the upland limit of fill or the first paved public road or railroad landward of the adjacent water area, whichever is closer to the water.

Proposed N.J.A.C. 7:7-9.23(b) explains how to determine the extent of the filled water's edge special area. The Department uses historical data such as United States Department of Agriculture soil surveys, Tidelands maps or aerial photography to determine filled water's edge

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areas. Soil surveys are publications developed by the National Cooperative Soil Survey, a joint effort of the United States Department of Agriculture and agencies of the State, usually the Agricultural Experiment Stations. They provide detailed soil descriptions that are the result of years of field work conducted by certified soil scientists. A soil survey is one of the most important and accurate tools used in the identification of soil types, including those soils that have been disturbed either through filling or excavating. For example, Psamment soils are described as “deep, moderately well drained and somewhat poorly drained, sandy fill material.” Because Psamment soils are a sandy fill material found in the coastal zone, the Department uses these soils types in identifying filled water’s edge areas. Tidelands maps and aerial photography are other forms of historical data that assist in determining areas that have been filled.

Existing N.J.A.C. 7:7E-3.23(b), proposed N.J.A.C. 7:7-9.23(c), defines how the area considered to be the “waterfront portion” of a filled water’s edge site is determined. The “waterfront portion” of the site is subject to limitations on the types of development allowed pursuant to proposed N.J.A.C. 7:7-9.23(d). The acronym “MHWL” is proposed to be deleted, and the capitalization of mean high water line removed as unnecessary.

Existing N.J.A.C. 7:7E-3.23(c), proposed N.J.A.C. 7:7-9.23(d), requires that for filled water’s edge sites with direct water access, the waterfront portion of the site be either developed with a water dependent use or left undeveloped for future water dependent uses. The Department, at proposed new subsection (l), is proposing to allow the construction of a restaurant at a marina with 25 or more dockage units consisting of either dry dock storage or wet slips provided that it meets the standards at proposed N.J.A.C. 7:7-15.3(d)8. Under the existing CZM rules, restaurants are considered “water oriented” development. A water oriented development is

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a development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. A restaurant, since it serves the public, can be water-oriented if it takes full advantage of a waterfront location. Marinas are a water dependent development essential to the State's boating industry as they provide necessary infrastructure and services to the boating public. However, the economic recession and Superstorm Sandy have severely impacted this industry. The Department has determined that the construction of a restaurant within the waterfront portion of a marina site is appropriate since the restaurant will serve the public and expand the public's opportunity for both visual and physical access to the water and will provide marinas with a year-round use making them more economically viable.

The Department is proposing to amend the rule rationale at proposed N.J.A.C. 7:7-9.23(m), existing N.J.A.C. 7:7E-3.23(l), for accuracy. Specifically, the Department is proposing to delete language stating that many marina existing marinas are filled to capacity with waiting lists of one season or more. As explained at N.J.A.C. 7:7-15.3(d), the conversion of marinas to waterfront condominiums and other non-water dependent development is a trend that is growing both on a national and State level. The Marine Trades Association of New Jersey has been tracking the loss of marine facilities within the State. According to the Marine Trades Association of New Jersey, as of 2011, the marina industry has lost over 500 slips and 17 marina facilities have been closed or sold for development. This is supported by the Department's experience in reviewing development proposals to convert existing water dependent uses to housing.

#### **N.J.A.C. 7:7-9.24 Existing lagoon edges**

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Proposed N.J.A.C. 7:7-9.24, which contains the Department's standards for the development of existing lagoon edges, is recodified from N.J.A.C. 7:7E-3.24. Existing N.J.A.C. 7:7E-3.24(b)4, proposed at N.J.A.C. 7:7-9.24(b)4, requires that development of existing lagoon edges comply with the requirements for impervious cover (non-porous cover, as proposed to be amended) and vegetative cover that apply to the site under existing N.J.A.C. 7:7E-5, 5A, or 5B (proposed N.J.A.C. 7:7-13). The Department is proposing to delete reference to the requirements of N.J.A.C. 7:7E-5A or 5B as these requirements are proposed to be included in proposed N.J.A.C. 7:7-13 as explained further in the summary of that subchapter.

#### **N.J.A.C. 7:7-9.25 Flood hazard areas**

Proposed N.J.A.C. 7:7-9.25, which contains the Department's standards for the development within flood hazard areas, is recodified from N.J.A.C. 7:7E-3.25.

Existing N.J.A.C. 7:7E-3.25(d) (proposed at N.J.A.C. 7:7-9.25(d)) provides that, in order to preserve the undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body for water dependent uses, development is prohibited unless the development is a water dependent use. Under this proposal, the Department is proposing to allow the construction of one or two single-family homes or duplexes within an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body. This change is consistent with the FHACA rules which allow development of a single family home in flood hazard areas provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.

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Proposed N.J.A.C. 7:7-9.25(g) requires that development in a flood hazard area comply with the requirements for non-porous and vegetative cover under proposed N.J.A.C. 7:7-13. The Department is proposing to delete reference to the requirements of N.J.A.C. 7:7E-5A or 5B as these requirements are proposed to be included in proposed N.J.A.C. 7:7-13 as explained in the summary of that subchapter.

At existing N.J.A.C. 7:7E-3.25(j) (proposed N.J.A.C. 7:7-9.25(j)), the Department is modifying the rule rationale to address the change concerning the development of one or two single-family homes or duplexes within the undeveloped portion of a flood hazard area.

#### **N.J.A.C. 7:7-9.26 Riparian zones**

New N.J.A.C. 7:7-9.26(h) allows for the construction of a restaurant at a marina facility within the riparian zone, provided that it meets the standards of N.J.A.C. 7:7-15.3(d)8. As stated in the summary of proposed N.J.A.C. 7:7-9.23(1), the ability to construct a restaurant at a marina facility will expand the public's opportunity for both visual and physical access to the State's tidal waters while providing marina facilities with a year-round use making them more economically viable.

#### **N.J.A.C. 7:7-9.27 Wetlands**

Proposed N.J.A.C. 7:7-9.27, which contains the Department's rule protecting wetlands, is recodified from N.J.A.C. 7:7E-3.27, with amendments. Specifically, the Department is proposing to amend this rule to modify the note regarding the availability of various maps on which wetlands are identified, modify the requirements that must be met for the use of former

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dredged material disposal sites where wetlands have become established, and to relocate the mitigation requirements to the new mitigation subchapter.

Proposed N.J.A.C. 7:7-9.27(a) cites the various maps which identify wetlands and indicates that the coastal wetlands maps and NJDEP freshwater wetlands maps are available from the Department's Maps and Publication Sales Office. The note regarding the availability of these maps from the sales office is updated as this office has been eliminated. The coastal wetlands maps are available from the Division of Land Use Regulation by e-mailing [TidelandsMapServices@dep.state.nj.us](mailto:TidelandsMapServices@dep.state.nj.us). The NJDEP freshwater wetlands maps are available through NJ-GeoWeb (see <http://www.nj.gov/dep/gis/newmapping.htm>).

Proposed N.J.A.C. 7:7-9.27(c) (existing N.J.A.C. 7:7E-3.27(c)) sets forth the four conditions under which development in wetlands not defined at proposed N.J.A.C. 7:7-9.27(b) is acceptable. Development that does not meet these conditions is prohibited. The Department is proposing to except from proposed N.J.A.C. 7:7-9.27(c), the establishment of a living shoreline in wetlands to address the loss of vegetated shorelines and habitat in the littoral zone. Tidal wetlands are a major component of the coastal ecosystem that serve multiple ecosystem purposes as well as functioning as a first defense against coastal storms. Living shorelines are a means to protect, restore, or enhance the wetlands special area. Accordingly, the establishment of a living shoreline within wetlands is acceptable provided the living shoreline complies with proposed N.J.A.C. 7:7-12.23 (existing N.J.A.C. 7:7E-4.23), Living shorelines.

Proposed N.J.A.C. 7:7-9.27(h) (existing N.J.A.C. 7:7E-3.27(h)) sets forth the conditions that must be met for the use of former dredged material management areas where wetlands have been established. Changes in terminology throughout this subsection are proposed for

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consistency with the proposed new special area rule at N.J.A.C. 7:7-9.49, Dredged material management areas. As discussed in detail at proposed N.J.A.C. 7:7-9.49, dredged material management areas are areas that are documented as being previously used for the placement of dredged material associated with the dredging of State and Federal navigation channels or marinas. The primary purpose of these areas is to facilitate maintenance and safe navigation of State and Federal navigation channels and marinas. In order to use a former dredged material management area in which wetlands are now present, existing N.J.A.C. 7:7E-3.27(h)1 requires that the site must have been used within the last 10 years. The Department is proposing to delete this requirement because the Department has determined that it is appropriate to evaluate the use of former dredged material management areas based on existing environmental conditions at the time an application is submitted to the Department in order to minimize impacts to special areas instead of limiting use of the area based solely on the last time it was used for dredged material management. The requirements of existing N.J.A.C. 7:7E-3.27(h)2 through 7 (proposed N.J.A.C. 7:7-9.27(h)1 through 6) serve to minimize impacts of the use of dredged material management areas on surrounding land uses and coastal resources. Removal of the 10-year requirement will facilitate the use of former dredged material management areas that may not have been used in the last 10 years but are critical to facilitate the maintenance and safe navigation of State and Federal navigation channels and marinas.

Existing N.J.A.C. 7:7E-3.27(h)2, proposed N.J.A.C. 7:7-9.27(h)1, addresses the construction or reconstruction of dikes or berms as part of the use of a former dredged material management area for continued placement of dredged material. This provision requires that the dredged material management area must have existing dikes or berms in sound condition and/or

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must have sufficient material within the area to allow for the construction or reconstruction of structurally sound dikes or berms, and is proposed to be amended to ensure the structural integrity of any constructed or reconstructed dikes or berms. Specifically, it is proposed that any construction or reconstruction of dikes or berms be designed by a New Jersey licensed professional engineer and be performed in accordance with proposed Appendix G. Proposed Appendix G requires that the construction or reconstruction of dikes or berms meet the technical standards set forth in the USACE Confined Disposal of Dredged Material Engineering Manual, EM 1110-5027, September 1987. In addition, under proposed N.J.A.C. 7:7-9.27(h)1, any material placed on the exposed surfaces of the dikes or berms must meet the appropriate Soil Remediation Standards (N.J.A.C. 7:26D Appendix 1). This provision is intended to minimize impacts of any potential exposure to contaminants that may be present in the dredged material within the management area used to construct or reconstruct berms or dikes.

The mitigation requirements for the loss or degradation of wetlands, currently codified at N.J.A.C. 7:7E-3.27(i), are being relocated to the new mitigation subchapter at proposed new N.J.A.C. 7:7-17. The Department is proposing to incorporate standards similar to most of the mitigation standards of the FWPA Rules at N.J.A.C. 7:7A-15 into the CZM rules as the standards for coastal wetland mitigation as these standards have proven to be effective in mitigating for the loss or degradation of wetlands and would apply to all wetland mitigation regardless of whether the wetlands are tidal or non-tidal. This change will provide consistency between the wetland mitigation requirements of the FWPA and the CZM rules. The standards specific to wetlands mitigation are described in the summary of proposed N.J.A.C. 7:7-17.13 and 17.14.

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#### **N.J.A.C. 7:7-9.30 Intermittent stream corridors**

Proposed N.J.A.C. 7:7-9.30, which contains the Department's rule protecting intermittent stream corridors, is recodified from N.J.A.C. 7:7E-3.32 with amendments. Specifically, the Department is proposing to delete the description of the prohibited activities that would directly degrade the function of intermittent stream corridors at existing N.J.A.C. 7:7E-3.32(c) since these resources are protected under the FHACA Rules and/or the FWPA Rules. Those regulations impose prohibitions as well as limitations that are designed to protect the functioning of this water feature. Therefore, in order to comply with this rule, the applicant must ensure that activities in an intermittent stream corridor meet the requirements of the FHACA Rules.

#### **N.J.A.C. 7:7-9.33 Dry borrow pits**

Proposed N.J.A.C. 7:7-9.33, which sets forth the Department's rule pertaining to dry borrow pits, is recodified from N.J.A.C. 7:7E-3.35 with amendments relating to the use of dredged material.

Proposed N.J.A.C. 7:7-9.33(h) sets forth the conditions that must be met for the filling of dry borrow pits for construction to be allowed. The Department is proposing to amend this subsection to include, as acceptable, fill dredged material that meets the standards contained in proposed Appendix G. This change supports the State's longstanding policy of beneficially using dredged material in appropriate applications rather than relying on the management of dredged material in dredged material management areas. Dredged material that meets the standards specified in proposed Appendix G will be of the appropriate grain size and will be

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demonstrated to be clean (from a non-contaminated source or material which has been tested and shown to attain the appropriate Residential Direct Contact Soil Cleanup Criteria) to be appropriately used as fill. Removal of dredged material from these dredged material management areas will allow for renewable capacity for future dredging projects.

Proposed N.J.A.C. 7:7-9.33(j), which contains the rationale for the rule, is being amended to recognize the beneficial use of dredged material of the appropriate grain size in the reclamation of dry borrow pits.

#### **N.J.A.C. 7:7-9.36 Endangered or threatened wildlife or plant species habitats**

Proposed N.J.A.C. 7:7-9.36, which contains the Department's rule protecting endangered or threatened wildlife or plant species habitats, is recodified from N.J.A.C. 7:7E-3.38 with amendments updating the appropriate Division contact information. Specifically, the Department is updating the Department address used to obtain information concerning endangered or threatened wildlife species habitat and the occurrence of endangered or threatened plant species at proposed N.J.A.C. 7:7-9.36(a)2, (f), and (g), respectively.

#### **N.J.A.C. 7:7-9.39 Special hazard areas**

Proposed N.J.A.C. 7:7-9.39, which contains the Department's rule regarding development within special hazard areas, is recodified from N.J.A.C. 7:7E-3.41 with amendments. Existing N.J.A.C. 7:7-9.41(c) provides that approvals from the Department's Division of Solid and Hazardous Waste prior to commencement of any hazardous waste investigations or cleanup activities at contaminated sites. Reference to the Department's

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Division of Solid and Hazardous Waste is being updated to reflect the Department's current organizational structure.

#### **N.J.A.C. 7:7-9.47 Atlantic City**

Proposed N.J.A.C. 7:7-9.49, which contains the Department's special area rule facilitating certain types of development and encouraging the redevelopment of Atlantic City, is recodified from N.J.A.C. 7:7E-3.49 with amendments relating to the standards for elevated pedestrian bridges.

At proposed N.J.A.C. 7:7-9.47(d), the Department is proposing to delete reference to the marina development standards at existing N.J.A.C. 7:7E-7.3A. As discussed in the summary of N.J.A.C. 7:7E-7.3A, the Department is proposing to repeal this rule since it is duplicative of New Jersey's Clean Marina Program and standards elsewhere in the CZM rules.

Existing N.J.A.C. 7:7E-3.49(e)2v requires that the elevated pedestrian bridge must be connected to an existing pier. The Department is proposing to delete this provision because it precludes the construction of these bridges to access the beach, the Atlantic Ocean, or other development. Allowing pedestrian bridges in these situations increases the connectivity of the casino-hotel with the beach, ocean, and other development on the east side of the Boardwalk. The Department is also proposing to amend existing N.J.A.C. 7:7E-3.49(e)2vi (proposed N.J.A.C. 7:7-9.47(e)2v) to modify the limitation that there be no more than one pedestrian bridge per existing pier to instead provide that each casino-hotel may only have one pedestrian bridge. This limitation is necessary to ensure that the relationship between the boardwalk, beach, and ocean are not adversely affected by numerous structures over the Boardwalk.

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### **N.J.A.C. 7:7-9.49 Dredged material management areas**

In accordance with proposed N.J.A.C. 7:7-9.1(a), special areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning as to merit focused attention and special management rules. Over the last decade, a number of dredged material management areas adjacent to Federal and State navigation channels have been converted to residential or commercial development or mitigation areas, which has resulted in the inability of the Federal and State governments to maintain these navigation channels for recreational and commercial boating. Due to the loss of these areas, the government has had to transport dredged materials far from its source at a high cost, create new capacity in environmentally sensitive nearshore environments, or defer maintenance dredging altogether. The failure to maintain navigational depths creates a hazard to all boating traffic and can impede growth of commercial and recreational activities in coastal communities or even result in reduction of those activities. Marinas are an essential component of the State's waterfront communities as they provide necessary infrastructure and services to the boating public; failure to maintain water depths at marinas may impede recreational boating opportunities. Therefore, the Department is proposing a new special area rule, dredged material management areas at N.J.A.C. 7:7-9.49, in recognition that these areas are critical to facilitating maintenance and safe navigation of State and Federal navigation channels and marinas.

Proposed N.J.A.C. 7:7-9.49(a) defines this special area. A dredged material management area is an area documented as having been previously used for the placement of sediment associated with the dredging of State and/or Federal navigation channels and marinas.

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Documentation that would support a finding that an area is a dredged material management area includes, but is not limited to, aerial photography, historical surveys, and/or previously issued dredging permits.

Proposed N.J.A.C. 7:7-9.49(b) and (c) address development of a dredged material management area which results in a change of land use. For example, construction of a residential or commercial development on a dredged material management area is a change in land use. Proposed N.J.A.C. 7:7-9.49(b) provides that development which changes the land use of a dredged material management area owned by a Federal or State agency is discouraged. This provision is intended to preserve these areas as they are a critical component of dredging operations to maintain State and Federal navigation channels. Dredged material management areas are also owned by persons, entities, and local governmental entities. For example, dredged material management areas may be located on a private property, such as a marina, or may be owned by a county or municipal government. In some cases, it is necessary for the State to use a dredged material management area that is not owned by a Federal or State agency. Proposed N.J.A.C. 7:7-9.49(c) provides that development which changes the land use of a dredged material management area owned by a person, entity, or local governmental entity is conditionally acceptable provided the Department determines either that the use of the area was for the one-time placement of dredged material or that the dredged material management area is not located within hydraulic pumping distance of a State or Federal navigation channel, and that the purchase of this area by the State for use as a dredged material management area is not feasible. This provision is intended to preserve those dredged material management areas which have historically been used for the management of dredged material and are located within close

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proximity to State and/or Federal navigation channels. Proposed N.J.A.C. 7:7-9.49(c)1 provides persons, entities, and local governmental entities assurance that areas used for the one-time placement of dredged materials or that are not located within hydraulic pumping distance of a State or Federal navigation channel, which is generally a distance greater than one mile, may be converted to a different land use where the Department has determined that the purchase of the property for use as a dredged material management area is not feasible.

Proposed N.J.A.C. 7:7-9.49(d) encourages the beneficial use of dredged material from a dredged material management area, provided environmental impacts associated with the removal of dredged material are minimized. This provision supports the State's longstanding policy concerning the beneficial use of dredged material allowing for renewable capacity at these sites for future dredging projects.

Proposed N.J.A.C. 7:7-9.49(e) contains the rule rationale. The rationale specifies that continued use of these areas for the management of sediments removed from State and Federal navigation channels and marinas to maintain navigation is critical to the State's recreational and commercial boating industry and marine commerce.

#### **Subchapter 10. Standards for Beach and Dune Activities**

Proposed N.J.A.C. 7:7-10, which contains the standards for beach and dune maintenance activities, is recodified from N.J.A.C. 7:7E-3A, with minor amendments to facilitate the combining of the coastal rules into one chapter. The standards for beach and dune maintenance activities are referenced in various specific CZM rules. They are also the standards for general permit 2 - beach and dune maintenance activities at proposed N.J.A.C. 7:7-6.2.

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### **N.J.A.C. 7:7-10.3 standards applicable to emergency post-storm beach restoration**

Proposed N.J.A.C. 7:7-10.3, existing N.J.A.C. 7:7E-3A.3, contains the standards applicable to emergency post-storm beach restoration in response to coastal storms with a recurrence interval equal to or exceeding a five-year storm. Proposed N.J.A.C. 7:7-10.3(d) addresses the movement of sand from the lower beach profile to the upper beach profile as part of an emergency post-storm beach restoration plan. Proposed N.J.A.C. 7:7-10.3(d)2 specifies that the beach face cannot be graded to a slope steeper than a ratio of 1:3. The Department is proposing to clarify that this existing ratio refers to a slope that shall not exceed one vertical to three horizontal.

### **Subchapter 11. Standards for Conducting and Reporting the Results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and/or Endangered Or Threatened Wildlife Species Habitat Evaluation**

The Department is proposing to recodify existing N.J.A.C. 7:7E-3C, which contains the Department's standards for conducting and reporting the results of an endangered or threatened wildlife or plant species habitat impact assessment and/or endangered or threatened wildlife species habitat evaluation, as proposed N.J.A.C. 7:7-11, with minor amendments to facilitate the combining of the coastal rules and to update terminology. An endangered or threatened wildlife or plant species habitat impact assessment is required to demonstrate that the proposed development will not directly or through secondary impacts adversely affect the endangered or threatened wildlife or plant species habitat on the site or in the surrounding area. An endangered

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or threatened wildlife species habitat evaluation is required to demonstrate that a site reported to have an endangered or threatened wildlife species does not contain suitable habitat, including sufficient buffer to ensure continued survival of the population of the species.

## **Subchapter 12. General Water Areas**

General water areas are all water areas which are located below either the spring high water line or the normal water level of non-tidal waters. General water areas are subject to this subchapter and to special area rules. Proposed N.J.A.C. 7:7-12, which contains the Department's rules governing general water areas, is recodified from N.J.A.C. 7:7E-4, with amendments. The Department is proposing to delete all references throughout the subchapter to figures within the existing CZM rules as the figures are outdated.

### **N.J.A.C. 7:7-12.5 Recreational docks and piers**

Proposed N.J.A.C. 7:7-12.5, which contains the Department's standards for the construction of recreational docks and piers, including jet ski ramps and mooring piles, is recodified from N.J.A.C. 7:7E-4.5 with amendments that address the situation where a dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and natural waterway, and add flexibility in dock design.

Proposed new N.J.A.C. 7:7-12.5(b)5 addresses the situation where a dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway. In that case, the dock, pier, or boat mooring must be located on the man-made lagoon unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with

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this rule or any other provisions of this chapter. This standard is intended to protect the environmental functions and values of the State's natural waterways and concentrate docks, piers, and boat moorings in those areas where there are minimal environmental concerns, such as man-made lagoons.

Proposed N.J.A.C. 7:7-12.5(b)6, existing N.J.A.C. 7:7E-4.5(b)5, requires that the space between horizontal planking be maximized and the width of horizontal planking be minimized to the maximum extent practicable and specifies the spacing necessary between planking based on the width of planks used under normal circumstances. The intent of this provision is to allow the maximum amount of sunlight penetration to the water below. Docks and piers that maximize sunlight penetration into the water and onto the bottom allow continued photosynthesis by plants underneath the structure. In recognition that new materials have been developed that will allow docks to meet the intent of the rule, the Department is proposing to modify the spacing requirement to allow an alternative dock design, that is, alternative materials and/or configuration, provided the alternative design allows for equal or greater sunlight penetration as docks constructed of planking and configured as prescribed in this paragraph. Alternative designs include, for example, grate decking which is constructed of metal, wood, aluminum, or other similar materials which allow sunlight penetration through the grates within the dock or pier. The rule rationale at proposed N.J.A.C. 7:7-12.5(g) is proposed to be amended to add a statement addressing the impact of docks or piers on special areas where insufficient water depths are present. The movement of a boat to and from a dock where insufficient water depths are present to accommodate the mooring of a vessel causes increased turbidity of the area surrounding the structure which results in an adverse impact to special areas and water quality.

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### **N.J.A.C. 7:7-12.6 Maintenance dredging**

Proposed N.J.A.C. 7:7-12.6, which contains the conditions that must be met for maintenance dredging to be allowed, is recodified from existing N.J.A.C. 7:7E-4.6 with amendments. As explained below, the proposed amendments refine the definition of maintenance dredging, incorporate Appendix G into the rule as the standards for dredging and dredged material management, clarify the pre-dredging chemical and physical analysis requirements for the material to be dredged, and refine the standards for mechanical dredging, dredging adjacent to wetlands and reprofiling.

Maintenance dredging under the existing rule is the removal of accumulated sediment from previously authorized and legally dredged navigation and access channels, marinas, lagoons, canals, or boat moorings for the purpose of maintaining previously authorized water depth and width for safe navigation. To be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length, and width as the previous dredging operation and, for natural water areas, the area must either currently be used for navigation or mooring of vessels requiring the proposed water depth or have been dredged within the last 10 years.

In some instances, an applicant may not be able to provide the Department with a previous authorization, such as a previously issued waterfront development permit or Federal Consistency determination, demonstrating that an area was previously dredged. However, an applicant may be able to demonstrate that an area was previously dredged through historical data, such as previous dredging contracts, historic bathymetric surveys, and/or aerial

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photographs. Therefore, the Department is proposing to amend the definition of maintenance dredging at N.J.A.C. 7:7-12.6(a) to take a common sense approach by allowing flexibility in the types of proofs that can be used to demonstrate that the proposed dredging activity qualifies as maintenance dredging. The Department is additionally proposing to eliminate the word “authorized” from the requirement that the previous dredging have been legally conducted to eliminate any misconception that dredging that occurred prior to the need to obtain a permit from the Department would not qualify under this section; such dredging would qualify as long as the dredging complied with all the requirements applicable at the time it was conducted.

Under this proposal, maintenance dredging is the periodic removal of accumulated sediment from previously dredged navigation and access channels, marinas, lagoons, canals, or boat moorings for the purpose of safe navigation. For a project to be considered maintenance dredging, the applicant must demonstrate through historical data that the proposed area to be dredged is limited to the same length and width as a previous dredging operation, that the proposed water depth is the same as historical water depths within the proposed dredge area, and that the area has been historically used for navigation or mooring of vessels requiring the proposed water depth. For example, an applicant may demonstrate that the proposed area to be dredged is limited to the same length and width as a previous dredging operation, that the proposed water depth is the same as historical water depths within the proposed dredge area, and that the area has been historically used for navigation or mooring of vessels requiring the proposed water depth by submitting historical aerial photographs that show boats within a marina basin of a certain size which are known to require the proposed water depths. Therefore,

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the determination of whether a proposed dredging project is considered maintenance dredging will be based on whether the area was previously dredged as well as whether the proposed dredge area has historically been used for navigation or mooring of vessels, rather than a requirement that the proposed dredge area be currently used for navigation or mooring of vessels requiring the proposed water depth. The burden of proof that an area was previously dredged rests on the applicant. If the applicant does not provide clear and convincing evidence that the area was previously dredged, any proposed dredging will be considered new dredging. The definition is also being modified to eliminate different standards for man-made versus natural waterways. This distinction is not necessary because in both situations the applicant will be required to demonstrate that the area has been previously dredged.

The proposed amendments to the definition of maintenance dredging eliminate the requirement that the area to be dredged must currently be used for navigation or mooring of vessels requiring the proposed water depth, or that the area had to have been dredged within the last 10 years. This amendment recognizes that not all navigation channels or mooring areas are currently used for navigation or have been dredged on a 10-year or less cycle. Since the Department is requiring that the proposed dredge area must have been historically dredged and used for navigation or mooring of vessels requiring the proposed water depth, the requirement that the area had to have been dredged within the last 10 years is redundant because, if the water body has been dredged within the last 10 years, then it has been historically dredged. The proposed amendments also allow for the proposed water depth to be either the same as a previous dredging operation or as historical water depths within the proposed dredge area. This requirement provides flexibility allowing for a potential increase in the depth of the proposed

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dredge area from a previous dredging operation should the historical water depths in the area be deeper.

It is anticipated that the proposed amendments to the definition of maintenance dredging will result in more dredging projects being considered maintenance dredging. Because maintenance dredging allows for the use of previously dredged navigation and access channels, marinas, lagoons, canals, and boat moorings, this type of dredging activity is conditionally acceptable within special areas, whereas new dredging may be discouraged or prohibited because the new dredging activities would result in the destruction of special areas. The proposed amendments to the maintenance dredging rule are intended to balance the protection of special areas with the need to provide for safe navigation and maintain commerce along New Jersey's waterways.

Proposed new N.J.A.C. 7:7-12.6(b) requires that maintenance dredging and the management of the dredged material be conducted in accordance with proposed Appendix G. This new subsection replaces existing N.J.A.C. 7:7E-4.6(e), which references the Department's dredging technical manual. As explained in the summary of proposed Appendix G, the Department is proposing to codify portions of what is currently contained in the dredging technical manual into this chapter as regulatory Appendix G.

Proposed N.J.A.C. 7:7-12.6(c), existing N.J.A.C. 7:7E-4.6(b), sets forth the conditions that must be satisfied for maintenance dredging to be permitted. Proposed N.J.A.C. 7:7-12.6(c)1 is being amended to provide that the Department will make an acceptable use determination (AUD) for the beneficial use of dredged material in accordance with Appendix G. An AUD is required for the beneficial use of dredged material. Under Appendix G, all persons producing

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structural or nonstructural fill, or manufactured soil, or using, processing, or transferring dredged materials in New Jersey must obtain an AUD prior to any use, processing, or transfer of the dredged material or products containing dredged material. An AUD is issued by the Department upon its finding that the dredged material admixture or product will be protective of human health and the environment and that all other necessary approvals have been obtained.

Existing N.J.A.C. 7:7E-4.6(b)2 provides that where the Department suspects that the dredged material may be contaminated, pre-dredging chemical and physical analysis of the dredged material may be required. At proposed N.J.A.C. 7:7-12.6(c)2, the Department is clarifying that these analyses include water quality predictive analysis for surface water and ground water. Water quality predictive analyses for surface water and ground water are used to determine whether the proposed dredging activity will impact surface waters and ground waters. Dredging and dredged material management activities have impacts on surface waters and depending upon the disposal or placement method, may also have impacts on ground water. To ensure that these impacts are addressed and are protective of human health and the environment, surface water and ground water quality analysis may be required. Surface water quality analysis may include elutriate analyses which serve to predict impacts at the dredging site and impacts of discharges from dredged material management areas. Ground water quality analysis may include leachate testing which serves to predict whether the placement of the material on land will result in a discharge to an underlying aquifer. The Department is proposing to delete specific reference to "elutriate" analysis because, as discussed above, this test only addresses surface water quality impacts. The Department is also proposing to make similar amendments to existing N.J.A.C. 7:7E-4.6(b)4, proposed N.J.A.C. 7:7-12.6(c)4. Specifically, proposed N.J.A.C.

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7:7-12.6(c)4 provides that, if predicted water quality parameters are likely to exceed the Surface Water Quality Standards at N.J.A.C. 7:9B or the Ground Water Quality Standards at N.J.A.C. 7:9C, or if pre-dredging chemical analysis of dredged material, including surface water or ground water predictive analysis, reveals significant contamination, the Department will impose control measures, including timing restrictions on when dredging or dredged material disposal or placement may occur.

Proposed N.J.A.C. 7:7-12.6(c)3 addresses water quality impacts associated with the dredging site and discharges from dredged material management areas. This paragraph is proposed to be amended to replace the phrase “slurry or decant water overflows” with “discharges from dredged material management areas” as these terms both refer to the same discharges and the new term reflects proposed changes in terminology.

Proposed N.J.A.C. 7:7-12.6(c)5 provides that when mechanical dredges are used, the deployment of silt curtains may be required, if feasible based on site conditions as provided in Appendix G (see Chapter IV, B Management of Dredging Activities and Transport of Dredged Material). The Department is proposing to delete the examples of mechanical dredges because any type of mechanical dredge causes significant turbidity during dredging. The Department is also proposing to amend this paragraph to provide that it may require that additional best management practices be employed in accordance with Appendix G (see Chapter IV, B Management of Dredging Activities and Transport of Dredged Material) where highly contaminated sites are proposed to be dredged. It has been the Department’s experience, based on the review of chemical analysis of sediment, that there is a need to impose more stringent best management practices in the industrial area of the Delaware River that coincides with the limits

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of the Federal navigation channels (from the Delaware Bay to Trenton) and the Port District of the New York-New Jersey Harbor Area.

Proposed N.J.A.C. 7:7-12.6(c)8 addresses maintenance dredging side slopes adjacent to wetlands. The Department is proposing to amend this paragraph to clarify that the 3:1 ratio referenced in the existing rules refers to a slope that shall not exceed three vertical to one horizontal.

Existing N.J.A.C. 7:7E-4.6(c) (proposed N.J.A.C. 7:7-12.6(d)) addresses reprofiling. Reprofiling is the movement of sediment from one area to a deeper, adjacent area without removing the sediment from the water. The Department is proposing to amend this subsection to make the definition of reprofiling here consistent with the definition of reprofiling set forth in Chapter IV of Appendix G. Existing N.J.A.C. 7:7E-4.6(c) discourages reprofiling in all water areas with the exception of the New York-New Jersey Harbor area. The Department is proposing to amend this subsection to make reprofiling a prohibited activity in areas outside of the New York-New Jersey Harbor area. Reprofiling is an interim management technique suitable for smaller scale projects (generally less than 5,000 cubic yards). The Department has several concerns relating to reprofiling, including: the adequacy of the depositional area to contain the relocated sediments; the resuspension and redeposition of sediments into other areas such as berths and navigation channels; and the impacts of the redeposition of sediments on existing benthic communities in the vicinity of the project area. The impacts on the benthic community within the New York-New Jersey Harbor area is not considered to be significant as extensive modification of the marine ecosystem has occurred compared to other portions of the State. In order for the Department to consider reprofiling as a management technique, it must be

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demonstrated that no other dredged material management alternative discussed in Appendix G is practicable, which is not common in most portions of the State outside of the New York-New Jersey Harbor area. Therefore, in consideration of the impracticability of other dredged material management alternatives in the New York-New Jersey Harbor area, and the need for the continued use of the State's port facilities, the Department has determined that reprofiling is conditionally acceptable only within the New York-New Jersey Harbor area.

Existing N.J.A.C. 7:7E-4.6(c) specifies the portion of the New York-New Jersey Harbor area where reprofiling is conditionally acceptable. Particularly, reprofiling is conditionally acceptable north of Sandy Hook, excluding the Raritan Bay and its tributaries east of Cheesequake Creek. Existing N.J.A.C. 7:7E-4.6(c)1 is proposed to be deleted, with its contents incorporated into the lead-in of proposed N.J.A.C. 7:7-12.6(d) and the reference to the New York Harbor area north of Sandy Hook is proposed to be replaced with reference to Region 1, described in proposed Appendix G, which encompasses the same geographic area. As discussed previously, for the purposes of the review of dredging projects, the Department has divided the State into three geographic regions based on the expected degree and type of sediment contamination and historic or potential dredged material management alternatives. Existing N.J.A.C. 7:7E-4.6(c)1iv (proposed N.J.A.C. 7:7-12.6(d)4), which addresses the "receiving" area of the sediment that is relocated through the reprofiling operation, is proposed to be amended for clarity and consistency with proposed Appendix G.

The rule rationale at proposed N.J.A.C. 7:7-12.6(f) is proposed to be amended to reflect the change in the definition of maintenance dredging and the need to maintain State and Federal

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navigation channels and to provide access to docks, marinas, ports, and other water dependent development.

### **N.J.A.C. 7:7-12.7 New dredging**

Proposed N.J.A.C. 7:7-12.7, which sets forth the conditions that must be satisfied for new dredging to be allowed, is recodified from N.J.A.C. 7:7E-4.7, with amendments.

The definition of new dredging at proposed N.J.A.C. 7:7-12.7(a) is proposed to be modified to exclude from the term for the purpose of inclusion within this section environmental dredging, which is subject to proposed N.J.A.C. 7:7-12.8, and to include the temporary or permanent displacement or removal of sediment for the purposes of the installation of submerged pipelines or cables. The conditions applicable to installation of submerged pipelines or cables are set forth in the general water area rules at proposed N.J.A.C. 7:7-12.15 and 12.21, existing N.J.A.C. 7:7E-4.14 and 4.20, respectively. These installations are also subject to the energy facility use rule at proposed N.J.A.C. 7:7-15.4(i), existing N.J.A.C. 7:7E-7.4(i), which contains standards relevant to pipelines and associated facilities. Under proposed N.J.A.C. 7:7-12.15 and 12.21, submerged pipelines and cables are required to be installed via directional drilling, unless it is demonstrated that directional drilling is not feasible. Because directional drilling and trenching equipment cannot pass through certain geological formations efficiently, in some cases limited new dredging may be necessary within a section of the proposed pipeline or cable route. Where this occurs, new dredging is necessary to complete the installation.

New dredging also occurs at the point where a submerged pipeline or cable is connected to the upland pipeline or cable. In this case, new dredging is performed within a temporary

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cofferdam. When these activities and the impacts they create are present, it is appropriate to require that the standards applicable to new dredging be met by these types of activities. This will ensure that impacts to special areas and water quality are addressed appropriately. This amendment makes it clear that this type of activity is going to be covered under new dredging.

Proposed new N.J.A.C. 7:7-12.7(b) requires that new dredging be conducted in accordance with proposed Appendix G. As stated previously, proposed Appendix G establishes clear and comprehensive standards and procedures for reviewing proposed dredging activities, and the management of dredged material. Currently, existing N.J.A.C. 7:7E-4.7(f) references the Department's dredging technical manual as a source for guidance on dredged material sampling, testing, transporting, processing, management, and placement. As stated previously, the Department is proposing to incorporate portions of the dredging technical manual into this chapter as a regulatory appendix at proposed Appendix G. Accordingly, existing N.J.A.C. 7:7E-4.7(f) is proposed for deletion.

Proposed N.J.A.C. 7:7-12.7(c), existing N.J.A.C. 7:7E-4.7(b), provides that new dredging is conditionally acceptable in all general water areas and sets forth the conditions that must be met for new dredging to be conducted in accordance with the standards contained in proposed Appendix G. This subsection is proposed to be amended to reflect the change at proposed N.J.A.C. 7:7-12.7(a) that makes submerged pipelines and cables subject to this section, and to provide that the Department will make an acceptable use determination (AUD) for the beneficial use of dredged material in accordance with Appendix G. New and maintenance dredging are similar in their potential water quality and biological impacts. Therefore, for the same reasons discussed with regard to the maintenance dredging rule at proposed N.J.A.C. 7:7-12.6(c)2

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through 5 and 8, the Department is proposing to modify the equivalent provisions applicable to new dredging at proposed N.J.A.C. 12:7(c)10ii through v and viii in the same manner as the provisions are proposed for amendment in proposed N.J.A.C. 7:7-12.6.

The rule rationale at proposed N.J.A.C. 7:7-12.7(h) is proposed to be modified to provide examples of new dredging and to address new dredging associated with the installation of submerged pipelines and cables.

#### **N.J.A.C. 7:7-12.8 Environmental dredging**

The Department is proposing to include a new general water area rule, N.J.A.C. 7:7-12.8, Environmental dredging, to distinguish new dredging performed for purposes of navigation and installation of submerged pipelines and cables from new dredging that is specifically undertaken to remove contaminated sediments from a waterway for remediation purposes in accordance with a remediation plan that is approved by the Department, a licensed site remediation professional, or a Federal agency under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This rule is intended to provide for the removal of sediments contaminated above specified action levels, while minimizing the spread of contaminants to the surrounding area during dredging operations.

Proposed new N.J.A.C. 7:7-12.8(a) defines environmental dredging as the removal of contaminated sediments for the purpose of remediating environmental risk within a special hazard area. Special hazard areas defined at N.J.A.C. 7:7-9.39 include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property.

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Proposed N.J.A.C. 7:7-12.8(b) sets forth the standards applicable to environmental dredging. Proposed N.J.A.C. 7:7-12.8(b)1 provides that the dredging and dredged material management must be conducted in accordance with either a Remedial Action Work Plan approved by the Department or approved by a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules, N.J.A.C. 7:26C, as satisfying the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; or conducted in accordance with CERCLA Sections 104, 106, 120, 121, or 122. Proposed N.J.A.C. 7:7-12.8(b)2 requires that the dredging and dredged material disposal comply with the applicable conditions for new dredging at N.J.A.C. 7:7-12.7(c)10, and proposed Appendix G. The new dredging rule addresses the placement of the dredged material, pre-dredging chemical and physical analyses, water quality parameters, water quality impacts, timing restrictions and side slopes adjacent to wetlands. Chapter IV of proposed Appendix G addresses the management of dredging activities and transport of dredged material so as to minimize environmental impacts.

Proposed N.J.A.C. 7:7-12.8(c) contains the rule rationale. As stated previously, the rule is intended to allow for the removal of sediments contaminated above specific action levels, while minimizing the spread of contaminants to surrounding areas.

#### **N.J.A.C. 7:7-12.9 Dredged material disposal**

Proposed N.J.A.C. 7:7-12.9, which contains the standards for dredged material disposal in water areas, is recodified from N.J.A.C. 7:7E-4.8, with amendments. The Department is proposing to clarify at proposed N.J.A.C. 7:7-12.9(a) that this rule pertains to the disposal of

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dredged material in water areas and does not apply to the beneficial use of dredged material in habitat creation, restoration or enhancement, artificial reef construction, or the establishment of living shorelines.

Proposed N.J.A.C. 7:7-12.9(b) contains the standards relevant to dredged material disposal. Existing N.J.A.C. 7:7E-4.8(b)2 (proposed N.J.A.C. 7:7-12.9(b)2) identifies Federal documents with which disposal of dredged material in the ocean and bays deeper than six feet must comply. The Department is proposing to recodify reference to the document, “USEPA and US Army Corps of Engineers Guidelines (40 C.F.R. parts 220-228 and 230-232 and 33 CFR, parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act” from existing N.J.A.C. 7:7E-4.8(b)2 to proposed N.J.A.C. 7:7-12.9(b)2i. These Federal regulations address the USEPA and USACE guidelines, permitting procedures, and requirements for various dredged material placement and disposal activities into waters of the United States or the ocean under the Marine Protection, Research, and Sanctuaries Act (ocean waters) and Section 404 of the Clean Water Act (U.S. waters). The U.S. Environmental Protection Agency and Department of the Army-U.S. Army Corps of Engineers document referenced at proposed N.J.A.C. 7:7-12.9(b)2ii replaces the document “Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993” currently codified at N.J.A.C. 7:7E-4.8(b)2, as the new document reflects the most current USEPA and USACE guidance for evaluating dredged material in inland waters. The listing of documents is proposed to be updated to reflect the most current documents. The document referenced at proposed N.J.A.C. 7:7-12.9(b)2iii is the USEPA and USACE document used in evaluating dredged material for ocean disposal and was developed on a national level for use by all USACE

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Districts. The document referenced at proposed N.J.A.C. 7:7-12.9(b)2iv is a document developed by USEPA Region II and USACE, New York District to provide guidance for permitting testing on dredged material proposed for ocean disposal which contains more detailed testing protocols and testing procedures for this region of the country.

Reference to the requirements of proposed Appendix G has also been added as Chapter IV of proposed Appendix G discusses various open water disposal options (see summary of proposed Appendix G for a description of the requirements contained in Chapter IV).

Proposed N.J.A.C. 7:7-12.9(b)5, which provides that overboard disposal of sediments consisting of less than 90 percent sand is conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site, is proposed to be amended to replace “upland or confined site” with “dredged material management area.” A dredged material management area is an area where dredged material has been deposited in accordance with these rules and includes both upland and confined sites.

For the reasons discussed in the summary of proposed N.J.A.C. 7:7-12.6(b) and 12.7(b), the Department is proposing to delete existing N.J.A.C. 7:7E-4.8(d) which references the Department’s dredging technical manual. As discussed above, certain portions of the technical manual related to open water disposal are proposed to be incorporated in proposed Appendix G. Proposed N.J.A.C. 7:7-12.9(b)2 requires that the standards contained in proposed Appendix G be satisfied, as described above.

The rule rationale is proposed at N.J.A.C. 7:7-12.9(d) with no changes in text.

#### **N.J.A.C. 7:7-12.11 Filling**

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Proposed N.J.A.C. 7:7-12.11, which addresses the filling of water areas, is recodified from existing N.J.A.C. 7:7E-4.10, with amendments as described below.

Proposed N.J.A.C. 7:7-12.11(f) addresses mitigation for the filling of tidal water areas and identifies activities for which mitigation is not required. The mitigation requirements for general water areas are proposed to be recodified to the new mitigation subchapter at N.J.A.C. 7:7-17.11. These standards are similar to the standards for intertidal and subtidal shallows mitigation, since the habitat types are similar in nature. Therefore, reference to the mitigation standards for the filling of intertidal and subtidal shallows is no longer necessary and is proposed for deletion. Proposed N.J.A.C. 7:7-17.11 includes a mitigation ratio of one acre created for one acre lost of similar habitat, standards for construction completion reports, monitoring, and success criteria. The mitigation requirements are discussed in more detail in the summary of proposed N.J.A.C. 7:7-17.11. With recodification of the mitigation requirements to N.J.A.C. 7:7-17.11, a cross-reference to that new subchapter is being proposed at proposed N.J.A.C. 7:7-12.11(f).

Existing N.J.A.C. 7:7E-4.10(g) (proposed N.J.A.C. 7:7-12.11(h)), addresses filling for the purposes of beach nourishment and living shoreline projects. Currently, filling using clean sediment of suitable particle size and composition or dredged material for which the Department has issued a determination of acceptable use, is acceptable for beach nourishment and living shoreline projects provided it meets the standards of the coastal engineering rule, proposed N.J.A.C. 7:7-15.11, or the living shoreline rule at proposed N.J.A.C. 7:7-12.23.

As discussed in the summary of proposed N.J.A.C. 7:7-12.6(c), the Department issues an acceptable use determination (AUD) for the beneficial use of dredged material. The

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determination as to whether the proposed use is acceptable is made in accordance with Appendix G. For the purposes of consistency in terminology throughout the chapter, the Department is proposing to amend N.J.A.C. 7:7-12.11(h) to replace “determination of acceptable use” with “acceptable use determination” and to provide that the Department will make such determination in accordance with Appendix G.

Existing N.J.A.C. 7:7E-4.10(i) (proposed N.J.A.C. 7:7-12.11(i)) addresses the removal of fill which was placed subsequent to September 26, 1980, or subsequent to September 28, 1978, for areas within the CAFRA area, where the placement of the fill does not comply with subsections (b), (c), or (d). These subsections address filling in lakes, ponds, reservoirs, and open bay areas greater than 18 feet, filling in man-made lagoons, and filling in other general water areas. The Department is proposing to also require that such filling comply with subsection (e), which requires that mitigation be provided unless the filling occurred in a man-made lagoon, is part of a beach nourishment project, or is associated with the construction of a replacement bulkhead in accordance with proposed N.J.A.C. 7:7-15.11, the establishment of a living shoreline or the construction of a boat ramp.

#### **N.J.A.C. 7:7-12.22 Artificial reefs**

Proposed N.J.A.C. 7:7-12.22 sets forth the Department’s standards for the construction of artificial reefs in waters of New Jersey and is recodified from N.J.A.C. 7:7E-4.21, with amendments. Proposed N.J.A.C. 7:7-12.22(b) sets forth the standards for the siting of artificial reefs. Currently, the rule only allows for the construction of artificial reefs in the Atlantic Ocean. Estuarine reefs have been successfully created by other Atlantic coast states to establish epifauna

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(for example, mussels, crabs, starfish, and flounder) and finfish habitat. The Department is proposing to allow the construction of an estuarine reef in the Lower Delaware Bay by the Department's Division of Fish and Wildlife. The goals of this project are three-fold: creation of a fishing ground in the Lower Delaware Bay for fishers; creation of habitat for more than 150 species of epifauna and finfish; and increased economic benefits associated with the respective fishing industries. Unlike the Upper Bay, the Lower Bay is not used as a nursery area for species such as striped bass and weakfish and, therefore, construction of a reef in the Lower Bay would not affect the nursery function of the Upper Bay. The estuarine reef would be located south of East Point Lighthouse in a suitable location that is nearly equidistant from all five major ports in the Lower Bay (Fortescue, Bidwell Creek, Maurice River, Dennis Creek, and Cape May) and would be no greater than one mile in size. Currently, reefs are located within the Delaware Bay in Delaware state waters. These reefs show high colonization by epifauna and finfish. The Department's Division of Fish and Wildlife would evaluate the reef that would be created in accordance with this proposed amendment in terms of epifaunal colonization, finfish utilization, and angler use over time. Based on monitoring of this reef, the Department may expand the artificial reef program in the Delaware Bay in the future.

#### **N.J.A.C. 7:7-12.23 Living shorelines**

The Department's standards for living shorelines at existing N.J.A.C. 7:7E-4.23 are recodified as N.J.A.C. 7:7-12.23 with the following amendments. Proposed N.J.A.C. 7:7-12.23(b) identifies the conditions under which the Department considers the establishment of a living shoreline acceptable. The Department is proposing to amend N.J.A.C. 7:7-12.23(b)2ii to

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delete the reference to the dates of the Tidelands Map baseline photography. As explained at N.J.A.C. 7:7-1.5, the Department is proposing a new definition for “Tidelands map” which includes the dates of the baseline photography.

Proposed N.J.A.C. 7:7-12.23(c) allows for the beneficial use of dredged material in the establishment of a living shoreline, provided it is determined by the Department that the material is acceptable for use in a living shoreline. The Department is proposing to modify this provision to require that, for the beneficial use of the dredged material to be acceptable in a living shoreline, the material must comply with Appendix G. As explained at N.J.A.C. 7:7-12.6(c), an AUD is required for the beneficial use of dredged material.

### **Subchapter 13. Requirements for Non-Porous Cover and Vegetative Cover for General Land Areas and Certain Special Areas**

Existing N.J.A.C. 7:7E-5, 5A, and 5B, which are used to determine the acceptable amount of impervious cover that may be placed on a development site and the amount of vegetative cover that must be preserved or planted on a development site, are proposed to be recodified at N.J.A.C. 7:7-13, with amendments. As discussed in the summary of N.J.A.C. 7:7-1.5, the use of the term “impervious cover” has caused some confusion and therefore the Department is proposing to replace this term with “non-porous cover.” Also, minor changes to the headings of various sections and cross-references are proposed throughout proposed new N.J.A.C. 7:7-13 to reflect the consolidation of the three subchapters into one.

#### **N.J.A.C. 7:7-13.1 Purpose and scope**

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Existing N.J.A.C. 7:7E-5.1, purpose and scope, is proposed to be recodified as N.J.A.C. 7:7-13.1, with amendments to incorporate certain provisions of the purpose and scope provisions at existing N.J.A.C. 7:7E-5B.1. No amendments are necessary to address the purpose and scope codified at existing N.J.A.C. 7:7E-5A.1, which is proposed to be repealed as unnecessary.

Proposed N.J.A.C. 7:7-13.1(d), which is recodified, with amendments, from existing N.J.A.C. 7:7E-5.1(d), identifies the types of development to which this subchapter does not apply. The Department is proposing to amend proposed N.J.A.C. 7:7-13.1(d)1 to exempt the development of one or two single-family homes or duplexes. As discussed in the summary of proposed N.J.A.C. 7:7-6.4, the Department is proposing to expand the existing general permit for the construction of one single-family home or duplex to apply to the construction of one or two single-family homes or duplexes. These sites are typically small bulkheaded infill lots located on back bays within existing residential areas. In many cases, these sites have already been disturbed and have existing non-porous cover present. The amount of non-porous cover on these sites will be limited by the lot size, presence of any special areas, and local zoning requirements. Further, the general permit at proposed N.J.A.C. 7:7-6.4 and the housing use rule at proposed N.J.A.C. 7:7-15.2(e) contain standards that are intended to address stormwater runoff associated with the dwelling. Stormwater runoff is also addressed at the local level. For these reasons, the Department believes it is appropriate to exempt the development of two single-family homes or duplexes from the non-porous and vegetative cover requirements of this subchapter.

Wind turbines are also proposed to be added to the list of developments to which this chapter does not apply, at proposed N.J.A.C. 7:7-13.1(d)10. Wind energy is a renewable energy source that does not result in greenhouse gas emissions. To facilitate the construction of these

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renewable energy facilities, the Department believes that it is not appropriate to apply the non-porous cover percentages and vegetative cover requirements to this type of development.

Proposed N.J.A.C. 7:7-13.1(h) and (i), existing N.J.A.C. 7:7E-5B.1(b) and (c), provide that it is not the intent of this subchapter that the extent to which a municipality has or has not conformed its ordinances or development master plan to this subchapter be considered by any department, agency, or instrumentality of State government in certain actions. These provisions are intended to clearly differentiate CAFRA regulations used in the review of individual permit applications from the State Development and Redevelopment Plan which is intended to provide a vision for accommodating future growth of the State.

Proposed N.J.A.C. 7:7-13.1(j), which provides that compliance with the non-porous and vegetative requirements of this chapter does not exempt any development from compliance with the special area and resource rules, or any other provision of this chapter, is recodified, with amendment, from existing N.J.A.C. 7:7E-5B.1(d). Existing N.J.A.C. 7:7E-5B.1(d) applies this requirement to only to the CAFRA area. As proposed to be amended, this provision will also apply to developments in the upland waterfront development area. Developments located in the upland waterfront development area are required to comply with all applicable sections of this chapter.

### **N.J.A.C. 7:7-13.2 Definitions**

Proposed N.J.A.C. 7:7-13.2, which contains the definitions that are specific to this subchapter, is recodified from existing N.J.A.C. 7:7E-5.2, with amendments. Minor changes are proposed to the lead-in language of this section to reflect the recodification and merger of

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existing N.J.A.C. 7:7E-5, 5A, and 5B into this proposed subchapter. As explained at N.J.A.C. 7:7-1.5, the Department is relocating the definitions of the terms “electrical substation,” “stormwater management facility,” “tidelands map,” and “upland waterfront development area” to proposed N.J.A.C. 7:7-1.5, Definitions, as these terms are used throughout the CZM rules as proposed to be consolidated and amended. The Department is also proposing to amend the definition of “tidelands map” as described in the summary of N.J.A.C. 7:7-1.5. The term “100 percent affordable housing” is also proposed for deletion. This term is used at existing N.J.A.C. 7:7E-5B.6(h), which addresses the non-porous cover limits and vegetative cover requirements for CAFRA applications declared complete for review prior to March 15, 2007, that proposed 100 percent affordable housing development in a mainland coastal center. As explained in the summary of proposed N.J.A.C. 7:7-13.19, the Department is proposing to delete this provision because it would have had to have made a decision on any permits that were declared complete for review by March 15, 2007, so this provision is no longer necessary.

### **N.J.A.C. 7:7-13.3 Non-porous cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

Proposed N.J.A.C. 7:7-13.3 sets forth the non-porous cover requirements that apply to sites in the upland waterfront development and CAFRA areas. This section is recodified from existing N.J.A.C. 7:7E-5.3 with amendments to reflect previously discussed terminology changes, as well as proposal of a new subsection (c).

As discussed previously in the summary of proposed N.J.A.C. 7:7-1.5, the Waterfront Development Law and CAFRA were amended to define solar panel and specify how solar panels

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are to be considered in calculating impervious surface or cover. As specified in N.J.S.A. 13:19-5.4, the Department cannot include solar panels in any calculation of impervious surface or impervious cover as part of the analysis of an application for development. However, the amendments to the Waterfront Development Law and CAFRA and the proposed definition of solar panel at N.J.A.C. 7:7-1.5 expressly exclude the base or foundation of the solar panel, canopy, or array from the definition of solar panel. Accordingly, the base or foundation is included in calculations of impervious cover (non-porous cover under the proposed CZM rules). The Department is proposing N.J.A.C. 7:7-13.3(c) to reflect the impact of these statutory amendments on the calculation of non-porous cover. Specifically, a solar panel as defined at N.J.A.C. 7:7-1.5 is not counted toward the non-porous cover limit for a site, but the base or foundation of the solar panel, canopy or array will be counted toward the non-porous cover on the site.

**N.J.A.C. 7:7-13.4 Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas**

Proposed N.J.A.C. 7:7-13.4, existing N.J.A.C. 7:7E-5.4, sets forth vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas. N.J.A.C. 7:7E-5.4(c)2 currently requires preserved trees be protected by a recorded conservation restriction enforceable by the Department. That requirement is being amended to require that the conservation restriction comply with proposed N.J.A.C. 7:7-18, Mitigation. As all conservation restrictions complying with the mitigation subchapter must be enforceable by the Department,

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the existing reference to the conservation restriction required by this paragraph being enforceable by the Department is deleted as it is no longer necessary.

#### **N.J.A.C. 7:7-13.5 Determining if a site is forested or unforested**

Existing N.J.A.C. 7:7E-5.5 is proposed to be recodified as N.J.A.C. 7:7-13.5. The rule establishes the method that must be utilized to determine if a site is considered to be forested or unforested. Whether a site is forest or unforested impacts the percentage vegetative cover that applies to the site.

Based on the Department's experience using the existing method of determining a forest, the method consistently results in an under-estimation of forest areas as the method tends to result in forest areas with smaller trees and those with larger trees that grow farther apart that should be considered forest instead of being classified as unforested.

To address this issue, the Department field tested three methods of forest identification, and compared the results of those field tests with those methods currently employed under the existing rules. The methods included: the Highlands method (see N.J.A.C. 7:38-3.9); a method currently under development by the Department's Division of Parks and Forestry; and a modified version of the existing method codified at existing N.J.A.C. 7:7E-5.5. The results showed that the Highlands method was the most consistent in identifying a forest. The modified version of the method contained in the existing CZM rules more accurately identified forest than the current method, but was not as accurate as the Highlands method. The method under development by the Division of Parks and Forestry was more difficult to administer and was better on larger parcels than those commonly encountered in the coastal zone. Consequently, the

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Department is proposing to amend the coastal method for identifying forest under this chapter to make it consistent with the method utilized in the Highlands area, with two exceptions as described below. As a result of the proposed amendments described below, additional areas previously inaccurately classified as unforested will be considered forested.

Proposed N.J.A.C. 7:7-13.5(c) sets forth the method for determining if a site or portion of a site is forested. Proposed N.J.A.C. 7:7-13.5(c)1 requires that a forest be identified first using aerial photography. The Department believes that using aerial photography is the appropriate first step since it is easier and less costly than doing extensive sampling onsite. If an area includes areas of sporadic coverage that the applicant asserts do not constitute forest area, proposed N.J.A.C. 7:7-13.5(c)2 requires an applicant to overlay a grid system on the photograph(s) to determine whether areas with sporadic coverage contain sufficient coverage to be identified as forest. The Department will provide this grid on its website at <http://www.nj.gov/dep/landuse/guidance.html>. The use of the grid to identify forest cover is a method consistent with the New Jersey No Net Loss Reforestation Act, N.J.S.A. 13:1L-14.1, et seq. This methodology is intended to identify the areas that meet the definition of a forest and, as such, should be classified as forest if an applicant has excluded such areas from his/her identification of forest on the site.

Proposed N.J.A.C. 7:7-13.5(d) sets forth the method of determining a forest on a site by measuring the trees and their density on the ground. The method specified in proposed N.J.A.C. 7:7-13.5(d) reflects the Highlands methodology specified at N.J.A.C. 7:38-3.9(c). The applicant is not required to perform onsite sampling unless the Department identifies additional areas of potential forest that were not identified by the applicant using aerial photography. Existing

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N.J.A.C. 7:7E-5.5(c)1 through 6 are proposed to be recodified as N.J.A.C. 7:7-13.5(d)1 through 6 and modified to reflect the Highlands methodology at N.J.A.C. 7:38-3.9(c)1 through 6, as described below.

Existing N.J.A.C. 7:7E-5.5(c) provides the scoring system utilized for trees within a sample area with points assigned based upon the diameter of the tree. Existing N.J.A.C. 7:7E-5.5(c)1iii, which allows the use of one plot instead of two if the forest is uniform overall, is recodified as N.J.A.C. 7:7-13.5(d)1ii with amendments. Specifically, the Department is proposing to amend proposed N.J.A.C. 7:7-13.5(d)1ii to require that, for the purposes of the point total calculation under proposed N.J.A.C. 7:7-13.5(d)5 (existing N.J.A.C. 7:7E-5.5(c)5), if only one plot is sampled, the point total resulting from the tree diameters on the plot shall be doubled since the calculation at proposed N.J.A.C. 7:7-13.5(d)5 is based on the points determined from sampling two plots. This is the same as the Highlands methodology at N.J.A.C. 7:38-3.9(c)1ii.

At proposed N.J.A.C. 7:7-13.5(d)3, the Department is proposing to amend the diameter categories and points assigned to the different categories to diameters/point values consistent with the system contained in the Highlands rules. The proposed amendments are based upon data from the U.S. Forest Inventory (USFI) Field Procedures Manual (U.S. Forest Service), Forest Statistics for New Jersey 1987 and 1999 (Griffith and Widmann, 2001), and Forests of the Garden State Resource Bulletin NE163 (Widmann, 2005). The USFI program provides an overall analysis of tree size Statewide and the percentage of such trees per acre in New Jersey's forests. The proposed amendments are intended to better adapt this method to more consistently identify forests in the coastal zone.

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In reviewing the U.S. Forest Service data, the Department discovered that its method of forest assessment (borrowed originally from the State of Maine) in the existing rules was based upon the U.S. Forest Service method that required point values from both sample plots within the acre of potential forest to be totaled in order to reach a final conclusion. Therefore, the Department is proposing to amend existing N.J.A.C. 7:7E-5.5(c)5 (proposed N.J.A.C. 7:7-13.5(d)5) to require that the total point scores for both sample plots be totaled in order to get a final score.

Because of the changes to the point distribution and the proposed requirement to total point values from both sample plots, the Department is proposing to amend proposed N.J.A.C. 7:7-13.5(d)5 to reflect the total score for both sample plots and to provide an appropriate example of how to do a final evaluation of the sample plots. This is consistent with the Highlands methodology at N.J.A.C. 7:38-3.9(c)5.

Consistent with the Highlands methodology at N.J.A.C. 7:38-3.9(c)6, the Department is proposing to amend existing N.J.A.C. 7:7E-5.5(c)6 (proposed N.J.A.C. 7:7-13.5(d)6) to emphasize that the sample plots are intended to identify an acre as forested. This provision is also intended to assist applicants in locating the outermost limits of the forest sample.

Existing N.J.A.C. 7:7E-5.5(c)7, which provides that if a plot is unforested, the Department will assume that the half-acre of the site surrounding the plot is also unforested is recodified at N.J.A.C. 7:7-13.5(d) with no changes in text.

The Department is not including two provisions from the Highlands rule concerning the determination of whether an area is considered forest. Specifically, the Department is not including N.J.A.C. 7:38-3.9(c)7 and 8 which address newly planted or regenerating forests and

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orchards, and Christmas tree farms and nurseries, respectively. The Department is not including these provisions since these types of horticultural activities are not regulated under CAFRA or the Waterfront Development Law.

Proposed new N.J.A.C. 7:7-13.5(e) provides that the limit of the forest is the outermost edge of the canopy of the forested area identified at proposed N.J.A.C. 7:7-13.5(c) and (d).

**N.J.A.C. 7:7-13.6 through 13.14 Impervious cover limits and vegetative cover percentages in the upland waterfront development area**

Existing N.J.A.C. 7:7E-5A contains impervious cover limits and vegetative cover percentages in the upland waterfront development area. The Department is proposing to recodify existing N.J.A.C. 7:7E-5A.2 through 5A.10 to proposed N.J.A.C. 7:7-13.6 through 13.14. Proposed amendments include insertion of an indication, where necessary, of language to clearly indicate that these sections in the new consolidated subchapter continue to be only applicable to the upland waterfront development area.

**N.J.A.C. 7:7-13.15 through 13.19 Impervious cover limits and vegetative cover percentages in the CAFRA area**

Existing N.J.A.C. 7:7E-5B contains impervious cover limits and vegetative cover percentages in the CAFRA area. The Department is proposing to recodify existing N.J.A.C. 7:7E-5B.2 through 5B.6 to proposed N.J.A.C. 7:7-13.15 through 13.19. Proposed amendments include insertion of an indication, where necessary, of language to clearly indicate that these sections in the new consolidated subchapter continue to be only applicable to the CAFRA area.

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**N.J.A.C. 7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; Non-mainland coastal centers**

Proposed N.J.A.C. 7:7-13.16 is recodified, with amendments, from existing N.J.A.C. 7:7E-5B.3, and sets forth the process for establishing coastal planning areas, CAFRA centers, and non-mainland coastal centers. Proposed N.J.A.C. 7:7-13.16(c) provides that a CAFRA center boundary shall supersede the boundary for a corresponding coastal center boundary identified at Appendix 2 or 3 of N.J.A.C. 7:7E. Reference to Appendix 2, Boundaries of mainland coastal centers in the CAFRA area, in this subsection and throughout the subchapter is proposed for deletion as this appendix was deleted by a notice of administrative change on May 21, 2007 (see 39 N.J.R. 2018(b)).

**N.J.A.C. 7:7-13.17 Non-porous cover limits for a site in the CAFRA area**

**N.J.A.C. 7:7-13.18 Vegetative cover percentages for a site in the CAFRA area**

Proposed N.J.A.C. 7:7-13.17 is recodified, with amendments, from existing N.J.A.C. 7:7E-5B.4 and sets forth the non-porous cover limits in the CAFRA area. Proposed N.J.A.C. 7:7-13.18, existing N.J.A.C. 7:7E-5B.5, sets forth the vegetative cover limits for a site in the CAFRA area. Proposed N.J.A.C. 7:7-13.17 and 13.18 and their respective existing sections each include a table, Table H and Table I, respectively. Table H contains the percentages for calculating the non-porous limits under proposed N.J.A.C. 7:7-13.17 and Table I contains the percentages for calculating the vegetative limits under proposed N.J.A.C. 7:7-13.18. The percentages contained in the two proposed tables are unchanged from the existing tables. The

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non-porous cover limits and vegetative cover percentages for the Coastal Suburban Planning Area are dependent upon whether the site is located within a sewer service area. The note containing the definition of sewer service area included in Table H and Table I is proposed for deletion since a new definition of sewer service area is proposed at N.J.A.C. 7:7-1.5. This definition is similar to the definition contained within the note, with changes as described in the summary of this proposed definition at proposed N.J.A.C. 7:7-1.5.

#### **N.J.A.C. 7:7-13.19 Mainland coastal centers**

Proposed N.J.A.C. 7:7-13.19, which addresses mainland coastal centers, is recodified from N.J.A.C. 7:7E-5B.6, with amendments. Existing N.J.A.C. 7:7E-5B.6 describes the mainland coastal centers, explains how a coastal center with a boundary that expired on February 7, 2005, becomes a mainland coastal center, sets forth the expiration for mainland coastal centers, identifies environmentally sensitive areas not considered part of the mainland coastal center, and specifies the impervious cover limits and vegetative cover requirements for development in mainland coastal centers. Under the existing rule at N.J.A.C. 7:7E-5B.6(c), all mainland coastal centers established under this rule expired March 15, 2007.

The 1993 amendments to CAFRA required that the rules adopted to implement those amendments be closely coordinated with the State Development and Redevelopment Plan. In response to these statutory amendments, the Department adopted new rules for determining impervious cover limits and vegetative cover percentages for sites in the CAFRA area based on the site's location in a CAFRA center, core or node, Coastal Planning Area or coastal center (see 32 N.J.R. 503(a), February 7, 2000) with higher impervious cover allowed in a coastal or

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CAFRA center. A five-year term was established for the boundaries of coastal centers located on the less developed mainland (mainland coastal centers), with the five-year term expiring February 5, 2005. This five-year term was intended to provide sufficient time for municipalities to obtain center designation through the State Planning process and ultimately achieve CAFRA center status. In consideration that some local governments had committed substantial time and money on diligent efforts to obtain plan endorsement from the State Planning Commission, the Department determined it appropriate to re-establish the boundaries of mainland coastal centers that expired on February 7, 2005, for a limited term and in limited circumstances. Re-established mainland coastal centers remained effective until March 15, 2007, or until the municipality's petition for plan endorsement was approved by the State Planning Commission and the Department determined the appropriateness of the State Planning Commission approved center boundary as a CAFRA center boundary, whichever occurs first (38 N.J.R. 928(c), February 6, 2006). Wetlands, endangered or threatened wildlife habitat, Natural Heritage Program priority sites, open space, special water resource protection areas, and Coastal Critical Environmental Sites within the re-established mainland coastal center boundary were not considered part of the mainland coastal center, except for CAFRA permit applications received prior to February 7, 2005.

In September 2008, the Permit Extension Act of 2008 was enacted. This Act re-established certain mainland coastal centers. The Act initially extended the expiration of approvals covered by the Act, including mainland coastal centers, to July 1, 2010. The Permit Extension Act of 2008 was subsequently extended on January 18, 2010. As a result of the 2010

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amendments to the Permit Extension Act of 2008, the boundaries of certain mainland coastal centers were extended through March 15, 2013. These mainland coastal centers are:

I. Atlantic County coastal centers

A. Egg Harbor Township coastal centers

1. Egg Harbor coastal town

II. Cape May County coastal centers

A. Lower Township coastal centers

1. Town Bank/North Cape May coastal town

III. Ocean County coastal centers

A. Toms River coastal centers

1. Toms River coastal regional center

2. Lakewood regional center

On September 19, 2012, the Permit Extension Act of 2008 at N.J.S.A. 40:55D-136.2 through 136.6 was further amended by P.L. 2012, c. 48. This Act further extended center designations in municipalities that had submitted an application for plan endorsement to the State Planning Commission as of March 15, 2007, and were in compliance with the provisions of existing N.J.A.C. 7:7E-5B.6. In accordance with P.L. 2012, c. 48, these centers now expire December 31, 2014. In light of this recent legislation further extending the expiration date of mainland coastal centers, the Department has determined it is appropriate to retain those portions of existing N.J.A.C. 7:7E-5B.6 (proposed N.J.A.C. 7:7-13.19) that identify the areas not

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considered a mainland coastal center, and address the non-porous cover limits and vegetative cover requirements for development within the re-established mainland coastal centers.

Existing N.J.A.C. 7:7E-5B.6(a) provides that the Department delineated boundaries of coastal centers not located on barrier islands, oceanfront spits, or peninsulas, that is, coastal centers located on the mainland (mainland coastal centers) in the CAFRA area, expired on February 7, 2005, and that the expired boundaries were re-established as the boundaries of the mainland coastal center once certain conditions were met. The Department is proposing to modify this provision to reflect the March 15, 2007, expiration of the mainland coastal centers pursuant to the Department's initial re-establishment of these centers as referenced above and the effects of the Permit Extension Act of 2008, as amended most recently on September 19, 2012, which had the effect of re-establishing certain of the mainland coastal centers.

Proposed N.J.A.C. 7:7-13.19(a) provides that the mainland coastal center boundaries expired March 15, 2007, and that, pursuant to the Permit Extension Act of 2008 as amended January 18, 2010, and September 19, 2012, the expired mainland coastal center boundaries are re-established and extended until December 31, 2014. The description of the re-established mainland coastal center boundaries is contained in proposed new Appendix J, Boundaries of the Mainland Coastal Centers in the CAFRA Area Re-established under the Permit Extension Act of 2008 as Amended January 18, 2010 and September 19, 2012.

Existing N.J.A.C. 7:7E-5B.6(b) sets forth the criteria to re-establish coastal centers as mainland coastal centers. This subsection is proposed for deletion because it is no longer relevant as the dates referenced for certain actions to be taken are long past and the only

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mainland coastal centers are those that were re-established under the Permit Extension Act of 2008, as amended.

Existing N.J.A.C. 7:7E-5B.6(c) (proposed for recodification with amendments to N.J.A.C. 7:7-13.19(b)) sets forth the expiration dates for mainland coastal centers and explains the non-porous cover limits and vegetative cover requirements that will apply to a site before and after the mainland coastal center expires. The Department is proposing to modify this section to provide that the mainland coastal centers expire December 31, 2014.

Existing N.J.A.C. 7:7E-5B.6(d) (proposed N.J.A.C. 7:7-13.19(c)) provides that the Department will publish administrative notice in the New Jersey Register when the boundaries of a mainland coastal center are established or a mainland coastal center expires. The Department is proposing to amend this subsection to reflect that only existing mainland coastal centers are extended by the Permit Extension Act. Accordingly, as no new mainland coastal centers will be established, reference to notice of establishment of mainland coastal centers is proposed for deletion.

Existing N.J.A.C. 7:7E-5B.6(f) sets forth the impervious cover limits and vegetative cover requirements that apply to CAFRA permit applications that were received by the Department prior to February 5, 2005 and subsequently determined to be complete for review by March 16, 2006. This subsection is proposed for deletion as it is no longer necessary because the Department would have made a permit decision on any permits that were declared complete for review by March 15, 2006.

Existing N.J.A.C. 7:7E-5B.6(h) addresses the non-porous cover limits and vegetative cover requirements for CAFRA applications declared complete for review prior to March 15,

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2007, that propose a 100 percent affordable housing development in a mainland coastal center.

This provision is proposed to be deleted because the Department would have made a permit decision on any permits that were declared complete for review by March 15, 2007.

Proposed N.J.A.C. 7:7-13.19(f), recodified from existing N.J.A.C. 7:7E-5B.6(i), addresses Critical Environmental Sites approved by the State Planning Commission and sets forth the process for the Department to review the Critical Environmental Site and accept, reject or reject and revise the boundary. Because Critical Environmental Sites are not considered part of a mainland coastal center, this subsection remains relevant.

#### **Subchapter 14. General Location Rules**

Existing N.J.A.C. 7:7E-6, which outlines the process of determining the most acceptable route for linear development and discusses secondary impacts and the requirements of a secondary impact analysis, is proposed for recodification at proposed N.J.A.C. 7:7-14 with amendments to facilitate the combining of the coastal rules into a single chapter. The Department is additionally proposing to clarify an example provided in proposed N.J.A.C. 7:7-14.1(a) of the type of generally unacceptable proposed alignment of a linear development that could be acceptable if the conditions specified in that section are met.

#### **Subchapter 15. Use Rules**

Proposed N.J.A.C. 7:7-15, which contains the rules and conditions for particular uses of coastal resources (including housing, resorts, marinas, energy, transportation, mining, ports, commercial facilities, and dredging) and contains particular rules and conditions addressed to

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particular developments, is recodified from N.J.A.C. 7:7E-7, with amendments described below.

Minor changes to the headings of various sections are proposed throughout proposed N.J.A.C.

7:7-15 to delete “use rule” as this clause is unnecessary.

### **N.J.A.C. 7:7-15.2 Housing**

Proposed N.J.A.C. 7:7-15.2, which contains the Department’s standards for housing, is recodified from N.J.A.C. 7:7E-7.2, with amendments described below.

Proposed N.J.A.C. 7:7-15.2(c), existing N.J.A.C. 7:7E-7.2(c), sets forth the standards for floating homes. Existing N.J.A.C. 7:7E-7.2(c)1, which defines a floating home, is proposed for deletion since a definition of floating home is proposed at N.J.A.C. 7:7-1.5. This definition is similar to the definition at N.J.A.C. 7:7E-7.2(c)1, with the change described in the summary of proposed N.J.A.C. 7:7-1.5.

Proposed N.J.A.C. 7:7-15.2(e)3ii and (f)2ii, existing N.J.A.C. 7:7E-7.2(e)2ii and (f)2ii, provide that development need not comply with the dunes rule, N.J.A.C. 7:7E-9.16, if the development is located on a dune which is isolated from a beach and dune system by a public road, public seawall, or public bulkhead existing on July 19, 1993, and if the site and development meet certain criteria. Consistent with proposed N.J.A.C. 7:7-6.4(e)2ii(1) and (4) and proposed N.J.A.C. 7:7-6.5(d)2i and iv, references to the municipal Flood Insurance Rate Map at proposed N.J.A.C. 7:7-15.2(e)3ii(1) and (4) and (f)2ii(1) and (4) are being replaced with the term “FIRM” which is proposed to be defined at N.J.A.C. 7:7-1.5. The FIRM is proposed to be defined as the Flood Insurance Rate Map prepared by FEMA for a community. In some

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instances, the FIRM may be on a municipal or county scale. Accordingly, reference to “municipal Flood Insurance Rate Map” is proposed for deletion.

As explained in detail in the summary of proposed N.J.A.C. 7:7-6.4, the Department is proposing to modify the existing general permit for the construction of one single-family home or duplex to allow the construction of one or two single-family homes or duplexes. Accordingly, the Department is proposing to amend proposed N.J.A.C. 7:7-15.2(e) to allow the construction of one or two single-family homes or duplexes under the conditions described in the section-by-section summary of the corresponding general permit at proposed N.J.A.C. 7:7-6.4.

The rule rationale at proposed N.J.A.C. 7:7-15.2(f)13 is being amended to delete the explanation as to how the Department determined that the construction of single family homes or duplexes is acceptable in certain circumstances. The rationale for standards for new single family home or duplex development is more appropriately discussed in the rationale of proposed N.J.A.C. 7:7-15.2(e). The amended rationale of proposed N.J.A.C. 7:7-15.2(f) focuses on the impacts associated with the expansion, or reconstruction (with or without expansion), of a single family home or duplex since that is the subject of this subsection.

### **N.J.A.C. 7:7-15.3 Resort/recreational**

Proposed N.J.A.C. 7:7-15.3, which sets forth the standards applicable to marina development, is recodified from N.J.A.C. 7:7E-7.3 with amendments.

Existing N.J.A.C. 7:7E-7.3(d)6, which provides that recreational boating facilities are acceptable provided that they are designed and located in order to cause minimum feasible interference with the commercial boating industry, is proposed for deletion. It has been the

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Department's experience that there have been very few instances where a conflict has been demonstrated and in such situations the conflict has been dealt with by appropriate Federal or State agencies whose expertise is commerce.

Existing N.J.A.C. 7:7E-7.3(d)8 (proposed N.J.A.C. 7:7-15.3(d)7) provides that the construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Consistent with the proposed amendments described under the shellfish habitat rule, proposed N.J.A.C. 7:7-9.2, the Department is proposing to amend this provision to allow for the construction of new marinas in infill situations where the standards at N.J.A.C. 7:7-9.2 have been satisfied.

Existing N.J.A.C. 7:7E-7.3(d)9 requires marinas to comply with the design standards set forth at N.J.A.C. 7:7E-7.3A to the maximum extent practicable. For the reasons described at the summary of the repeal of N.J.A.C. 7:7E-7.3A below, the Department is proposing to delete this paragraph. Accordingly, reference to the marina development rule is proposed for deletion.

Marinas are an essential component of the State's waterfront communities as they provide necessary infrastructure and services to the boating public. Marinas also contribute to the State's economy. The conversion of marinas to waterfront condominiums and other non-water dependent development is a trend that is growing both on a national and State level. The Marine Trades Association of New Jersey has been tracking the loss of marine facilities within the State. According to the Marine Trades Association of New Jersey, as of 2011, the marina industry has lost over 500 slips and 17 marina facilities have been closed or sold for development. This is supported by the Department's experience in reviewing development proposals to convert existing water dependent uses to housing. In an effort to preserve existing

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marinas and make them economically viable, while assuring that important environmental concerns continue to be addressed, the Department is proposing the below amendments.

New Jersey's waterfront communities are diverse, active lands, where people come to enjoy being in close proximity to the water and where the economy thrives. The Department, through the adoption of its public access rules (see 43 N.J.R. 772(a), April 4, 2011, and 44 N.J.R. 2559(a), November 2, 2012), recognized that the establishment of restaurants along tidal waterways is a legitimate public access opportunity. Restaurants located along tidal waterways allow the public to enjoy this resource and provide the community with an economic benefit. In an effort to assist in the economic recovery of marinas after Superstorm Sandy and to preserve existing marinas, the Department is proposing to allow for the construction of a restaurant at certain new or existing marina facilities. The Department believes that allowing for the construction of a restaurant at these facilities will expand the public's opportunity for both visual and physical access and will provide marina facilities with a year-round use making them more economically viable, while assuring that marina functions continue to be provided.

Proposed N.J.A.C. 7:7-15.3(d)8 allows for the construction of a restaurant at a new or existing marina facility provided certain conditions are met. Specifically, proposed N.J.A.C. 7:7-15.3(d)8i requires that the new or existing marina facility maintain 25 or more dockage units consisting of either dry dock storage or wet slips. This requirement will ensure that the marina is of a sufficient size that, after construction of the restaurant, it will continue to provide marina services to support the recreational boating industry. Proposed N.J.A.C. 7:7-15.3(d)8ii requires that the upland marina support facilities be preserved to the maximum extent practicable such that the marina use on the site is not compromised by the restaurant. It also requires that existing

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wet slips servicing the marina shall not be reduced in number except as may be necessary to reconfigure the wet slips to accommodate different size vessels. Marina support facilities include boat rack systems and marina support buildings providing services such as showrooms, maintenance and repair, marine supplies, bait and tackle sales, boat sales, and dock masters office, but do not include a residential development. This provision is intended to preserve both the in-water and upland services provided by the marina facility prior to the construction of the restaurant. Proposed N.J.A.C. 7:7-15.3(d)8iii requires that, where a restaurant is proposed as part of a new marina facility, the marina facility must provide an appropriate mix of marina support facilities. This provision is intended to ensure that the new marina facility will support the boating industry. Proposed N.J.A.C. 7:7-15.3(d)8iv requires that the restaurant be located landward of the mean high water line. While restaurants are considered a water oriented use (see definition of water oriented use at proposed N.J.A.C. 7:7-1.5), they do not need to be located over water. Proposed N.J.A.C. 7:7-15.3(d)8v sets forth the setback requirements for the restaurant. These setback requirements are consistent with the setback requirements for other structures at marinas under general permit 9 - construction of support facilities at legally existing marinas, proposed N.J.A.C. 7:7-6.9. The requirement that the restaurant provide onsite pumpout facilities and restrooms adequate to serve both marina patrons and patrons of the restaurant at proposed N.J.A.C. 7:7-15.3(d)8vi is intended to protect water quality. Proposed N.J.A.C. 7:7-15.3(d)8vii requires that public access be provided in accordance with the public trust rights rule, N.J.A.C. 7:7-9.48, and the public access rule, N.J.A.C. 7:7-16.9. This requirement will ensure that public access continues to be provided in accordance with these rules.

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At proposed N.J.A.C. 7:7-15.3(d)9ii, the Department is proposing to clarify that bulkhead sheathing and planking as well as dock planking must be made of a nonpolluting material, but that this requirement does not apply to pilings.

The rule rationale at existing N.J.A.C. 7:7E-7.3(d)11, proposed N.J.A.C. 7:7-15.3(d)10, is proposed to be amended to address the expansion of an existing marina or construction of new marina in limited situations in shellfish habitat and the construction of a restaurant at a new or existing marina facility that provides dockage for 25 or more dockage units consisting of either dry dock storage or wet slips.

#### **N.J.A.C. 7:7-15.10 Commercial facility**

Proposed N.J.A.C. 7:7-15.10, which contains the standards for the development of hotels and motels, retail and trade service establishments, and convention centers and arenas, is recodified from N.J.A.C. 7:7E-7.10, with amendments to require a setback from shore protection structures when located on a non-oceanfront site.

Currently, the CZM rules do not contain a setback requirement for commercial developments and, therefore, these structures can be constructed immediately adjacent to a bulkhead. However, the CZM rules do require a 15-foot setback for residential structures located adjacent to existing or proposed shore protection structures. The construction of a structure such as a house or commercial facility within 15 feet of the bulkhead may preclude the replacement of the bulkhead within 18 inches resulting in the filling of water areas and potential impacts to special areas. This requirement is intended to ensure that the residential structure will not preclude the replacement of the bulkhead within 18 inches. If there is no alternative to locating

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the proposed structure at least 15 feet landward of the shore protection structure, the Department will reduce the setback where an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the shore protection structures. The proposed amendments also require that a conservation restriction be recorded which states that any reconstruction of the shore protection structure must be within 18 inches of the existing shore protection structure. The requirement to record a conservation restriction will put subsequent property owners on notice about the required placement as part of the purchase process. The Department is proposing to add the 15-foot setback and conservation restriction requirement for commercial facilities located on non-oceanfront sites at proposed N.J.A.C. 7:7-15.10(a)5, (b)4, and (c)3.

#### **N.J.A.C. 7:7-15.11 Coastal engineering**

Proposed N.J.A.C. 7:7-15.11, which sets forth the standards for coastal engineering measures to manage water areas and protect the shoreline from the effects of erosion, storms, and sediment and sand movement, is recodified from N.J.A.C. 7:7E-7.11, with amendments relating to the construction of bulkheads in V zones. Existing N.J.A.C. 7:7E-7.11(d)1 requires that a bulkhead subject to wave run-up forces (V zones) include a 10-foot wide splash pad, constructed of concrete, asphalt, or other erosion resistant material, on the landward site side of the bulkhead. For the same reasons as discussed at proposed N.J.A.C. 7:7-6.10(b) and 6.14(a)8, the Department is proposing to delete the requirement at proposed N.J.A.C. 7:7-15.11(d)1 that the construction of a bulkhead include a splash pad on the landward side.

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#### **N.J.A.C. 7:7-15.12 Dredged material placement on land**

Proposed N.J.A.C. 7:7-15.12, which contains the standards for dredged material placement on land, is recodified from N.J.A.C. 7:7E-7.12, with amendments discussed below.

Proposed N.J.A.C. 7:7-15.12(b) addresses the testing of dredged material to determine the acceptability of the placement of the material on a particular site. The Department is proposing to provide that, if testing of the dredged material is required, the testing must be conducted in accordance with proposed Appendix G. Currently, where the Department requires testing of sediment prior to its placement on land, Chapters III and V of the Department's dredging technical manual provide information on testing methods, as referenced in existing N.J.A.C. 7:7E-7.12(i). With the incorporation of much of the dredging technical manual into proposed regulatory Appendix G, cross-reference to the standards contained in proposed Appendix G is added and existing N.J.A.C. 7:7E-7.12(i), which references the Department's dredging technical manual, is proposed for deletion.

Proposed N.J.A.C. 7:7-15.12(f) provides that dredged material disposal in wet and dry borrow pits is conditionally acceptable. For the purposes of clarity, the Department is proposing to amend this provision to replace the term "disposal" with "placement" to make it clear that this provision refers to the beneficial use of dredged material.

#### **N.J.A.C. 7:7-15.14 High-rise structures**

Proposed N.J.A.C. 7:7-15.14, which contains the standards for the development of high rise structures, is recodified from N.J.A.C. 7:7E-7.14, with amendments. The high-rise structures rule applies to structures that are more than six stories or more than 60 feet in height as

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measured from existing preconstruction ground level. The rule establishes standards to address a variety of issues applicable to these taller structures, including compatibility with existing densities and character of surrounding development consistent with municipal comprehensive development schemes, maintaining visual and physical access to the waterfront, preserving the views of the water, shoreline features, and horizons or skylines from existing residential development and public roads, and limiting over-shadowing of beaches and waterfront parks. The Department is proposing to amend the standard at N.J.A.C. 7:15.14(b)3, which addresses the orientation of high-rise structures with respect to the shoreline, to clarify its application to the taller portions of a high-rise building, or complex of buildings, that comprises both a low-rise component (six stories or 60 feet or less in height as measured from preconstruction ground level) and a component that is more than six stories or 60 feet in height as measured from preconstruction ground level). In order to lessen the degree to which a high-rise building obstructs views to the water, shoreline, and horizon or skyline, the taller component must be oriented such that its longest lateral dimension is perpendicular to the beach or coastal water. The amendment makes clear that this limitation is applicable only to buildings and not to other tall structures such as amusement ferris wheels or utility towers, which do not present the same concerns of scale and bulk in the context of blocking views toward the water.

Proposed N.J.A.C. 7:7-15.14(c) identifies the types of development to which this rule does not apply. Existing N.J.A.C. 7:7E-7.14(c)1 exempts development in Atlantic City on existing ocean piers and elevated pedestrian bridges which meet the standards of the Atlantic City special area rule. The Department is proposing to amend this exemption to exclude any development within the City of Atlantic City. This rule is not intended to ban high-rise

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structures, rather to provide criteria for their development at suitable locations in the coastal zone. The City of Atlantic City has numerous high-rise developments such that the addition of the new high-rise structures will not significantly alter the existing viewshed, cause adverse traffic impacts, or adversely affect beaches and parks.

### **Subchapter 16, Resource Rules**

The Department is proposing to recodify N.J.A.C. 7:7E-8, which contains rules and conditions used to review a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region, to proposed N.J.A.C. 7:7-16, with amendments described below.

#### **N.J.A.C. 7:7-16.2 Marine fish and fisheries**

Proposed N.J.A.C. 7:7-16.2, which sets forth the standards applicable to activities that impact the marine fish and fisheries resource, is recodified from existing N.J.A.C. 7:7E-8.2, with amendments with related to recreational docks and piers as described below.

Proposed N.J.A.C. 7:7-16.2(c) sets forth activities that are conditionally acceptable provided the activity complies with the appropriate general water area rule at proposed N.J.A.C. 7:7-12 (existing N.J.A.C. 7:7E-4). The Department is proposing to add to the list of activities that are conditionally acceptable the construction of a recreational dock or pier at proposed N.J.A.C. 7:7-16.2(c)5. One of the activities which may interfere with marine fish and fisheries is an unacceptable increase in turbidity levels. Typically, boats are moored at recreational docks and piers. The movement of a boat to and from a dock where insufficient water depths are present to

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accommodate the mooring of a vessel will result in increased turbidity of the area surrounding the structure which may interfere with marine fish and fisheries. Docks and piers constructed in accordance with the recreational docks and piers rule at proposed N.J.A.C. 7:7-12.5 will ensure that the impacts associated with the use of the dock, including impacts from turbidity, are minimized.

#### **N.J.A.C. 7:7-16.3 Water quality**

The Department is proposing to amend existing N.J.A.C. 7:7E-8.4(a) (proposed N.J.A.C. 7:7-16.3(a)) to correct citations and also eliminate reference to the rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5). The wastewater discharge requirements were recodified to become part of the New Jersey Pollutant Discharge Elimination System (NJPDES) rules (see 37 N.J.R. 3648(a), September 19, 2005). As the NJPDES rules are already listed in existing N.J.A.C. 7:7E-8.4(a) (proposed N.J.A.C. 7:7-16.3(a)), no further amendment is needed.

#### **N.J.A.C. 7:7-16.9 Public access**

Proposed N.J.A.C. 7:7-16.9, which sets forth the Department's public access requirements, is recodified from existing N.J.A.C. 7:7E-8.11, with amendments relating to the required conservation restriction. Specifically, the public access rule at existing N.J.A.C. 7:7E-8.11(z) requires that the areas set aside for public access be permanently dedicated for public use through the recording of a Department approved conservation restriction maintaining the publicly dedicated areas in perpetuity. This subsection also specifies the form and recording requirements of the conservation restriction. As discussed in detail at proposed N.J.A.C. 7:7-18,

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Conservation Restrictions, the Department is proposing a new subchapter which sets forth the form and recording requirements for conservation restrictions required under this chapter.

Therefore, the Department is proposing to replace the specific form and recording requirements at existing N.J.A.C. 7:7E-8.11(z)1 through 4 with a reference to the new subchapter.

### **N.J.A.C. 7:7-16.12 Traffic**

Proposed N.J.A.C. 7:7-16.12, which sets forth the Department's requirements for the movement of vehicles and pedestrians within the coastal zone, is recodified from existing N.J.A.C. 7:7E-8.14, with amendments relating to the review of impacts to the level of service of a traffic system. Specifically, proposed N.J.A.C. 7:7-16.12(c) (existing N.J.A.C. 7:7E-8.14(c)) provides that when the level of service of a traffic system is disturbed by an approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement must be prepared and implemented as part of the coastal development and to the satisfaction of the New Jersey Department of Transportation and any regional agencies. The Department is proposing to amend this provision to provide flexibility in the review of any potential effects on traffic by eliminating the requirement that both NJDOT and regional agencies review the design modifications or funding contribution. Review by both NJDOT and regional agencies is in many cases unnecessary. For example, where a coastal development affects traffic on a county road, the county agency responsible for that road would review the effect of the development and the appropriateness of design modifications or a funding contribution toward an area wide traffic improvement.

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### **Subchapter 17. Mitigation**

Proposed new N.J.A.C. 7:7-17 sets forth the requirements for all mitigation required under the CZM rules and replaces the mitigation requirements at existing N.J.A.C. 7:7E-3.2, 3.6, 3.15, 3.27, 3B, and 4.10. As discussed below, the Department is proposing to reorganize and consolidate the mitigation requirements and update them to better align them with the standards currently used elsewhere in the United States.

In 2002, the Department published on its website at <http://www.state.nj.us/dep/dsr/wetlands/final.pdf>, the results of a study conducted by Amy S. Greene Environmental Consultants Inc., entitled, “Creating Indicators of Wetland Status (quantity and quality): Freshwater Wetland Mitigation in New Jersey,” March 2002. This study concluded that, based on an evaluation of 90 freshwater wetland mitigation sites in New Jersey between 1988 and 1999, wetland mitigation practices in New Jersey were not effective in meeting the Department’s goal of increasing wetland quantity and quality in the State. To address the concerns raised by the study, the Department amended the mitigation standards in the FWPA rules at N.J.A.C. 7:7A-15 in order to better ensure the long term success of mitigation projects. (See 39 N.J.R. 3587(a); 40 N.J.R. 5581(a); effective October 6, 2008.)

In 2008, the USEPA and USACE adopted regulations, known as “Compensatory Mitigation for Losses of Aquatic Resources” (hereafter referred to as the Federal Mitigation Rule), after a national wetland mitigation study published conclusions similar to those of New Jersey’s study. The Federal Mitigation Rule contains the same standards for both freshwater and tidal wetlands located within New Jersey’s coastal zone.

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In 1993, the Department entered into an assumption agreement with the USEPA to administer the permit program established pursuant to Section 404 of the Federal Clean Water Act. The assumption agreement obligates the State to maintain program compatibility, which means the State's freshwater wetland regulatory program must be as strict as the Section 404 Federal program. The Federal CZMA does not contain such a requirement for coastal wetlands.

In contrast to the Federal Mitigation Rule, the mitigation standards for projects involving tidal wetlands under the existing CZM rules differ from the mitigation standards for projects involving freshwater wetlands under the FWPA rules. To remedy the inconsistency and ensure the State's tidal wetland mitigation program reflects current science, the Department is proposing to amend the wetland mitigation standards of the CZM rules to reflect the standards for wetlands mitigation in the FWPA rules.

#### **N.J.A.C. 7:7-17.1 Definitions**

Proposed new N.J.A.C. 7:7-17.1 contains definitions specific to the mitigation subchapter. Other terms used in the subchapter are defined at N.J.A.C. 7:7-1.5 because they are also used elsewhere in the CZM rules.

Definitions for "degraded wetland," "in-kind mitigation," "out-of-kind mitigation," and "Wetlands Mitigation Fund" are proposed for purposes of consistency with the FWPA rules and are identical to the definitions of the terms at N.J.A.C. 7:7A-1.4 and 15.1 in those rules.

A definition of "temporary disturbance" is proposed and describes an activity that occupies, persists, and/or occurs on a site for no more than six months. The six-month time period is consistent with the duration of a temporary disturbance under the FWPA rules (see

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N.J.A.C. 7:7A-1.4). The Department recognizes that disturbance associated with certain regulated activities, such as hazardous substance remediation or solid waste facility closure, are intended to be temporary but may exceed six months in duration. Accordingly, the definition provides that the Department will consider such disturbances to be temporary for purposes of this subchapter provided the disturbed areas are restored to their original topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.

The terms “creation,” “enhancement,” and “restoration” are currently defined in the CZM rules’ wetlands special area rule at existing N.J.A.C. 7:7E-3.27. New definitions of these terms are proposed that are consistent with the definitions of these terms in the mitigation provisions of the FWPA rules at N.J.A.C. 7:7A-15.1.

Definitions for “credit purchase,” “mitigation banking instrument,” “mitigation bank site,” and “service area” are proposed because wetland mitigation banking is a form of mitigation used in the coastal zone. There are four Department-approved wetland mitigation banks located within the coastal zone that can sell credits for impacts associated with coastal permits: Stipsons Island, Dennis Township, Cape May County; Port Reading, Woodbridge Township, Middlesex County; Kane Wetland Bank, Borough of Carlstadt and Borough of South Hackensack, Bergen County; and MRI 3, Carlstadt, Bergen County. The proposed definitions are the same as the definitions of “credit purchase,” “mitigation banking instrument,” “mitigation bank service area,” and “mitigation bank site” at N.J.A.C. 7:7A-15.1 in the FWPA rules with minor amendments for clarity that do not affect meaning.

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The proposed definition of “fee simple” is the same as that in the Department’s Green Acres Program rules at N.J.A.C. 7:36-2.1. The term “fee simple” is used in describing ownership of the property on which mitigation may be performed.

Existing N.J.A.C. 7:7E-3.27(h)9iv allows for wetland mitigation in the form of either a monetary contribution or land donation. The Federal Mitigation Rule recognizes a different type mitigation, known as an “in-lieu fee program.” Because the State and the USACE have joint jurisdiction in non-assumable waters and adjacent wetlands, the Department is proposing to incorporate in proposed N.J.A.C. 7:7-17 an in-lieu fee program as an additional form of monetary contribution. An in-lieu fee program is a program approved by the Department and the USACE that involves the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a government or non-profit entity to satisfy compensatory mitigation requirements for both State and USACE permits. An in-lieu fee program sells credits to permittees whose obligation to provide mitigation is then transferred to the in-lieu fee program. An “in-lieu fee program instrument” is the document that authorizes an in-lieu fee program. The Department is proposing definitions for “in-lieu fee program” and “in-lieu fee program instrument” to facilitate the implementation of an in-lieu fee program for mitigation should such a program be approved in New Jersey. The definition of “in-lieu fee program” is similar to the definition of the term in the Federal Mitigation Rule, modified to make it clear that an in-lieu fee program must be approved by both the Department and the USACE. The definition of “in-lieu fee program instrument” is the same as that in the Federal Mitigation Rule.

Mitigation for purposes of the CZM rules is described at existing N.J.A.C. 7:7E-1.6(a). The Department is proposing a definition of “mitigation” at N.J.A.C. 7:7-17.1 that is similar to

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the definition of this term at N.J.A.C. 7:7A-15.1 in the FWPA rules, with amendments to reflect that the resources for which mitigation is undertaken for purposes of the CZM rules are those in the coastal zone, including wetlands, intertidal and subtidal shallows, submerged aquatic vegetation, riparian zones, and shellfish habitat.

The concept of “contribution” described at existing N.J.A.C. 7:7E-3.27(h)9iv is replaced in proposed N.J.A.C. 7:7-17.1 with a definition of “monetary contribution.” The proposed definition is consistent with the definition of the term at N.J.A.C. 7:7A-15.1 in the FWPA rules, with amendments that recognize that monetary contributions may be made to the Wetlands Mitigation Fund through the Wetlands Mitigation Council for impacts to intertidal and subtidal shallows, or to the Department’s dedicated account for shellfish habitat mitigation when mitigation for impacts to shellfish habitat is required pursuant to the shellfish habitat rule at proposed N.J.A.C. 7:7-9.2.

#### **N.J.A.C. 7:7-17.2 General mitigation requirements**

Proposed N.J.A.C. 7:7-17.2 contains the standard requirements that apply to all mitigation proposals under the CZM rules. Proposed N.J.A.C. 7:7-17.2(a), which describes mitigation, replaces existing N.J.A.C. 7:7E-1.6(a) with amendments that clarify that the Department will consider proposals for out-of-kind mitigation provided the mitigation meets the goals of the subchapter and would result in an increase in the ecological functions and values of the resource as compared to the impacted resource.

Proposed N.J.A.C. 7:7-17.2(b) specifies that the Department will not consider a mitigation proposal when determining whether to approve an application for a coastal permit. A

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mitigation proposal may be reviewed during the permit review process; however, the Department's decision on the mitigation proposal will not have any bearing on the Department's decision to approve or deny the permit. This is consistent with the requirements of existing N.J.A.C. 7:7E-3.27, as well as N.J.A.C. 7:7A-15.2(a) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.2(c) provides that mitigation is not required for certain types of development in intertidal and subtidal shallows, as provided at proposed N.J.A.C. 7:7-9.15(i). This provision is the same as existing N.J.A.C. 7:7-4.2(e)3.

Proposed N.J.A.C. 7:7-17.2(d) provides that mitigation is not required for certain types of filling, as provided at proposed N.J.A.C. 7:7-12.11(f).

Proposed new N.J.A.C. 7:7-17.2(e) provides that mitigation is not required where the impact to a coastal resource is determined by the Department to be *de minimis* and where the applicant demonstrates that the impacts were avoided and minimized. For example, an applicant proposes to replace an existing bridge, which will impact 0.5 acres of intertidal and subtidal shallows through the installation of support pilings. Once construction of the new bridge is completed, the old bridge and support pilings will be removed, resulting in the restoration of 0.498 acres of intertidal and subtidal shallows. In this instance the Department would determine the remaining 0.002 acres of disturbance is *de minimis* and therefore not require mitigation for that impact.

Existing N.J.A.C. 7:7-4.2(e)2 provides that the Department may determine that mitigation will not be required as part of an application for a permit for the construction of catwalks, piers, docks, landings, footbridges, and observation decks, where the applicant demonstrates that vehicles and equipment will not be placed in wetlands to construct the

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structure(s) and that the structure(s) complies with the requirements at N.J.A.C. 7:7E-4.5, Recreational docks and piers. The existing rule also provides that the Department may require mitigation notwithstanding the applicant's compliance with these criteria. Proposed N.J.A.C. 7:7-17.2(f) replaces existing N.J.A.C. 7:7-4.2(e) with amendments that remove the provision that the Department may require mitigation anyway in these circumstances. The Department has determined that these types of projects, when constructed in compliance with the criteria, result in minimal impacts to coastal resources.

Proposed new N.J.A.C. 7:7-17.2(g) specifies that when the Department requires mitigation in order to compensate for impacts to wetlands, intertidal and subtidal shallows, shellfish habitat, submerged vegetation habitat, or riparian zones resulting from regulated activities, the Department will authorize the activities necessary to undertake and complete the mitigation through an authorization under a general permit; an individual permit; an approval of a mitigation proposal submitted to comply with a condition of an authorization under a general permit or an individual permit; or an enforcement document.

Proposed new N.J.A.C. 7:7-17.2(h) establishes the standard that a mitigation proposal must meet in order for the Department to approve it. The mitigation project must have a high probability of long-term success. This standard and the factors listed at N.J.A.C. 7:7-17.2(h)1 through 5 that the Department will consider in evaluating if the mitigation proposal meets the standard are consistent with the standard for approval of mitigation and the factors considered in the FWPA rules at N.J.A.C. 7:7A-15.2(d).

Proposed N.J.A.C. 7:7-17.2(i) specifies that mitigation cannot start until the Department has approved a mitigation proposal. It is similar to N.J.A.C. 7:7A-15.2(e) in the FWPA rules.

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This provision ensures that mitigation occurs prior to, or concurrent with, the regulated activity, thereby reducing the period during which the functions and values of the impacted resource are lost.

Proposed N.J.A.C. 7:7-17.2(j) provides that mitigation may also require additional State or Federal authorizations and that mitigation cannot start until all necessary permits or approvals are obtained.

Proposed N.J.A.C. 7:7-17.2(k) specifies that if mitigation is required as part of a remedy for a violation, the Department will determine the amount of mitigation and the type of mitigation required in consideration of the extent (area) and severity of the violation and the functions and values provided by the proposed mitigation. Mitigation required to remedy a violation must be at least as stringent as mitigation required to compensate for a permitted disturbance. This provision is similar to N.J.A.C. 7:7A-15.2(h) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.2(l) requires that a mitigation area be permanently protected from future development in accordance with proposed N.J.A.C. 7:7-18, which details the requirements for conservation restrictions. This provision ensures that there is no net loss of the resource through the preservation of the mitigation site in perpetuity. This provision is consistent with N.J.A.C. 7:7A-15.1(i) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.2(m) specifies that mitigation may consist of one or more of the mitigation alternatives set forth under this subchapter. This may be especially important for a development with a large impact, as under this provision the permittee could conduct mitigation onsite, purchase credits from a mitigation bank, and make a land donation to satisfy the mitigation requirements for the impacts associated with the development. This provision

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provides flexibility to implement mitigation alternatives that collectively achieve a greater ecological benefit than could be achieved through the implementation of any single mitigation alternative.

Proposed new N.J.A.C. 7:7-17.2(n) provides that, with Department approval, a single permittee may aggregate mitigation for multiple disturbances, so that mitigation can be performed for more than one disturbance by that permittee using a single mitigation site. For example, a public agency, such as the New Jersey Department of Transportation, proposes to widen an existing roadway, resulting in multiple small wetland disturbances that require mitigation. Allowing the aggregation of the mitigation for these small disturbances at one mitigation site may result in a more environmentally beneficial mitigation project than could be achieved by implementing a separate mitigation project for each small disturbance. The proposed subsection also provides that an aggregated mitigation project shall not be used as mitigation for disturbances by any person other than the permittee, unless the permittee obtains approval of the project as a mitigation bank. This provision is consistent with N.J.A.C. 7:7A-15.2(k) in the FWPA rules,

Proposed new N.J.A.C. 7:7-17.2(o) provides that mitigation proposed in order to satisfy a mitigation requirement of a Federal or local law or another State law cannot substitute for or preempt any mitigation requirement under the CZM rules. For example, a freshwater wetlands mitigation project proposed under N.J.A.C. 7:7A can satisfy the mitigation requirements under the CZM rules only if the proposed mitigation project meets the requirements of N.J.A.C. 7:7-17. This provision is intended to ensure that all applicable requirements of this chapter are met.

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Proposed new N.J.A.C. 7:7-17.2(p) provides that if a mitigator encounters a possible historic property that is or may be eligible for listing in the New Jersey or National Register, the mitigator must preserve the resource, immediately notify the Department, and proceed as directed by the Department. This provision is currently found at existing N.J.A.C. 7:7E-3B.2(a)16.

### **N.J.A.C. 7:7-17.3 Timing of mitigation**

Proposed N.J.A.C. 7:7-17.3 specifies when mitigation must be performed. Proposed N.J.A.C. 7:7-17.3(a) sets forth the timing of mitigation depending upon whether the mitigation is for a non-temporary permitted disturbance, a permitted temporary disturbance, or a disturbance that resulted in a violation. This provision is consistent with N.J.A.C. 7:7A-15.3(a) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.3(b) makes it clear that all mitigation must continue until completion according to the schedule in the approved mitigation proposal.

### **N.J.A.C. 7:7-17.4 Amount of mitigation required**

Proposed N.J.A.C. 7:7-17.4 sets forth the general requirements for determining the amount of mitigation that will be required. The amount of mitigation required is dependent upon the resource impacted. Proposed N.J.A.C. 7:7-17.4(a) points to where in the CZM rules the specific requirements for each type of mitigation project are found. Specifically, the requirements for shellfish habitat mitigation projects are proposed at N.J.A.C. 7:7-17.9; for submerged vegetation habitat, mitigation projects, at N.J.A.C. 7:7-17.10; for intertidal and

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subtidal shallows and tidal waters mitigation projects, at N.J.A.C. 7:7-17.11; for riparian zone mitigation projects, at N.J.A.C. 7:7-17.12; for wetlands mitigation projects, at N.J.A.C. 7:7-17.13; for credit purchases, at N.J.A.C. 7:7-17.15; and for in-lieu fee payment, at N.J.A.C. 7:7-17.16.

Proposed N.J.A.C. 7:7-17.4(b) specifies that if a proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless it is demonstrated that the encumbrance will not prohibit compliance with the mitigation requirements. This provision is necessary because problems have arisen where mitigation is proposed on land that is not under the legal control of the mitigator.

#### **N.J.A.C. 7:7-17.5 Property suitable for mitigation**

Proposed N.J.A.C. 7:7-17.5 identifies suitable properties on which mitigation may be conducted. Proposed N.J.A.C. 7:7-17.5(a) provides that mitigation may be carried out on either private or public property. Proposed N.J.A.C. 7:7-17.5(b) makes it clear that mitigation may only be conducted on property that is under the full legal control of the mitigator. This provision is necessary because problems have arisen when mitigators have attempted to use land that is not under their control for mitigation. This provision is similar to N.J.A.C. 7:7A-15.4(e) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.5(c) establishes the criteria for mitigation that is proposed to be conducted on public property. The proposed criteria, described below, differ from those at N.J.A.C. 7:7A-15.4(a) in the FWPA rules because the criteria in the FWPA rules are set by

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statute. The Department is proposing modified criteria for mitigation under the CZM rules that is proposed on public property because it has been the Department's experience that the freshwater wetlands criteria can prevent government entities from undertaking ecologically beneficial projects on public lands. The Department is proposing that mitigation may be conducted on public property where the public entity gives written permission to allow the mitigation; the public entity is willing to allow a conservation restriction to be placed on the mitigation area, or it can be demonstrated that an existing conservation restriction will protect the area in perpetuity; and, where the land was acquired using Green Acres funding, the Department's Green Acres Program approves the use of the area for mitigation. These criteria are intended to ensure that mitigation is conducted in suitable locations and does not negatively affect the public's access to and use of existing public lands.

Proposed N.J.A.C. 7:7-17.5(d) makes it clear that certain activities are not considered mitigation. These activities include the installation of or an improvement to a public facility which is intended for human use such as a baseball field or nature trail, or a stormwater management facility such as a basin. The Department has found that some mitigators mistakenly view mitigation as the creation or enhancement of open space for human use, rather than compensation for the habitat values and other natural functions lost through a disturbance. Stormwater management facilities do not constitute mitigation. This is consistent with N.J.A.C. 7:7A-15.4(i) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.5(e) specifies that the Department will not approve creation, enhancement, or restoration of a wetland in an area that is already of high ecological value. Mitigation is the replacement of functions and values lost as a result of an impact to a resource.

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Therefore, it is not appropriate to conduct these types of mitigation in an area that already has a high ecological value. This provision is similar to N.J.A.C. 7:7A-15.4(d) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.5(f) specifies that the Department will not approve mitigation that would destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species, or jeopardize a local population of a threatened or endangered species. This provision is similar to N.J.A.C. 7:7A-15.14(g) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.5(g) provides that the Department will not approve a mitigation project or a mitigation bank where the proposed mitigation poses an ecological risk. The proposed mitigation site must be properly characterized and assessed to determine ecological risk. The mitigator shall prepare this characterization and assessment in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9. N.J.A.C. 7:7-17.5(g)1 provides that if the Department determines that the mitigation site characterization and assessment demonstrates that the proposed mitigation activities will not pose an ecological risk, the mitigator can proceed with the mitigation project. N.J.A.C. 7:7-17.5(g)2 provides that if the Department determines that based on the characterization and assessment that the proposed mitigation activities do pose an ecological risk, the mitigator must remediate the site pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E-4.8, 5.1 and 5.2. The mitigator must demonstrate to the satisfaction of the Department that the remediation and/or mitigation activities will fully address the ecological risk on the site. This provision is necessary both to assess the likelihood of success of a potential mitigation site, and to protect the health and safety of Department staff that will be inspecting the site. The Department cannot properly review a

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mitigation or mitigation bank proposal without knowing the potential for success as it relates to contamination on a site. This provision is similar to N.J.A.C. 7:7A-15.4(h) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.5 (h) provides that properties where a large amount of soil must be removed to achieve suitable wetland hydrology are not acceptable mitigation sites. These sites are not suitable for mitigation purposes because the substrate is unstable and unsuitable for planting and the hydrology is questionable as to whether it would support a wetland in perpetuity.

#### **N.J.A.C. 7:7-17.6 Conceptual review of a mitigation area**

Proposed N.J.A.C. 7:7-17.6 establishes the requirements for a prospective applicant to obtain conceptual review of a mitigation area. This is similar to a pre-application conference on a project for which a permit is being sought and is consistent with N.J.A.C. 7:7A-15.10 in the FWPA rules. Proposed N.J.A.C. 7:7-17.6(a) encourages prospective applicants to request a conceptual review prior to submitting a mitigation proposal and/or prior to buying land for mitigation. A conceptual review will help prospective applicants avoid purchasing land and subsequently finding out that the land is not suitable for mitigation.

Proposed new N.J.A.C. 7:7-17.6(b) requires that a request for a conceptual review include a brief description of the area and mitigation project considered; a map showing the location and extent of the prospective mitigation area, with topography if available; and consent from the owner of the prospective mitigation area allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.

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Proposed N.J.A.C. 7:7-17.6(c) provides that the guidance provided by the Department at a conceptual review is not binding. It also provides that a conceptual review does not grant any property or other rights or in any way imply that activities have been or will be authorized.

### **N.J.A.C. 7:7-17.7 Basic requirements for mitigation proposals**

Proposed N.J.A.C. 7:7-17.7 sets forth the basic requirements for mitigation proposals. Proposed N.J.A.C. 7:7-17.7(a) requires that a mitigation proposal authorized by a permit under this chapter shall be submitted 90 calendar days prior to the commencement of authorized activities. Proposed N.J.A.C. 7:7-17.7(b) requires that a mitigation proposal submitted to remedy a violation be submitted by the deadline set forth in the Department's enforcement document.

Proposed N.J.A.C. 7:7-17.7(c) requires that a mitigation proposal include all information necessary for the Department to determine if the requirements of this subchapter are met.

Proposed N.J.A.C. 7:7-17.7(d) provides that the information required to be submitted in a mitigation proposal for the restoration, creation and/or enhancement of wetlands, intertidal and subtidal shallows, submerged vegetation habitat, and riparian zones is set forth in the appropriate mitigation proposal checklist described at N.J.A.C. 7:7-17.7(h).

Proposed N.J.A.C. 7:7-17.7(e) provides that a mitigation proposal for a monetary contribution to the Department's dedicated account for shellfish habitat mitigation must contain a copy of the permit authorizing the impact(s) that is being mitigated and a demonstration that the contribution amount addresses the factors at proposed N.J.A.C. 7:7-17.9(b)2, that is, area of

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shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish resource.

Proposed N.J.A.C. 7:7-17.7(f) provides that a proposal for the purchase of bank credits to satisfy a mitigation requirement must contain a copy of the permit and the identity of the mitigation bank from which the credits will be purchased.

Proposed N.J.A.C. 7:7-17.7(g) provides that a proposal for the purchase of in-lieu fee credits to satisfy a mitigation requirement must contain a copy of the permit and the identity of the in-lieu fee program from which the credits will be purchased.

Proposed N.J.A.C. 7:7-17.7(h) identifies the information contained in the mitigation proposal checklist. This section replaces existing N.J.A.C. 7:7E-3B.2. Each of the items identified is necessary to ensure compliance with the CZM rules and is intended to eliminate or reduce the probability of failure after construction of the mitigation area. The Department has found that if a site is well planned and is constructed properly the likelihood of success significantly increases and the amount of money that an applicant spends on corrective actions during the monitoring period is significantly reduced. A mitigation proposal must include basic information regarding the applicant, information regarding the disturbance for which mitigation is required, and a copy of the permit (if issued) or enforcement document requiring the mitigation; materials explaining and illustrating existing and proposed conditions of the mitigation area; identification of each resource for which mitigation is proposed and the type and quantity of proposed mitigation for each resource; information regarding relevant features of other properties in the vicinity of the mitigation area; schedules identifying the sequence of

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mitigation activities and estimated completion dates; cost estimates to perform the mitigation and maintain the mitigation area; a characterization and assessment for ecological risk in accordance with N.J.A.C. 7:7-17.5(g) (discussed above); a description of post construction activities; contingency measures should the project fail; certification that the mitigation will not adversely affect historic resources which are listed or are eligible for listing on the New Jersey or National Register of Historic Places; information and certifications regarding the presence or absence of threatened and/or endangered wildlife or plant species habitat; letters, contracts, agreements, conservation restrictions, or other documents necessary to ensure compliance with the CZM rules; certification of the truth and accuracy of the information submitted; and consent from the owner of the mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area.

In addition to the information required by the checklist as set forth at N.J.A.C. 7:7-17.7(h), proposed N.J.A.C. 7:7-17.7(i) requires that a mitigation proposal for the creation, restoration or enhancement of wetlands or intertidal and subtidal shallows also include a projected water budget for the proposed mitigation site. Achieving the proper hydrology on a site significantly increases the likelihood of success of a project. The projected water budget must detail the sources of water and water losses; document that an ample supply of water is available; show that the mitigation area will have sustained wetland hydrology indefinitely into the future, or for intertidal and subtidal shallows will have sustained tidal inundation; and include information concerning proposed and existing regional conditions.

In addition to the information required by the checklist as set forth at N.J.A.C. 7:7-17.7(h), proposed N.J.A.C. 7:7-17.7(j) requires that a mitigation proposal for a submerged

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vegetation habitat must include information sufficient to document that the area previously supported submerged vegetation but no longer does; the specific cause of the elimination of submerged vegetation; and the specific condition or actions that caused the elimination of submerged vegetation has ceased. It is important that the mitigator demonstrate that the area proposed for submerged vegetation habitat mitigation previously supported submerged vegetation because mitigating for this resource can be very difficult if the location is not appropriate to support the vegetation. Requiring that the proposed mitigation area be in an area where submerged vegetation previously existed significantly improves the likelihood of success. This requirement is at existing N.J.A.C. 7:7E-3.6(d).

#### **N.J.A.C. 7:7-17.8 Department review and approval of a mitigation proposal**

Proposed N.J.A.C. 7:7-17.8 sets forth the procedures for reviewing a mitigation proposal, and replaces existing N.J.A.C. 7:7E-3B.4. Proposed N.J.A.C. 7:7-17.8(a) explains the actions the Department will take within 30 calendar days after receiving a mitigation proposal. The Department will review the proposal for completeness and either request additional information or declare the proposal complete for further review. Under the existing rules, the Department will make a decision on the completeness of a submission within 60 calendar days. The Department has determined that it is in the best interest of the applicant to shorten this time frame, so that any potential problems are identified early in the process.

Proposed N.J.A.C. 7:7-17.8(b) specifies that a mitigation proposal must meet all the requirements of this subchapter in order for the Department to approve it.

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### **N.J.A.C. 7:7-17.9 Requirements for shellfish habitat mitigation**

Proposed N.J.A.C. 7:7-17.9 establishes the mitigation requirements for impacts to shellfish habitat.

Proposed N.J.A.C. 7:7-17.9(a) explains that the section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.2 for impacts to shellfish habitat.

Proposed N.J.A.C. 7:7-17.9(b) sets forth the required mitigation for impacts to shellfish habitat associated with the construction of a dock, pier, mooring, or marina. Under the existing rules at N.J.A.C. 7:7E-3.2(d)3vi(2), a monetary contribution to the Department's dedicated account for shellfish habitat mitigation is required as mitigation for the construction of a dock in shellfish habitat at a single family dwelling. This requirement is continued at proposed N.J.A.C. 7:7-9.2(c)3. In addition, proposed N.J.A.C. 7:7-9.2(c)4 requires a monetary contribution for shellfish habitat mitigation for the expansion of a legally existing commercial marina in shellfish habitat in certain infill situations, and proposed N.J.A.C. 7:7-9.2(c)5 requires it for the construction of a new commercial marina in shellfish habitat in certain infill situations.

Proposed N.J.A.C. 7:7-17.9(b)1, which requires that a conservation restriction must be placed on the property where the construction of a dock, pier, mooring, or marina is undertaken, replaces existing N.J.A.C. 7:7E-3.2(d)3vi(1), with amendments clarifying the language but not affecting meaning. Proposed N.J.A.C. 7:7-17.9(b)2 requires mitigation in the form of a monetary contribution to the Department's dedicated account for shellfish habitat mitigation where the construction of a dock, pier, mooring, or marina is undertaken. This contribution is the same as existing N.J.A.C. 7:7E-3.2(d)3vi(2) and is based on the area of shellfish habitat

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covered by structures and moorings, the documented shellfish density on the property, and the commercial value of the resource.

#### **N.J.A.C. 7:7-17.10 Requirements for submerged vegetation habitat mitigation**

Proposed N.J.A.C. 7:7-17.10 addresses the mitigation requirements for impacts to submerged vegetation habitat and replaces existing N.J.A.C. 7:7E-3.6(d). Proposed N.J.A.C. 7:7-17.10(a) explains that this section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.6 for impacts to submerged vegetation habitat.

Proposed N.J.A.C. 7:7-17.10(b) provides that the mitigation for a temporary disturbance to a submerged vegetation habitat must consist of the restoration of the disturbed area to its preconstruction contours and conditions. This requirement is currently found at existing N.J.A.C. 7:7E-3.6(b)1 as it relates to the temporary disturbance of submerged vegetation habitat for trenching for utility pipelines and submarine cables. It is proposed at N.J.A.C. 7:7-17.9(b) to apply to all temporary impacts to submerged vegetation habitat that may be approved by the Department.

Proposed N.J.A.C. 7:7-17.10(c) requires that an applicant proposing to mitigate for a temporary disturbance to a submerged vegetation habitat must submit a schedule and restoration planting plan. This requirement ensures that areas of temporary disturbance are restored to preexisting conditions and are stabilized within a reasonable timeframe.

Proposed N.J.A.C. 7:7-17.10(d) specifies that mitigation for unavoidable, permanent, significant impacts to submerged vegetation habitat must consist of restoration of self-sustaining habitat for the appropriate species in accordance with scientifically documented transplanting

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methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years.

Proposed N.J.A.C. 7:7-17.10(e) provides that priority will be given to in-kind restoration in as close proximity as possible to the impacted site. This provision is currently found in existing N.J.A.C. 7:7E-3.6(d), and is amended for clarity without changing meaning.

Proposed N.J.A.C. 7:7-17.10(f) provides that mitigation shall not consist of planting submerged vegetation habitat within unvegetated interpatch areas of existing submerged vegetation habitat, or increasing bottom coverage within existing submerged vegetation beds. This provision is currently found in existing N.J.A.C. 7:7E-3.6(d), and is amended for clarity without changing the meaning.

#### **N.J.A.C. 7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation**

Proposed N.J.A.C. 7:7-17.11, which addresses the mitigation requirements for intertidal and subtidal shallows required pursuant to proposed N.J.A.C. 7:7-9.15 and for tidal water areas, required pursuant to proposed N.J.A.C. 7:7-12.11(f), replaces existing N.J.A.C. 7:7E-3.15(h) and 4.10(e) respectively. This section also incorporates the substantive concepts of existing N.J.A.C. 7:7E-3B, Information Required in Tidal Wetland and Intertidal and Subtidal Shallows Mitigation Proposals. Because tidal waters and intertidal and subtidal shallows are similar ecosystems, the mitigation standards are also similar. Typically, impacts to tidal waters and intertidal and subtidal shallows involve only the disturbance of water areas and generally do not disturb or impact vegetation. In most cases, the difference between the two ecosystems is the depth of the

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water. Therefore, it is appropriate to establish similar mitigation standards for impacts to tidal waters and intertidal and subtidal shallows when in-kind mitigation is proposed.

Existing N.J.A.C. 7:7E-3.15(h) provides that mitigation for the filling of intertidal and subtidal shallows is required at a creation to loss ratio of 1:1 through creation of intertidal and subtidal shallows on the site of the filling, where feasible. The mitigation standards vary depending upon whether the impact occurs at a single-family property or at property other than a single-family property. For single-family properties only, if mitigation on site is not feasible, mitigation is required in the form of a monetary contribution to the Wetlands Mitigation Fund in the amount of the value of the land filled and the cost of creation of intertidal and subtidal shallows of equal ecological value to those being lost.

Mitigation at a site other than a single-family home is based on a mitigation hierarchy depending upon the type and location of the mitigation proposed. Mitigation through the creation of intertidal and subtidal shallows must first occur on site. If onsite creation is not feasible, creation must occur in the same HUC-11. If this is not feasible, creation must then occur in an adjacent HUC-11. If creation of intertidal and subtidal shallows is not feasible as described above, mitigation in the form of enhancement of a degraded wetland system onsite at an enhancement to loss ratio of 2:1 must be provided. If enhancement of a degraded wetland system is not feasible on site, then enhancement of a degraded wetland system must occur in the same HUC-11; if this is not feasible, then enhancement of a degraded wetland system must occur in an adjacent HUC-11. If none of these mitigation alternatives is feasible, then mitigation must be in the form of either creation of intertidal and subtidal shallows or enhancement of a degraded wetland system within the same watershed management area.

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With respect to tidal waters, existing N.J.A.C. 7:7E-4.10(e) requires mitigation for the filling of tidal water areas at a creation to loss ratio of 1:1 within the same estuary.

Proposed N.J.A.C. 7:7-17.11(a) explains that the section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.15 for the filling of intertidal and subtidal shallows, and pursuant to N.J.A.C. 7:7-12.11(e) for the filling of tidal waters. Consistent with the existing mitigation requirements for the filling of intertidal and subtidal shallows at existing N.J.A.C. 7:7E-3.15(h) and tidal water areas at existing N.J.A.C. 7:7E-4.10(e), proposed N.J.A.C. 7:7-17.11(b) requires in-kind mitigation at a creation to loss ratio of 1:1 onsite where the filling occurred.

Similar to existing N.J.A.C. 7:7-3.15(h), for mitigation of impacts to intertidal and subtidal shallows, proposed N.J.A.C. 7:7-17.11(c) provides that where onsite creation at a creation to loss ratio of 1:1 is not feasible, the mitigation requirement will vary depending on whether the impact occurs on a single-family property or property other than a single-family property. Proposed N.J.A.C. 7:7-17.11(c)1 provides that the mitigation for the filling of intertidal and subtidal shallows at a single-family home or duplex property that is not part of a larger development, must be in the form of a monetary contribution to the Wetlands Mitigation Fund in the amount of the value of the land filled and the cost of creation of intertidal and subtidal shallows of equal ecological value to those which are lost. For properties other than a single-family home or duplex, mitigation for the filling of intertidal and subtidal shallows must be performed in accordance with the mitigation hierarchy at proposed N.J.A.C. 7:7-17.11(d) through (g).

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Similar to the existing mitigation requirements, proposed N.J.A.C. 7:7-17.11(d) provides that where mitigation for the filling of intertidal and subtidal shallows at properties other than single-family home or duplex properties is not feasible onsite, or where mitigation for the filling of tidal waters is not feasible onsite, then mitigation shall be performed offsite through creation, at a creation to loss ratio of 1:1. However, rather than requiring offsite mitigation within the same HUC-11 or an adjacent HUC-11, the proposed rule provides that offsite mitigation may be performed within the same estuary as the filling or through the purchase of credits from a mitigation bank with a service area that includes the site of the filling. By allowing the offsite mitigation site to be located within the same estuary rather than the same HUC-11 or outside the HUC-11, the Department is providing greater flexibility in locating a potential mitigation site that will provide for in-kind mitigation. HUC-11s and watershed management areas all drain into the same estuary. Therefore, the effects and benefits to the estuary system as a whole are the same whether the mitigation is performed within a HUC-11 or outside the HUC-11 in which the filling occurs. As with any mitigation that is not performed at the site where the impact occurs, the site does experience a loss; however, the overall estuary ecosystem benefits from the mitigation. Allowing the mitigation to be provided through the purchase of credits from a mitigation bank with a service area that includes the site where the filling occurred is appropriate because a mitigation bank is constructed in advance of the filling of the resource, and thus the time delay between when the filling occurs and the mitigation is established is significantly reduced.

Proposed N.J.A.C. 7:7-17.11(e) provides that if the offsite creation of intertidal and subtidal shallows at a creation to loss ratio of 1:1, in accordance with proposed N.J.A.C. 7:7-

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17.11(d), is not feasible, or the offsite mitigation for tidal waters is not feasible, then mitigation must be in the form of restoration, creation, or enhancement of a wetland within the same estuary in accordance with proposed N.J.A.C. 7:7-17.13 or through the purchase of out-of-kind credits from a mitigation bank with a service area that includes the site of the impact. The Department currently allows the restoration, creation or enhancement of a wetland under the existing rules. These types of mitigation are appropriate because tidal wetlands, in order to thrive, require the twice daily tidal cycle similar to intertidal and subtidal shallows. Where a tidal wetland is created, restored or enhanced, the wetland provides additional functions and values to the system, such as a nursery, habitat and food source for a variety of species.

Proposed N.J.A.C. 7:7-17.11(f) provides that if restoration, creation, or enhancement of a wetland in the same estuary as the impact or the purchase of out-of-kind credits is not feasible in accordance with proposed N.J.A.C. 7:7-17.11(e), then mitigation must be provided through either one or a combination of upland preservation in accordance with the FWPA rules at N.J.A.C. 7:7A-15.9 or in-lieu fee payment in accordance with N.J.A.C. 7:7-17.16. Existing N.J.A.C. 7:7E-3.27(h) allows for the preservation of uplands as a mitigation alternative when the restoration, creation or enhancement of wetlands is not feasible. The Department has determined that upland preservation is an appropriate form of mitigation for the filling of intertidal and subtidal shallows and tidal waters only if all other mitigation options at N.J.A.C. 7:7-17.11(b) through (e) are not feasible and only if the amount of uplands preserved is sufficient to ensure that the functions and values resulting from the preservation of the uplands will fully compensate for the fact that uplands preservation, unlike other mitigation alternatives, does not directly replace the functions and values of the resources lost.

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An in-lieu fee program is similar to a mitigation bank, in that if one is established in New Jersey, an applicant would make a monetary contribution into the program to purchase credits from an already established mitigation project. This has similar benefits to those of a mitigation bank.

Proposed N.J.A.C. 7:7-17.11(g) provides that if upland preservation or in-lieu fee payment in accordance with N.J.A.C. 7:7-17.11(f) is not feasible, then mitigation through a land donation in accordance with the FWPA rules at N.J.A.C. 7:7A-15.19 is required. For mitigation through a land donation, in accordance with the FWPA rules, the mitigator must obtain approval from the Wetlands Mitigation Council for the particular parcel of land to be donated. The Council will approve the land to be donated only if the amount of land donated is sufficient to ensure that the functions and values provided by the donated land will fully compensate for the loss of functions and values caused by the impact. Therefore, the Department has determined that mitigation in this form is appropriate where no other type of mitigation is feasible.

Proposed N.J.A.C. 7:7-17.11(h) requires the submission of a construction completion report to the Department within 60 calendar days of completion of the mitigation site. This report serves as the baseline to which the post-construction monitoring will be compared. The construction completion report must include an as-built plan of the completed mitigation area, showing grading and any structures included in the approved mitigation proposal; photographs of the completed mitigation; and an explanation of any deviation from the approved mitigation proposal.

For mitigation projects involving the construction of intertidal and subtidal shallows or tidal waters, proposed N.J.A.C. 7:7-17.11(i) requires the mitigator to submit a post construction

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monitoring report to the Department. Compliance with the standards listed at N.J.A.C. 7:7-17.11(k)1 through 4, discussed below, must be demonstrated for each intertidal and subtidal shallows or tidal waters mitigation site for one lunar month after completion of construction of the mitigation site. Proposed N.J.A.C. 7:7-17.11(i) also provides that if one or more of the standards listed at paragraphs (k)1 through 4 are not met, the post-construction monitoring must be repeated the following lunar month(s) until all of the standards are met. Failure to meet the standards at N.J.A.C. 7:7-17.11(k)1 through 4 for a given lunar month must result in corrective action, including regrading or relocation of the mitigation site. This provision replaces existing N.J.A.C. 7:7E-3B.5(c).

Proposed N.J.A.C. 7:7-17.11(j) provides that the mitigator must submit the post-construction monitoring report, required under subsection (i), to be submitted by December 31 of each year and also identifies the information that must be included in the monitoring report. This provision replaces existing N.J.A.C. 7:7E-3B.5(d), with amendments. Existing N.J.A.C. 7:7E-3B.5(d) requires submission of the post-construction monitoring report to the Department by November 15 of each year. In proposed subsection (j), the submission date is changed to December 31 to provide necessary time to complete, prepare, and submit the required reports.

Based on the Department's experience with reviewing post-construction monitoring reports for mitigation projects involving the creation of intertidal and subtidal shallows and tidal waters, the Department has determined that the following information must be included in the monitoring report: an executive summary; the requirements and goals of the mitigation proposal; a detailed explanation of the ways in which mitigation has or has not achieved progress towards the goals, and any corrective actions necessary to meet the goals as well as a time frame for

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completion of such actions; identification of the mitigation site on a USGS quad map and aerial photograph; photographs of the mitigation site; an assessment of the site's hydrology; and a field delineation and accompanying plan showing the extent and location of the intertidal and subtidal shallows or tidal waters at the site using global positioning system data points.

The standards by which a mitigation site where intertidal and subtidal shallows or tidal waters were created will be determined successful are set forth at proposed N.J.A.C. 7:7-17.11(k)1 through 4. The mitigator must submit a post-construction monitoring report demonstrating that these standards have been met. The standards are that the goals of the approved mitigation proposal have been achieved; that the mitigation site is an intertidal and subtidal shallows or a tidal water as documented by tidal data, topography for the spring high tide, photographs and field observation notes collected throughout the monitoring period; that the mitigation meets all applicable requirements of N.J.A.C. 7:7-17; and that the mitigator has executed and recorded a conservation restriction that meets the requirements of N.J.A.C. 7:7-18. These standards are similar to the standards at existing N.J.A.C. 7:7E-3B.5(b)3 for determining if a wetland mitigation site is successful.

Proposed N.J.A.C. 7:7-17.11(l) provides that if the mitigation performed is the restoration, creation or enhancement of a wetland, the mitigator must demonstrate compliance with the post-construction monitoring standards for wetland mitigation sites at N.J.A.C. 7:7-17.13(d) through (g).

#### **N.J.A.C. 7:7-17.12 Requirements for riparian zone mitigation**

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Proposed N.J.A.C. 7:7-17.12 addresses the mitigation requirements for impacts to riparian zones. Any development regulated under the proposed CZM rules must meet the requirements for a permit under the FHACA rules, N.J.A.C. 7:13. Therefore, mitigation for impacts to riparian zones is to be provided as required in those rules at N.J.A.C. 7:13-10.2(t) and (u).

### **N.J.A.C. 7:7-17.13 Requirements for wetlands mitigation**

Proposed N.J.A.C. 7:7-17.13 sets forth the requirements for mitigating impacts to wetlands, and replaces existing N.J.A.C. 7:7E-3.27(h). Proposed new N.J.A.C. 7:7-17.13(a) explains that this section contains the requirements that apply to wetland creation, restoration, or enhancement mitigation projects.

Existing N.J.A.C. 7:7E-3.27(h)9 requires restoration of wetlands at a restoration to lost or disturbed ratio of 1:1, the creation of wetlands at a creation to lost or disturbed ratio of 2:1, and the enhancement of wetlands at a ratio determined on a case-by-case basis. Under proposed N.J.A.C. 7:7-17.13(b), both the restoration and creation to lost or disturbed ratios are proposed to be 2:1. The restoration to lost or disturbed ratio is proposed to be increased to 2:1 because restoration, like creation, results in the creation or restoration of wetland functions. This is consistent with existing N.J.A.C. 7:7E-3.27(h)9i(1) for non-temporary disturbances and with N.J.A.C. 7:7A-15.8(c) in the FWPA rules. This subsection also provides that mitigation involving the restoration or creation of wetlands must be designed to include a wetlands buffer but that the buffer shall not be counted in the acreage of mitigation provided by the wetlands creation or restoration. The inclusion of a wetland buffer area is necessary to ensure that

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mitigated wetlands are not degraded by adjacent activities. The buffer area must be designed in accordance with the wetland buffer rule proposed at N.J.A.C. 7:7-9.28.

As discussed above, the restoration and creation of wetlands must be at a restoration or creation to lost or disturbed ratio of 2:1. However, N.J.A.C. 7:7-17.13(b)1 provides that where it is demonstrated through the use of productivity models or other similar studies that by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value, the mitigation ratio may be relaxed. In no case will the creation or restoration to lost or disturbed ratio be reduced to less than 1:1. To demonstrate equal ecological value, surveys and documentation concerning the existing soil, vegetation, water quality functions, flood control functions and wildlife habitat conditions, and a detailed explanation of how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed must be provided. This provision is consistent with N.J.A.C. 7:7A-15.8(c), (d), and (j) in the existing FWPA rules.

Proposed N.J.A.C. 7:7-17.13(c) addresses the enhancement of wetlands and replaces existing N.J.A.C. 7:7E-3.27(h)9iii. Similar to existing N.J.A.C. 7:7E-3.27(h)9iii, the subsection requires that enhancement requirements will be determined on a case-by-case basis. The Department is proposing to clarify that the amount of enhancement required must ensure that the mitigation area results in wetlands of at least equal functions and values to those lost.

Similar to the intertidal and subtidal shallows and tidal water area mitigation requirements at proposed N.J.A.C. 7:7-7.12(h), proposed N.J.A.C. 7:7-17.13(d) requires that a construction completion report must be submitted to the Department within 60 calendar days of completion of construction of the mitigation project, unless the Department determines a

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different schedule would be more effective. The report must include an as-built plan of the completed mitigation area, showing grading, plantings, and any structures included in the approved mitigation proposal; photographs of the mitigation area; and an explanation for any deviation from the approved mitigation proposal.

Proposed N.J.A.C. 7:7-17.13(e) requires the submission of a post-construction monitoring report on an annual basis for five years after completion of the construction of a creation, restoration, or enhancement wetlands mitigation project, unless a different time frame for submittal is specified in the approved mitigation proposal. The five-year monitoring period is consistent with the monitoring period for wetlands restoration, creation or enhancement in the FWPA rules at N.J.A.C. 7:7A-15.16. The proposed provision that gives the Department flexibility to modify the frequency and/or duration of required reporting for those types of mitigation sites is also consistent with the FWPA rules and is necessary because, for example, some mitigation sites may be successful after three years, and, therefore, two more years of monitoring would not be necessary. For example, the temporary disturbance of a phragmites dominated marsh does not usually require five years to return to pre-existing conditions. In this case, the Department may require one year of monitoring, ensuring that the site does return to pre-existing conditions and that there are no erosion problems or concerns.

Proposed N.J.A.C. 7:7-17.13(f) establishes the time frame and content of post construction monitoring reports, and replaces existing N.J.A.C. 7:7E-3B.5(d). For the same reasons discussed above concerning proposed N.J.A.C. 7:7-17.11(k), the Department is modifying the submission deadline to December 31 of each reporting year. The information required to be included in the post-construction monitoring report is the same as that required at

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N.J.A.C. 7:7A-15.16 in the FWPA rules, and includes an executive summary; the requirements and goals of the approved mitigation proposal; a detailed explanation of the ways in which mitigation has or has not achieved progress towards the goals, and any corrective actions necessary, as well as a time frame for completion of the actions; and information for wetlands mitigation projects as required by the coastal wetland mitigation monitoring checklist, which includes a USGS quad map and an aerial photograph of the mitigation site; photographs of the mitigation site; an assessment of the planted vegetation and the species that are naturally colonizing the mitigation site, including documentation concerning invasive or noxious plant species and the percent coverage of these species on the site; an assessment of the hydrology of the mitigation site including, where appropriate, monitoring well data, stream gauge data, relevant tidal data, photographs, and field observation notes collected throughout the monitoring period; a field delineation of the wetlands at the site, based on techniques specified in the Federal Manual for Identifying and Delineation Jurisdictional Wetlands (1989); and a plan showing the flagged wetlands delineation and global positioning system data points.

Proposed N.J.A.C. 7:7-17.13(g) sets forth the standards to demonstrate that the final post-construction monitoring season is successful. The post-construction monitoring report must demonstrate that the goals of the approved wetland mitigation proposal have been achieved; the mitigation site is a wetland; the percent coverage of the planted vegetation or targeted hydrophytes has been achieved; the mitigation meets all applicable requirements of this subchapter; and a conservation restriction that meets the requirements of proposed N.J.A.C. 7:7-18 has been executed and recorded in accordance with proposed N.J.A.C. 7:7-18.

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Proposed N.J.A.C. 7:7-17.13(h) provides that the Department will require corrective action if the project fails to meet the requirements of this subchapter for a given reporting year. Corrective actions may include, regrading, replanting, or relocation of the mitigation site. This provision ensures that the mitigation project will be successful by the end of the monitoring period.

#### **N.J.A.C. 7:7-17.14 Wetlands mitigation hierarchy**

Proposed N.J.A.C. 7:7-17.14 sets forth the hierarchy of mitigation alternatives to be followed when mitigation is required for impacts to wetlands.

Proposed N.J.A.C. 7:7-17.14(a) sets forth the scope of the section.

Proposed N.J.A.C. 7:7-17.14(b) provides that wetland mitigation must be performed through restoration, creation, or enhancement onsite or offsite in the same drainage area or estuary as the impacts or through the purchase of credits from a mitigation bank with a service area that includes the area of impacts. In determining the feasibility of onsite or offsite mitigation or credit purchase, the Department will consider the following factors relating to the proposed mitigation area: size, location in relation to other preserved areas, habitat value, interaction with nearby resources, and the availability of offsite parcels for mitigation that meet the specifications described at proposed N.J.A.C. 7:7-17.14(e). Proposed N.J.A.C. 7:7-17.14(b)1 through 4 are consistent with N.J.A.C. 7:7A-15.5(e) in the FWPA rules. The specifications at proposed N.J.A.C. 7:7-17.14(e)5 that the parcels for offsite mitigation must meet are consistent with N.J.A.C. 7:7A-15.11(c).

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Proposed N.J.A.C. 7:7-17.14(c) provides that if restoration, creation, or enhancement onsite or offsite or through the credit purchase in accordance with N.J.A.C. 7:7-17.14(b) is not feasible, mitigation must be in the form of one or more of the following, as determined in consultation with the Department: monetary contribution; upland preservation; or in-lieu fee payment. The standards for these mitigation alternatives are found at N.J.A.C. 7:7A-15.18, 15.19, and 17.17, respectively, in the FWPA rules.

Proposed N.J.A.C. 7:7-17.14(d) requires that if none of the other mitigation alternatives is feasible, then mitigation must be in the form of a land donation in accordance with N.J.A.C. 7:7A-15.19 of the FWPA rules. The Department has determined that land donation is the least favorable mitigation alternative, as it does not necessarily result in the creation, restoration, or enhancement of wetlands on the ground. However, as discussed above with regard to N.J.A.C. 7:7-17.11(g), the mitigator must obtain approval from the Wetlands Mitigation Council for the particular parcel of land to be donated. The Council will approve the land to be donated only if the amount of land donated is sufficient to ensure that the functions and values provided by the donated land will fully compensate for the loss of functions and values caused by the impact. Therefore, the Department has determined that mitigation in this form is appropriate where no other type of mitigation is feasible.

As noted above, proposed N.J.A.C. 7:7-17.14(e) identifies the criteria the Department will use to determine that offsite mitigation is not feasible. The applicant must provide a list of six potential areas within the same drainage area or estuary on which mitigation could be performed. Each of the potential areas must be located at a practical elevation suitable for a wetland; have an adequate water supply; be available for purchase; and meet the requirements of

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N.J.A.C. 7:7-17.5(g) regarding ecological risk. These criteria will narrow potential sites to those that are reasonably likely to be suitable for mitigation.

#### **N.J.A.C. 7:7-17.15 Requirements for credit purchase from an approved mitigation bank**

Proposed N.J.A.C. 7:7-17.15 sets forth the requirements for credit purchase from an approved mitigation bank. The requirements of this section are consistent with N.J.A.C. 7:7A-15.17 in the FWPA rules. Under proposed new N.J.A.C. 7:7-17.15(a), the Department will evaluate the values and functions lost as a result of the impacts and determine the number of credits required to ensure that the mitigation results in wetlands or intertidal and subtidal shallows of equal functions and values to those lost.

Proposed new N.J.A.C. 7:7-17.15(b) explains that the mitigator must prepare and execute all documents necessary to ensure that the credits have been purchased from a Department-approved mitigation bank with available credits. Proposed new N.J.A.C. 7:7-17.15(c) specifies the criteria which the Department will declare mitigation through a credit purchase successful. These criteria are: demonstration by the mitigator that the completed mitigation satisfies all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal; and documentation that the credit purchase was made as required, including a written certification from the mitigation bank operator indicating the number of credits purchased and the Department permit number.

#### **N.J.A.C. 7:7-17.16 Requirements for in-lieu fee payment**

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Proposed N.J.A.C. 7:7-17.16 sets forth the requirements for an in-lieu fee payment. As discussed in the summary of proposed N.J.A.C. 7:7-17.1, the Federal Mitigation Rule recognizes an “in-lieu fee program” as a type of monetary contribution by which credits are sold to permittees whose obligation to provide mitigation is thus transferred to the in-lieu fee program. Currently, there are no approved in-lieu fee programs in New Jersey. The Department is proposing this rule to allow for this type of mitigation should an in-lieu fee program be approved in New Jersey.

Proposed N.J.A.C. 7:7-17.16(a) provides that if the Department determines an in-lieu fee payment is the appropriate mitigation alternative, the payment will be determined by the in-lieu fee instrument. As discussed previously, the in-lieu fee instrument is the document that authorizes the in-lieu fee program.

Proposed N.J.A.C. 7:7-17.16(b) provides that an in-lieu fee payment will be declared successful upon the Department’s receipt of documentation from the administrator of the program that payment in full has been received. This requirement is consistent with the Federal Mitigation Rule.

#### Financial assurances for mitigation projects

Proposed N.J.A.C. 7:7-17.17 sets forth the general provisions applicable to all financial assurance for mitigation projects. Proposed N.J.A.C. 7:7-17.18 through 17.21 set forth the requirements for the various types of financial assurance that are acceptable to the Department, which are fully funded trust fund; line of credit; letter of credit; and surety bond. The requirements of proposed N.J.A.C. 7:7-17.18 through 17.21 were developed in consultation with

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the Department's Site Remediation Program and modeled after those in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-5. The financial assurance requirements are intended to put in place an efficient system for establishing, reviewing, and approving financial assurance documents. The requirements of proposed N.J.A.C. 7:7-17.17 through 17.21 replace existing N.J.A.C. 7:7E-3B.3.

**N.J.A.C. 7:7-17.17 Financial assurance for mitigation projects; general provisions**

N.J.A.C. 7:7-17.17 identifies the mitigation projects for which financial assurance is required; identifies the persons responsible for the financial assurance; identifies the types of financial assurances acceptable to the Department; establishes the amount of financial assurance; and explains the Department's actions when the mitigator fails to perform the mitigation project as required by the permit, mitigation banking instrument, enforcement document, or settlement agreement. This section contains standards similar to those in the FWPA rules at N.J.A.C. 7:7A-15.13.

Proposed N.J.A.C. 7:7-17.17(a) explains that the requirement for financial assurance applies to restoration, creation, or enhancement activities for mitigation of impacts to intertidal and subtidal shallows, tidal waters, and wetlands. This section does not apply to a mitigation proposal or mitigation bank proposal submitted by a government agency or by an entity that is exempt from the requirement to provide financial assurance by Federal law. For example, a portion of a mitigation area might be the subject of a clean-up under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or "Superfund"). In such a case, CERCLA requires its own financial assurance, and precludes the Department

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from requiring any additional financial assurance. Thus, the mitigator would be exempt from the financial assurance requirement.

Proposed N.J.A.C. 7:7-17.17(b) identifies the person responsible for establishing and maintaining adequate financial assurance. This person is either the permittee or mitigation bank sponsor; or the person responsible for providing mitigation as part of a remedy for a violation.

Proposed N.J.A.C. 7:7-17.17(c) requires the person responsible for establishing and maintaining the financial assurance do so in the amount specified at N.J.A.C. 7:7-17.17(f) until the Department determines that the mitigation site or bank has satisfied the applicable performance standards, permit conditions, enforcement document, or settlement agreement.

Proposed N.J.A.C. 7:7-17.17(d) identifies the forms of financial assurance that are acceptable to the Department, which are a fully funded trust fund, a line of credit, a letter of credit, a surety bond, or other forms of financial assurance, such as an escrow account, other than self-insurance or self-guarantee. Templates for these types of financial assurance are available from the Division of Land Use Regulation's web site at [www.dep.state.nj.us/landuse](http://www.dep.state.nj.us/landuse). Self-insurance and self-guarantee are not acceptable forms of financial assurance because it is necessary to have a third party guaranteeing the financial support to complete the mitigation project should the mitigator file for bankruptcy or otherwise not complete the mitigation.

Proposed N.J.A.C. 7:7-17.17(e) requires that the financial assurance under this subchapter be provided at least 30 calendar days prior to undertaking mitigation activities approved under a permit or mitigation banking instrument, or required under an enforcement document or settlement.

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Proposed N.J.A.C. 7:7-17.17(f) specifies how the amount of the financial assurance is determined, based on estimates of the construction costs and monitoring and maintenance costs of the mitigation project. These costs are consistent with existing N.J.A.C. 7:7E-3B.3 and N.J.A.C. 7:7A-15.13(c) in the FWPA rules.

Proposed N.J.A.C. 7:7-17.17(g) provides that the Department will review the financial assurance on an annual basis and adjust the assurance to reflect current economic factors.

Proposed N.J.A.C. 7:7-17.17(h) provides that additional financial assurance will be required where additional construction and/or monitoring are necessary to ensure success of the mitigation project. These requirements are consistent with existing N.J.A.C. 7:7E-3B.3(c), and with N.J.A.C. 7:7A-15.13(d) and (e) in the FWPA rules.

Consistent with existing N.J.A.C. 7:7E-3B.3(d) and N.J.A.C. 7:7A-15.13(f) in the FWPA rules, proposed N.J.A.C. 7:7-17.17(i) provides that the portion of the financial assurance for construction costs will be released upon the Department's determination that construction has been successfully completed in accordance with the approved mitigation proposal. Similarly, consistent with existing N.J.A.C. 7:7E-3B.3(e) and N.J.A.C. 7:7A-15.13(g) in the FWPA rules, proposed N.J.A.C. 7:7-17.17(j) provides that the portion of the financial assurance for maintenance costs will be released upon the Department's determination that the mitigation project or bank is successful in accordance with N.J.A.C. 7:7-17.11(k), 17.13(g), or 17.22(j).

Proposed N.J.A.C. 7:7-17.17(k) addresses the situation where the Department determines that the person responsible for establishing a financial assurance has failed to perform the mitigation project or bank. In this case, the Department will notify the person of its determination in writing and will require that the mitigation project or bank be brought into

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conformance with the permit, mitigation banking instrument, enforcement document, or settlement agreement within 30 calendar days after receipt of the notice, unless the time frame for compliance is extended by the Department.

Proposed N.J.A.C. 7:7-17.17(l) provides that the Department may, at its discretion, perform the mitigation project or bank by drawing on the funds available in the financial assurance. This provision ensures that the mitigation project will be completed if for some reason the mitigator fails to perform the mitigation project or bank as required by a permit, banking instrument, enforcement document, or settlement agreement.

#### **N.J.A.C. 7:7-17.18 Financial assurance; fully funded trust fund requirements**

Proposed N.J.A.C. 7:7-17.18 sets forth the requirements for financial assurance in the form of a fully funded trust fund. This section is consistent with N.J.A.C. 7:26C-5.5 in the Administrative Requirements for the Remediation of Contaminated Sites.

Proposed N.J.A.C. 7:7-17.18(a) requires submission of the original fully funded trust fund agreement to the Department. The trust fund must be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency; include any applicable Department file number and information concerning the location of the mitigation site; specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the Department; specify that the trustee may only disburse funds with the Department's written approval; specify that funds shall be utilized solely for the purposes of conducting the mitigation project or mitigation bank as approved by the Department; specify that the Department may access the fully funded trust fund

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to pay for the cost of the mitigation project or bank; and identify the Department as the sole beneficiary of the fully funded trust fund.

Proposed N.J.A.C. 7:7-17.18(b) requires submission of a written statement from the trustee of the trust fund confirming the value of the trust in the amount that the Department has approved and confirming that the trust will continue for the next consecutive 12-month period. This statement must be submitted to the Department on an annual basis, at least 30 calendar days prior to the anniversary date of when the mitigator was obligated to establish a financial assurance.

#### **N.J.A.C. 7:7-17.19 Financial assurance; line of credit requirements**

Proposed N.J.A.C. 7:7-17.19 sets forth the requirements for financial assurance in the form of a line of credit. This section is consistent with N.J.A.C. 7:26C-5.6 in the Administrative Requirements for the Remediation of Contaminated Sites.

Proposed N.J.A.C. 7:7-17.19(a) requires submission of the original line of credit to the Department. A line of credit must be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in New Jersey, or by a Federally regulated bank; include any applicable Department file number and information concerning the location of the mitigation site; specify that the line of credit shall be issued for a period of one year and will be automatically extended for a period of at least one year; specify that if the issuer of the line of credit decides not to extend the line of credit after its expiration, the issuer will notify both the Department and mitigator by certified mail of such decision within 120 calendar days before the current expiration; specify that the lender shall disburse only those funds that the

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Department approves in writing; specify that the funds in the line of credit will be utilized solely for the purposes of conducting the mitigation project or bank; and specify that the Department may access the line of credit to pay for the cost of the mitigation project or bank.

Lines of credit do not typically restrict the use of the funds. By requiring that the line of credit must specify that disbursement requires the Department's written approval and that the funds will be utilized solely for the purpose of conducting the mitigation project or bank, the rule ensures that the funds will be used for the approved mitigation project or bank.

Proposed N.J.A.C. 7:7-17.19(b) requires the annual submission of a statement concerning the value of the line of credit and that the financial assurance will be in place for the next consecutive 12-month period.

#### **N.J.A.C. 7:7-17.20 Financial assurance; letter of credit requirements**

Proposed N.J.A.C. 7:7-17.20 sets forth the requirements for financial assurance in the form of a letter of credit. This section is consistent with N.J.A.C. 7:26C-5.7 in the Administrative Requirements for the Remediation of Contaminated Sites.

Proposed N.J.A.C. 7:7-17.20(a) requires submission of the original letter of credit to the Department. A letter of credit must be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in New Jersey, or by a Federally regulated bank; include any applicable Department file number and information concerning the location of the mitigation site; specify that the letter of credit shall be issued for a period of one year and will be automatically extended for a period of at least one year; specify that if the issuer of the letter of credit decides not to extend the letter of credit after its expiration, the issuer will

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notify both the Department and mitigator by certified mail of such decision within 120 calendar days before the current expiration; and indicate that the Department may access the letter of credit to pay for the cost of the mitigation project or bank.

#### **N.J.A.C. 7:7-17.21 Financial assurance; surety bond requirements**

Proposed N.J.A.C. 7:7-17.21 sets forth the requirements for financial assurance in the form of a surety bond to guarantee the availability of funds.

Proposed N.J.A.C. 7:7-17.21(a) requires that the person responsible for posting the financial assurance complete and submit the surety bond. The surety bond must: be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or is listed as acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury; include any applicable Department file number and information concerning the location of the mitigation site; indicate that if the issuer of the surety bond decides not to extend the surety bond after its expiration, the issuer will notify both the Department and mitigator by certified mail of such decision within 120 calendar days before the current expiration, beginning from the date of receipt by the Department as shown on the signed return receipt; and specify that the Department may access the surety bond to pay for the cost of the mitigation project or mitigation bank.

#### **N.J.A.C. 7:7-17.22 Mitigation banks**

Proposed N.J.A.C. 7:7-17.22 contains the standards that apply to mitigation banks approved by the Department. For the purposes of consistency with the FWPA rules and to ensure

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that mitigation banks are reviewed and established using the same standards, this section incorporates many of the standards of the FWPA rules at N.J.A.C. 7:7A-15.23. These standards have been modified in order to apply to the types of mitigation performed for purposes of the CZM rules rather than just wetland mitigation. Incorporating mitigation banking into this chapter will allow the Department and mitigation bank entrepreneurs to develop a more comprehensive and robust mitigation banking program in the coastal zone.

Proposed N.J.A.C. 7:7-17.22(a) specifies that a mitigation bank requires approval by the Department prior to the sale of any mitigation credits. This provision ensures that the bank has met the performance standards necessary for a credit release.

Proposed N.J.A.C. 7:7-17.22(b) requires a permit for any regulated activities involved in establishing a mitigation bank. This provision makes it clear that a mitigation bank approval does not relieve the mitigation bank sponsor from obtaining all necessary Department permits and approvals.

Proposed N.J.A.C. 7:7-17.22(c) requires a mitigation bank operator to fully carry out all requirements of the banking instrument approving the bank, regardless of whether or not credits are sold. This provision is intended to ensure that a bank continues to completion, especially after credits have been released.

Proposed N.J.A.C. 7:7-17.22(d) specifies that the Department will determine the amount of mitigation credits each mitigation bank operator may receive or sell, based on the increase in values and functions created as a result of the proposed mitigation bank, as well as how the increase in functions and values will interact with the regional aquatic and non-aquatic resources. The Department will evaluate each mitigation bank to determine its functions and values in

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consideration of the functions and values provided by the bank site at the time the mitigation bank proposal is submitted, such as existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat functions; whether the proposed mitigation activities will result in an increase in functions and values over the existing value of the mitigation bank site; the likelihood of long-term success of the proposed mitigation activities in creating functions and values similar to undisturbed wetlands, intertidal and subtidal shallows, submerged vegetation habitat, tidal water, and riparian zones; the amount of wetlands, intertidal and subtidal shallows, submerged vegetation habitat, tidal water, and/or riparian zones located on the proposed bank site; the potential for the completed mitigation site to be a valuable component of the ecosystem; the size and scope of the bank; the types of resource losses that have occurred in the area; the similarity or dissimilarity of the bank to other existing aquatic and wetland resources in the area; available scientific literature regarding credit ratios; and the Department's and other government agencies' experience with mitigation and mitigation banks.

Proposed N.J.A.C. 7:7-17.22(e) explains that the banking instrument approved by the Department includes a schedule for releasing credits. The release of credits will be based on meeting specific performance standards. The credit release schedule is the same as the FWPA rules at N.J.A.C. 7:7-15.23(d) with one exception. The Department is proposing to allow for a credit release in years two and four, provided performance standards have been met. This is appropriate because the establishment of tidal wetlands is more predictable, occurs at a faster rate, and has a reduced risk of failure in comparison with freshwater wetlands.

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Proposed N.J.A.C. 7:7-17.22(f) provides that preservation credits may be released in their entirety once preconstruction performance standards are met. A release of credits at this time is appropriate because a preservation site has already achieved success and does not have to be monitored.

Proposed N.J.A.C. 7:7-17.22(g) requires that the mitigation bank operator execute and record a conservation restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction shall meet the requirements for protecting mitigation sites from future disturbance set forth at N.J.A.C. 7:7-18.

Proposed N.J.A.C. 7:7-17.22(h) requires that the mitigation bank operator monitor the bank during and after construction until the last credit is sold, the final inspection is conducted, or the bank is transferred to a charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator must submit progress reports to the Department at least annually during and after construction, and more often if required by the banking instrument. These standards are consistent with those monitoring standards placed on wetland mitigation projects.

Proposed N.J.A.C. 7:7-17.22(i) addresses the situation in which the bank falls more than one year behind the schedule for completion specified in the banking instrument. In such case, the Department may amend the banking instrument and/or require corrective action to ensure the successful completion of the bank. The number of credits that may be sold may be reduced based on the corrective action, reflecting the change in values and functions that will result from the changes to the bank. This provision is intended to ensure that a bank follows the approved schedule and provides the Department a mechanism to put the bank back on schedule.

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Proposed N.J.A.C. 7:7-17.22(j) addresses the actions of a mitigation bank operator upon completion of the monitoring period. These include demonstrating that the bank is successful; transferring the mitigation bank site in fee simple to a government agency or Department-approved charitable conservancy; providing the government agency or charitable conservancy to which the mitigation bank site is transferred with a maintenance fund; and ensuring that the transfer and the conservation restriction are recorded.

Proposed N.J.A.C. 7:7-17.22(k) provides that upon expiration of the banking instrument that authorizes the creation of a mitigation bank, the Department will determine whether the amount of mitigation completed at the bank site is commensurate with the number of credits already sold. If it is determined that the amount of mitigation completed is less than the number of credits already sold, the banker will be considered in default. When this occurs, the Department may assert its rights to the financial assurance. This provision ensures that compensation for all impacts has been provided at the wetland mitigation bank.

#### **N.J.A.C. 7:7-17.23 Application for a mitigation bank**

Proposed N.J.A.C. 7:7-17.23 contains the standards for establishing a mitigation bank. This section incorporates many of the provisions of N.J.A.C. 7:7A-15.25 in the FWPA rules.

Proposed N.J.A.C. 7:7-17.23(a) addresses the conceptual review of a prospective mitigation bank. Rather than requiring such review as in the FWPA rules, conceptual review of a potential mitigation bank under this subchapter is optional. The Department recommends that a prospective mitigation bank operator obtain a conceptual review of the mitigation bank because

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it will help the prospective operator avoid purchasing land and subsequently finding out that the land is not suitable for the establishment of a mitigation bank.

Proposed N.J.A.C. 7:7-17.23(b) identifies the information to be submitted in a request for a conceptual review of a prospective bank. This information is the minimum necessary to ensure that the prospective bank operator can receive appropriate guidance from the Department.

Proposed N.J.A.C. 7:7-17.23(c) establishes the information that must be submitted in the mitigation bank proposal. Each of these items is necessary to help ensure that the proposed mitigation bank will be successful.

Proposed N.J.A.C. 7:7-17.23(d) provides that the Department approval of the mitigation bank will incorporate conditions necessary to ensure that the requirements of the mitigation subchapter are met.

### **Subchapter 18. Conservation Restrictions**

This subchapter sets forth the form and recording requirements for conservation restrictions required under this chapter. Conservation restrictions are required under this chapter to protect the public health, safety, and welfare, or to protect wildlife and/or fisheries, or to otherwise preserve, protect, and enhance the natural environment. This subchapter ensures that conservation restrictions are in the proper form, properly recorded, and recorded in a timely manner so that they are enforceable.

Subchapter 18 combines the conservation restriction form and recording requirements at existing N.J.A.C. 7:7E-8.11(z) and the conservation restriction requirements for mitigation areas contained in the FWPA rules at N.J.A.C. 7:7A-15. This change will place conservation

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restriction procedures and requirements in one subchapter for ease of use and will also make the requirements more consistent with the requirements of the FWPA rules at N.J.A.C. 7:7A. As described further below, the Department is additionally proposing to allow de minimis modifications to conservation restrictions and the removal of the restriction if the permittee abandons their permit approval and there has been no site disturbance.

### **N.J.A.C. 7:7-18.1 Conservation restriction form and recording requirements**

Proposed N.J.A.C. 7:7-18.1 establishes the form and recording requirements for conservation restrictions under this chapter as well as the required forms of proof that must be provided to the Department.

Proposed N.J.A.C. 7:7-18.1(a) sets forth the form and recording requirements of a conservation restriction. Proposed N.J.A.C. 7:7-18.1(a)1 requires that the conservation restriction run with the land and be binding upon certain individuals. Proposed N.J.A.C. 7:7-18.1(a)1i requires that for mitigation areas, the conservation restriction be binding on the landowner, and successors in interest to any interest in the land or any part of the land on which the mitigation area is located. Proposed N.J.A.C. 7:7-18.1(a)1ii requires that for conservation restrictions that do not include a mitigation area, the conservation restriction be binding upon the land owner and successors in interest to any interest in the land or in any part thereof. The conservation restriction is placed on the entire site to provide notification to the property owner and future property owners that there are limitations on the site. For example, a conservation restriction is required to be placed on a property where the construction of a dock, pier, mooring,

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or marina is constructed in shellfish habitat. In order to protect the shellfish resource, the conservation restriction would prohibit the construction of a shoreline protection structure other than stone rip rap or other sloped revetment if the dock, pier, mooring, or marina is associated with an unbulkheaded shoreline. Proposed N.J.A.C. 7:7-18.1(a)2 requires that the conservation restriction be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq. in the chain of title. This recording requirement is consistent with the New Jersey Supreme Court case, *Island Venture Associates v. NJDEP*, 179 N.J. 485 (2004), and is necessary to ensure that restrictions appear in the chain of title and, therefore, provide notice to perspective purchasers and are enforceable against successors in title. Proposed N.J.A.C. 7:7-18.1(a)3 requires that the conservation restriction be in the form and include such terms as specified by the Department. The form of the conservation restriction may only be altered by the applicant when the Department agrees that an alteration is necessary to address site-specific conditions. Because the available forms of conservation restriction are drafted to include specific limitations and requirements designed to protect the public health, safety, and welfare, or to protect wildlife and/or fisheries, or to otherwise preserve, protect, and enhance the natural environment, the form conservation restrictions may only be altered with the explicit consent of the Department to assure the amended document continues to provide the appropriate level of protection. Form conservation restrictions are available from the Department's website.

Proposed N.J.A.C. 7:7-18.1(b) requires that the conservation restriction be recorded in the Office of the County Clerk or registrar of deeds and mortgages of the county in which the development, project, project site, or mitigation area is located and that proof of recordation be provided to the Department. This will ensure that there will be proper notice to future owners

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and other interested parties of restrictions applicable to the area subject to the conservation restriction and also ensures that the conservation restriction is enforceable. For permits which authorize the establishment of a mitigation bank, proposed N.J.A.C. 7:7-18.1(c)1 requires the conservation restriction be recorded prior to the release of credits. This is consistent with the requirements of the FWPA rules at N.J.A.C. 7:7A-15.23(f). N.J.A.C. 7:7-18.1(b)2 requires the conservation restriction to be recorded prior to the sooner of either the start of any site disturbance, including pre-construction earth movement, removal of vegetation of structures, or construction of the project, or the date that is 90 calendar days after the issuance of the permit. The current rule, at N.J.A.C. 7:7E-8.11(z), provides that the permit is not effective until the conservation restriction has been filed. As a result, both the date the permit is effective and corresponding date of expiration can vary significantly between permits issued on the same day, making enforcement difficult. The proposal will provide a date certain by which the restriction must be filed while continuing to ensure that the conservation restriction is in place prior to the start of construction. The 90-calendar-day time frame will allow sufficient time for an applicant to complete the restriction and complete the filing process. Should a permit be obtained to construct a development on a property that is subject to an agreement of sale, the parties may include provisions in the contract of sale warranting that the contract seller will cooperate to assure that the conservation restriction is filed within the 90-day time frame.

Proposed N.J.A.C. 7:7-18.1(c) requires proof that the conservation restriction has been recorded in accordance with proposed N.J.A.C. 7:7-18.1(b). Proof of recordation must be in the form of either a copy of the complete recorded document or a receipt or other proof that the

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conservation restriction has been recorded issued by the recording office. Where the permittee submits proof other than a copy of the complete recorded document, a copy of the complete recorded document must be submitted to the Department within 180 calendar days of issuance of the permit.

Proposed N.J.A.C. 7:7-18.1(d) provides that in addition to complying with the other requirements of N.J.A.C. 7:7-18.1, conservation restrictions for mitigation areas must also comply with the requirements at proposed N.J.A.C. 7:7-18.2.

#### **N.J.A.C. 7:7-18.2 Additional requirements applicable to a conservation restriction for mitigation areas**

Proposed N.J.A.C. 7:7-18.2 contains additional requirements for conservation restrictions for mitigation areas. These requirements are similar to the FWPA rules at N.J.A.C. 7:7A-15, except as explained below.

Proposed N.J.A.C. 7:7-18.2(a) identifies two provisions that must be included in the conservation restriction. Specifically, the conservation restriction must include a requirement that each owner of any interest in the land subject to the conservation restriction (that is, the mitigation area): notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted and insert notice of the conservation restriction into any subsequent deed or other legal instrument by which the owner divests either the fee simple title or any interest in the land subject to the conservation restriction. This subsection is similar to the FWPA rules at N.J.A.C. 7:7A-15.14(b)3, with wording changes that do not change the substance of the requirements and

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are necessary to ensure that a municipality or county considering future development on the site are aware of the conservation restriction and that future property owners are also aware of the conservation restriction.

Proposed N.J.A.C. 7:7-18.2(b) provides that any conservation restriction under this chapter is enforceable by the Department and may also be directed by the Department to be made enforceable by a government agency or by a charitable conservancy whose trustees have no other interest in the land.

Proposed N.J.A.C. 7:7-18.2(c) provides that if the mitigation area is donated land or a mitigation bank that required approval from the Wetland Mitigation Council, the conservation restriction will require approval by both the Department and the Wetland Mitigation Council. This is similar to the FWPA rules at N.J.A.C. 7:7A-15.14(d).

### **N.J.A.C. 7:7-18.3 Reservation of rights**

Proposed N.J.A.C. 7:7-18.3 is a new section that reserves certain rights of the property owner to allow modification or remove of a conservation restriction in certain limited circumstances.

Proposed N.J.A.C. 7:7-18.3(a) provides that a property owner may request approval from the Department to make a de minimis modification to the conservation restriction if the modification will result in an equivalent level of protection for the regulated resource. For example, a property owner may request that a utility line be moved from one part of a restricted area to another and propose to restrict the same amount of land as was originally restricted and thereby demonstrate that the resource has an equivalent level of protection. The Department may

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also approve the de minimis modification if the applicant demonstrates that an equivalent area of land is restricted and that the modification will not compromise the original protected resource. For example, the construction of a trail through a wetland transition area may be acceptable where the trail is constructed of wood chips since such construction would not result in adverse impacts to the transition area and an equivalent transition area is provided.

N.J.A.C. 7:7-18.3(b) provides that a property owner may reserve the right to abandon a project and seek approval from the Department to remove a conservation restriction at any time prior to the start of any site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, provided the property owner or grantor informs the Department in writing that it is abandoning the project and requests that the Department void the permit. Upon Department confirmation that no site disturbance has occurred, the Department will provide the permittee or grantor an executed release of the conservation restriction, which the permittee or grantor may then record. The removal of the conservation restriction in this case will leave the site in the same condition as it was before the Department approved a regulated activity. Any new regulated activities will require a new approval from the Department.

#### **Subchapter 19. Relaxation of Procedures; Reconsideration of Application of Rules**

Existing N.J.A.C. 7:7-1.10 is proposed to be recodified at N.J.A.C. 7:7-19 with amendments to reflect the combining of the coastal rules into one chapter. In addition, throughout the new subchapter, the phrase “substantive standards in the rules on Coastal Zone Management at N.J.A.C. 7:7E” and similar phrases are proposed to be replaced with “rules in

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this chapter” and similar phrases, since as combined in the new single subchapter there is no need to distinguish the standards for purposes of the reconsideration process.

As explained in the summary of proposed N.J.A.C. 7:7-1, existing N.J.A.C. 7:7-1.10(a) is proposed to be recodified at N.J.A.C. 7:7-1.7, Liberal construction.

For ease of use, the Department is proposing to separate the provision providing for the relaxation of procedures from the provisions regarding the reconsideration process.

Accordingly, existing N.J.A.C. 7:7-1.10(b) is proposed to be recodified as N.J.A.C. 7:7-19.1, Relaxation of procedures in this chapter, and existing N.J.A.C. 7:7-1.10(c) is proposed to be recodified as N.J.A.C. 7:7-19.2, Reconsideration of the application of a rule(s) in this chapter.

N.J.A.C. 7:7-19.2(a) (recodified from existing N.J.A.C. 7:7-1.10(c)) establishes the circumstances in which the Department will reconsider the application of a CZM rule or rules. Three criteria must be met. First, the Department must have rendered a decision on the permit application under the CZM rules as strictly applied (see N.J.A.C. 7:7-19.2(a)1). Second, all administrative and judicial appeals of the permit decision must have been concluded (see N.J.A.C. 7:7-19.2(a)2). Third, either (1) a court must have determined that the coastal permit decision would constitute a taking and the property owner has submitted a request for reconsideration, or (2) a takings complaint has been filed with the court or the court has determined the coastal permit decision would constitute a taking, and the Department initiates the reconsideration (see N.J.A.C. 7:7-19.2(a)3i and ii). The Department is proposing an additional alternative as part of this third criterion. Under new N.J.A.C. 7:7-19.2(a)3iii, the Department may initiate the reconsideration before a takings complaint is filed in the situation where the proposed development that is the subject of the permit decision is a single-family

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home or duplex. This alternative would enable both the property owner and the Department to avoid the time and financial costs of a court proceeding and give the Department flexibility to work with the property owner to provide appropriate relief in this limited circumstance with limited impacts to coastal resources.

At N.J.A.C. 7:7-19.2(h)2, the Department is proposing amendments to the public notice requirements for a request for reconsideration for consistency with proposed N.J.A.C. 7:7-24, where the requirements for public notice that applicants for coastal permits must provide are consolidated. The public notice requirements unique to a request for reconsideration are continued at N.J.A.C. 7:7-19.2(h)2, namely, that the notice must state that a request for reconsideration has been received by the Department, and that the notice may be combined with the required offer to sell the property.

At N.J.A.C. 7:7-19.2(h)1ii, the Department is proposing an amendment to clarify that the referenced final decision by the Commissioner is the final decision rendered if the permit decision was contested through the administrative hearing process.

Proposed N.J.A.C. 7:7-19.2(m) is new and provides that a property owner or any other person with a particularized property interest who is aggrieved by the Department's determination on a reconsideration under this subchapter of the application of one or more of the CZM rules may request an adjudicatory hearing on the reconsideration determination pursuant to N.J.A.C. 7:7-28.1. The Department's determination on how to apply its rules in response to a reconsideration request is a fact-sensitive regulatory decision that should be challenged and reviewed in the first instance through a contested case hearing. The Commissioner's final

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decision after the hearing proceedings is a final agency action that can be appealed to the Appellate Division.

## **Subchapter 20. Provisional Permits**

### **N.J.A.C. 7:7-20.1 Provisional permits**

Existing N.J.A.C. 7:7-1.6, Provisional permits, is proposed to be recodified at N.J.A.C. 7:7-20 with no changes in text. This rule provides that the Department may issue a provisional permit where the Department finds that the beginning of construction prior to the completion of the full permit review process is necessary to meet the regulatory or funding requirements of a Federal or State agency.

### Changes to rules governing the permit process

Subchapters 21 through 28 contain the rules governing the coastal permitting process. The changes to these rules reflect the alignment of the permitting processes across the three land use permitting programs to the extent the statutes allow. While the standards that an applicant must meet to obtain a permit differ widely among the three permitting programs, many of the permitting procedures are very similar. For example, all three permitting programs require public notice of an application submission to the Department.

Some procedural components of the coastal permitting program are required by statute, such as deadlines for Department decisions on an application. Where the statutory requirements of the three permitting programs do not match, the Department cannot make the rules uniform across all three programs. Therefore, portions of the rules governing the permit process will

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differ among the three permitting programs, as they are tailored to the enabling statutory authority of the permitting program. This is particularly true of the application review procedures for CAFRA individual permits.

The changes to the permitting process are intended to standardize the language of the three permitting programs using the clearest, most well-organized provisions from each program. This in turn will make it easier for applicants to understand and comply with the rules of each permitting program, especially when they must obtain more than one Land Use permit.

### **Subchapter 21. Emergency Authorizations**

Proposed new N.J.A.C. 7:7-21 sets forth the procedures for the emergency authorization of regulated activities in the coastal zone. It replaces existing N.J.A.C. 7:7-1.7. An emergency authorization is an expedited temporary authorization to undertake a regulated activity when conditions warrant immediate action to protect lives, property, and/or the environment. The Department is proposing to use the term “emergency authorization” rather than “emergency permit authorization” to make it clear that an emergency authorization is temporary and is not a permit per se; rather, a permit must subsequently be obtained for the regulated activities that are covered by the emergency authorization.

#### **N.J.A.C. 7:7-21.1 Standard for issuance of an emergency authorization**

Proposed N.J.A.C. 7:7-21.1 sets forth the standard for issuance of an emergency authorization. Under existing N.J.A.C. 7:7-1.7(a), the Department will issue an emergency authorization when it determines that there is an imminent threat to lives or property if regulated

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activities are not immediately commenced or if there is the potential for severe environmental degradation. The substance of existing N.J.A.C. 7:7-1.7(a) is proposed at N.J.A.C. 7:7-21.1(a) with amendments to make clear that an emergency authorization is issued only in extraordinary circumstances when the need to undertake regulated activities is immediate and requires authorization sooner than could be accomplished in the normal course under a general permit or an individual permit. Specifically, proposed N.J.A.C. 7:7-21.1(a) provides that the Department will issue an emergency authorization only if it is demonstrated that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and that the threat, severe loss, or degradation can only be prevented or ameliorated through undertaking a regulated activity and the threat, severe loss, or degradation is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.

#### **N.J.A.C. 7:7-21.2 Procedure to request an emergency authorization**

Proposed N.J.A.C. 7:7-21.2 sets forth the procedure for requesting an emergency authorization. Existing N.J.A.C. 7:7-1.7(a) provides that a person requesting an emergency authorization must contact the Department's Bureau of Coastal and Land Use Enforcement and must additionally notify the Division of Land Use Regulation and Bureau of Coastal and Land Use Enforcement in writing of the imminent threat, the vulnerability of people and/or property, or imminent threat to the environment, and the proposed activities for which the emergency permit is being sought. The Department is proposing to streamline the process for requesting an emergency authorization by deleting the requirement to notify both the enforcement and

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permitting elements, and is proposing other amendments that align with the emergency authorization provisions of the FHACA rules at N.J.A.C. 7:13-12.

Proposed N.J.A.C. 7:7-21.2(a) requires that the person seeking an emergency authorization telephone the Division of Land Use Regulation and submit the request in writing to the Division by fax, electronic mail, or letter, unless the emergency is so immediate that only a telephone call is feasible. Proposed N.J.A.C. 7:7-21.2(a)1 through 10 identify the information that must be included in the request and are similar to the requirements in the FHACA rules at N.J.A.C. 7:13-12. The requester must provide the contact information for the property owners and for the owners of any other properties that would be affected by the proposed activity, and must demonstrate that the property owners have given permission for the activity to be conducted. If the activity is to be conducted by a public entity through the use of eminent domain, then the request has to include a written statement of the public entity's intention to conduct the activity. The requester must provide specific information about the location of the property where the activity will be conducted, as well as the nature of the emergency, existing site conditions, vulnerabilities of people and property, the environmental threat, and the nature and extent of the proposed activities. The requester must provide information regarding when it discovered the emergency and the intended start and completion dates for the proposed activities. The requester must provide photographs of the area where the activities will be conducted and, if possible, a site plan showing the regulated activities and anticipated impacts of the proposed activities to special areas, as well as any other information necessary for the Department to ensure compliance with the CZM rules. This information assists the Department in evaluating the situation to determine if an emergency authorization is warranted, tailoring the emergency

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authorization to minimize the extent of regulated activities undertaken without the full public and Department review that are part of the normal permitting process, and ensuring any adverse impacts to coastal resources are minimized.

Proposed new N.J.A.C. 7:7-21.2(b) states that the person requesting an emergency authorization need not provide public notice of the request or submit an application fee. However, the applicant must provide public notice and include an application fee when it subsequently submits its application for a general permit authorization or individual permit for the activities performed under the emergency authorization as required by proposed N.J.A.C. 7:7-21.3(e), described below. The Department provides public notice of the emergency authorization in the DEP Bulletin in accordance with proposed N.J.A.C. 7:7-21.3(b), also described below.

### **N.J.A.C. 7:7-21.3 Issuance of emergency authorization; conditions**

Proposed new N.J.A.C. 7:7-21.3 sets forth the Department's process for issuing an emergency authorization and the conditions that apply to all emergency authorizations. While the existing rules do not set a time frame for Department action, under proposed new N.J.A.C. 7:7-21.3(a) the Department will verbally approve or deny an emergency authorization within 15 calendar days after receiving a request that meets the requirements of proposed N.J.A.C. 7:7-21.2. A written confirmation of the Department's decision to issue an emergency authorization will follow within five working days of a verbal approval. These time frames provide predictability to persons requesting emergency authorizations.

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Proposed N.J.A.C. 7:7-21.3(b) provides that the Department will publish notice of the issuance of an emergency authorization in the DEP Bulletin within 20 calendar days after the verbal decision.

Proposed N.J.A.C. 7:7-21.3(c) provides that the Department's written confirmation of its decision to issue an emergency authorization will include a description of the authorized activities, the time frame as established in accordance with N.J.A.C. 7:7-21.3(d) within which the activities must be commenced and conducted, a requirement for updates on progress of activities, any limits or criteria necessary to ensure compliance with the CZM rules, and a requirement for mitigation of impacts to special areas, as appropriate.

Proposed N.J.A.C. 7:7-21.3(d) through (f) set forth the requirements that apply after an emergency authorization has been issued. Proposed N.J.A.C. 7:7-21.3(d) identifies the time frames in which regulated activities authorized under an emergency authorization must commence and be conducted, which time frames are consistent with those in the FHACA rules at N.J.A.C. 7:13-12.2.

Proposed N.J.A.C. 7:7-21.3(d)1 requires that the activities authorized by the emergency authorization must be commenced within 30 calendar days after the verbal approval of the emergency authorization, unless the Department establishes a different deadline, as provided at N.J.A.C. 7:7-21.3(f). Where activities are not commenced within 30 calendar days or the alternate Department-established deadline, the emergency authorization is automatically void as of the 30th calendar day after the verbal approval or the alternate deadline. This time frame is not in existing N.J.A.C. 7:7-1.7.

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As discussed in the summary of proposed N.J.A.C. 7:7-21.1 above, the Department will make a verbal decision to approve an emergency authorization only in extraordinary circumstances when the need to undertake regulated activities is immediate and requires authorization more quickly than could be accomplished in the normal course of obtaining authorization under a general permit or an individual permit. If the Department determines that a situation warrants such immediate action but the permittee subsequently fails to undertake the authorized activities within 30 calendar days, then the authorization is void because the situation needs to be reevaluated.

In some cases, the conditions that originally warranted the emergency authorization might have been eliminated due to physical changes on a site (such as erosion), or the intended use of a site has changed, or the concerns that were thought imminent when the request was made and the emergency authorization approved have not materialized. For example, a municipality might request an emergency authorization to repair a culvert along a public roadway that appears to be failing, and the Department approves the emergency authorization on the basis that public safety is at risk and in consideration that the municipality has stated its intention of immediately ameliorating the problem. However, the municipality does not conduct the repairs within 30 calendar days and the condition of the culvert has not worsened during this period. What originally appeared to be an emergency situation has proven not to be one, and, therefore, the municipality must apply for authorization under a general permit or an individual permit for the culvert repair. It is also possible in this hypothetical situation that the culvert is in even greater need of repair at the end of the 30 calendar days, and the municipality must request another emergency authorization to accomplish the repairs immediately.

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Also, as noted, under proposed N.J.A.C. 7:7-21.3(f), the Department can establish a different timeframe for a permittee to commence construction other than within 30 days when all or a portion of the authorized activities cannot feasibly be started within 30 days. For example, if the permittee is unable to commence in 30 calendar days every aspect of the construction of a large stabilization project such as a very large area of eroded beachfront, the Department may establish staggered start dates for different parts of the project so as to allow the emergency operation to move forward without the permittee having to reapply for a new emergency authorization for each part of the project.

Proposed N.J.A.C. 7:7-21.3(d)2 requires that the emergency activities, including any restoration, must be completed within 60 calendar days after the verbal approval of the emergency authorization, unless the Department establishes a different deadline as provided at N.J.A.C. 7:7-21.3(f). However, if the authorized activities are not completed by either the 60th calendar day or the alternate deadline, the activities must cease until a general permit authorization or individual permit, or another emergency authorization, is obtained. This time frame also is not in existing N.J.A.C. 7:7-1.7.

Emergency authorizations are typically approved for preventive and ameliorative activities of a relatively simple scope that can be completed within 60 calendar days. Projects of a complex nature require a significant amount of planning, site investigation, calculations, and site plan preparation, which obviate the quick completion that is necessary in order for an emergency authorization to be approved. However, there are circumstances when a more complex project, such as an emergency stabilization project that must be undertaken over a large area as a result of a catastrophic event, warrants a longer time frame to complete than 60 days.

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While these circumstances are generally rare, they do occur, and proposed N.J.A.C. 7:7-21.3(f) enables the Department to establish a longer period for completion of the activity, which enables the emergency to be addressed in a time frame that is appropriate for properly mitigating the imminent threat to lives, property, or the environment.

Proposed N.J.A.C. 7:7-21.3(e) requires submittal of a complete application for a general permit authorization or individual permit within 90 calendar days after verbal approval of the emergency authorization. Existing N.J.A.C. 7:7-1.7(a)4 requires submittal of a permit application for authorization under a general permit or individual permit within 10 working days of issuance of an emergency authorization. The 90-calendar-day requirement is the same as that in the FHACA rules at N.J.A.C. 7:13-12.2. The 90-day period provides the person to whom the emergency authorization was issued sufficient time to prepare any necessary calculations for the application as well as documentation concerning the regulated activities undertaken as part of the emergency authorization and “as built” site plans which, pursuant to N.J.A.C. 7:7-21.3(h), are required in addition to the completed permit application. In some cases, documentation related to the application can be assembled concurrently with the undertaking of the authorized activities; however, 10 working days is often not a sufficient amount of time for applicants to prepare the site plans, including topographic surveys that sometimes can take weeks to perform, and the calculations required for the permit application. Allowing sufficient time will facilitate the preparation of a more complete and accurate permit application, which will assist the Department in determining whether the regulated activities were undertaken in compliance with the requirements of the CZM rules.

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Proposed N.J.A.C. 7:7-21.3(f), as noted above, provides that the Department may establish different time frames to commence and to complete a project where the person requesting the emergency authorization demonstrates that the 30-day or 60-day deadline cannot feasibly be met for all or a portion of the authorized activities or where the Department determines that a different time frame is necessary to facilitate the regulated activities.

Similar to N.J.A.C. 7:13-12.2(e) in the FHACA rules, proposed N.J.A.C. 7:7-21.3(g) requires that the activities performed under the emergency authorization must meet the requirements that would apply to the activity under the CZM rules to the maximum extent practicable.

In non-emergency situations, an applicant is required to demonstrate to the Department that a proposed activity complies with the CZM rules in its permit application, and the Department undertakes a full technical review of the permit application to evaluate the proposed activity and determine that it can meet the requirements of the CZM rules. If any changes to the proposed activity are necessary to meet the requirements, such changes are made prior to issuance of the permit and the commencement of regulated activities. However, in the circumstances where an emergency authorization has been issued, the Department will not have undertaken its prior technical review of the proposed activity. Accordingly, proposed N.J.A.C. 7:7-21.3(h) requires that the application for a general permit authorization or individual permit submitted after the Department's verbal decision to issue the emergency authorization must include a demonstration that the regulated activities conducted under the emergency authorization meet the requirements of the CZM rules or else an explanation as to why

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compliance could not be achieved, as well as “as-built” site plans showing the regulated activities that were or are being conducted under the emergency authorization.

Under proposed N.J.A.C. 7:7-21.3(i), the Department will, upon its review of the permit application submitted after the emergency authorization, require design changes, restoration, and/or stabilization measures as necessary to ensure compliance with the CZM rules to the maximum extent practicable.

Should the regulated activity performed under the emergency authorization result in unanticipated impacts, proposed N.J.A.C. 7:7-21.3(j) provides that the Department may amend or terminate an emergency authorization at any time if it determines that such action is necessary to protect public health, safety, and welfare, and/or the environment.

Where any regulated activities are conducted that have not been authorized under the emergency authorization or the permit issued thereafter, proposed N.J.A.C. 7:7-21.3(k) provides that such action constitutes a violation of the CZM rules and is subject to enforcement action.

## **Subchapter 22. Pre-Application Conferences**

Proposed new N.J.A.C. 7:7-22, Pre-Application Conferences, replaces existing N.J.A.C. 7:7-3 in its entirety but continues many of the general provisions and requirements for pre-application review from the existing rules, as discussed below. This new subchapter is part of the Department's effort to align the procedural requirements under the FHACA, FWPA, and CZM rules, as previously discussed. Each of these permit programs provides the option for pre-application meetings under rules that are similar in substance but vary in detail. Proposed new

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N.J.A.C. 7:7-22 presents a simplified and updated approach to pre-application conferences for purposes of the coastal permitting program.

#### **N.J.A.C. 7:7-22.1 Purpose and scope**

Proposed new N.J.A.C. 7:7-22.1(a) describes the purpose of a pre-application conference and states that the Department may hold an in-person pre-application conference or may address the questions raised in writing or by telephone. Proposed N.J.A.C. 7:7-22.1(b) explains that a pre-application conference is not mandatory except, as under the existing rules at N.J.A.C. 7:7-3.2(b), when the coastal permit application involves the installation of submarine cables in the Atlantic Ocean.

To provide guidance as to the types of development projects for which a prospective applicant should request a pre-application conference, the Department is proposing at N.J.A.C. 7:7-22.1(c) that a pre-application conference is recommended for large and/or complicated projects, and for dredging and dredged material management projects.

Proposed N.J.A.C. 7:7-22.1(d) emphasizes that the Department's guidance does not constitute a commitment to approve or deny an application. Proposed N.J.A.C. 7:7-22.1(e) states that there is no fee for a pre-application conference. Proposed N.J.A.C. 7:7-22.1(f) is a new provision that encourages prospective applicants with projects that will require approvals from several Department programs to contact the Department's Office of Permit Coordination and Environmental Review. This office is responsible for coordinating and facilitating the permitting of large, complex projects.

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**N.J.A.C. 7:7-22.2 Request for a pre-application conference; scheduling; information required**

Proposed new N.J.A.C. 7:7-22.2(a) and (b) identify to whom a request for a pre-application conference must be submitted depending on the type of project proposed.

Proposed N.J.A.C. 7:7-22.1(c) identifies the information that must be submitted with the request for a pre-application conference. This information includes a written description of the site and proposed development; site plans or conceptual designs depicting the proposed development (if available); the location of the site; and a copy of any freshwater wetlands letter of interpretation or flood hazard area verification issued by the Department for the site or, if there have been none issued, the general location of areas such as freshwater wetlands, freshwater wetland transition areas, and special areas as described at N.J.A.C. 7:7-9.

Proposed N.J.A.C. 7:7-22.2(d) identifies to whom prospective applicants with projects involving the installation of submarine cables in the Atlantic Ocean must direct a request for a pre-application conference, and lists the information specific to these projects that must be provided in addition to the information required under N.J.A.C. 7:7-22.2(c). The additional information includes a description of the project along with an NOAA nautical chart showing the potential cable routes, and documentation that the prospective applicant provided written notice of the pre-application conference to certain entities concerned with the seafood industry and ocean shellfishery and fishery resources. This subsection continues the requirements at existing N.J.A.C. 7:7-3.2(b) and (d), except that the list of entities to which the applicant must provide notice does not include the Commercial Fishing Communications Association as this organization no longer exists.

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Proposed N.J.A.C. 7:7-22.2(e) describes the action the Department will take within 10 calendar days of receipt of the materials submitted in accordance with N.J.A.C. 7:7-22.2(c). The Department will either determine that a pre-application conference is necessary and reach out to the prospective applicant to schedule a conference, or determine that a pre-application conference is not necessary and instead address the prospective applicant's questions in writing or by telephone. Where a pre-application conference is determined to be necessary, often the conference will involve various programs in the Department and/or involve other State and Federal agencies. The Department will work with the participants to coordinate schedules to allow the conference to occur as expeditiously as possible. Where the Department determines to address the questions in writing or by telephone, such response will be issued by the Department within 20 calendar days of receipt of the material submitted in accordance with N.J.A.C. 7:7-22.2(c). This provision replaces existing N.J.A.C. 7:7-3.2(c) with respect to the scheduling of a pre-application conference.

The Department has determined not to continue in the proposed rules the provision at existing N.J.A.C. 7:7-3.2(c) under which the Department must schedule a pre-application conference within 10 days after a request. Often pre-application conferences involve various programs in the Department and/or involve other State and Federal agencies, requiring coordination of schedules that may take longer than 10 days. The Department has also determined it is not necessary to continue the statement at existing N.J.A.C. 7:7-3.2(c) that a pre-application conference will not be considered a declaration of intent to submit an application. By definition, the pre-application conference is a meeting about a potential project, and it is

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understood that the result may be that the prospective applicant decides not to submit an application.

The Department is not continuing in the new rules existing N.J.A.C. 7:7-3.3, Discussion of information requirements, because the purpose and scope of a pre-application conference are described at proposed N.J.A.C. 7:7-22.1. The Department is also not continuing in the new rules existing N.J.A.C. 7:7-3.4, Memorandum of record, which provides that the Department, on request, will prepare a written summary of the items discussed at the pre-application conference. It is too resource-intensive for the Department to prepare and mail a written summary of a meeting that is held as an optional service to a prospective applicant. The Department believes it is incumbent on prospective applicants to maintain their own record of items and issues discussed at a pre-application conference. Depending on workload demands, Department staff will provide follow-up summaries of pre-application conferences as needed and when appropriate depending on the scope, complexity, and issues associated with a particular project.

### **Subchapter 23. Application Requirements**

The Department is proposing to consolidate the application requirements for general permit authorizations and individual permits currently found in various provisions in existing N.J.A.C. 7:7 at proposed new N.J.A.C. 7:7-23, Application Requirements.

#### **N.J.A.C. 7:7-23.1 Purpose and scope**

Proposed N.J.A.C. 7:7-23.1 explains that the subchapter sets forth the requirements for submitting an application for an authorization under a general permit-by-certification or a

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general permit, or for an individual permit. Application requirements for other approvals and determinations under the CZM rules are found elsewhere in the chapter, as noted at proposed N.J.A.C. 7:7-23.1(b).

### **N.J.A.C. 7:7-23.2 General application requirements**

At proposed N.J.A.C. 7:7-23.2, the Department is combining provisions pertaining to applications for general permit authorizations and individual permits, which are currently located at various places in existing N.J.A.C. 7:7, and is, in addition, proposing several new provisions for these applications. New N.J.A.C. 7:7-23.2 also applies to applications for authorizations under general permits-by-certification.

Similar to N.J.A.C. 7:7A-10.1(j) in the FWPA rules and N.J.A.C. 7:13-15.1(b) in the FHACA rules, the Department is proposing at N.J.A.C. 7:7-23.2(a) to explain that application checklists are or will be available for authorizations for general permits-by-certification and general permits, and for individual permits under these rules. Currently, application checklists for waterfront development, tidal wetlands, and CAFRA permits are referenced at existing N.J.A.C. 7:7-4.2(a)7i(1)(B) and 4.2(a)7ii(1). Application checklists identify all of the submissions required under the rules to be part of an application, and also the appropriate level of detail and the format of the information to be submitted for each type of application to ensure that the submissions are sufficient to demonstrate the proposed development meets the requirements of the particular permit. As noted in the example in proposed N.J.A.C. 7:7-23.2(a), where the rules require, as part of an application, the submittal of a site plan or photographs showing certain types of information, the corresponding checklist will indicate, based on the type

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of development the particular permit covers, the number of copies of the plan to be submitted, the scale and details of the information to be illustrated on the plan or drawing, and the number and orientation of photographs of the location of the proposed development. The checklist will also indicate that the plan should be folded or prepared in a certain manner to facilitate processing. The checklists will be available for download from the Department's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse) or by contacting the Department at the address set forth at N.J.A.C. 7:7-1.6.

Proposed N.J.A.C. 7:7-23.2(b) provides that the level of detail and documentation required for an application will be commensurate with the size and impact of the proposed activity, its proximity to coastal special areas, and its potential for environmental impacts. This new provision is similar to N.J.A.C. 7:7-6.3(a) which is specific to environmental impact statements (EIS). The Department is proposing to broaden the provision so that it will apply to all documentation required as part of an application because the complexity of the proposed activity will affect the level of detail needed for all aspects of an application.

Proposed N.J.A.C. 7:7-23.2(c) is new and identifies the persons who can submit an application under this subchapter, that is, the owner(s) of the site where the activity is proposed, or an authorized agent of the owner(s), or a public entity proposing an activity within a right-of-way or easement. Similar requirements are found in the FHACA rules at N.J.A.C. 7:13-1.3(b). This provision is necessary to ensure that the applicant owns the property or is authorized to represent the owner of the property.

The Department is proposing at N.J.A.C. 7:7-23.2(d) through (j) new requirements that are similar to those in the FWPA rules at N.J.A.C. 7:7A-10.9 and that specify who must certify

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an application for an authorization under a general permit-by-certification or general permit, or for an individual permit, as well as any reports submitted to the Department in accordance with one of these approvals. Specifically, as provided at proposed N.J.A.C. 7:7-23.2(d), where the applicant is a corporation, a principal executive officer of at least the level of vice president must certify. Where the applicant is a partnership or sole proprietorship, a general partner or the proprietor, respectively, must certify. Where the applicant is a municipality, State, Federal, or other public entity, either a principal executive officer or ranking elected official must certify. Where the applicant is an entity other than one of these, all individual owners of record of the property must certify.

Proposed new N.J.A.C. 7:7-23.2(e) identifies those individuals considered a duly authorized representative of the applicant who may thus certify an application in the applicant's stead. A duly authorized representative must be designated in writing as such by an individual identified at N.J.A.C. 7:7-23.2(d) and the authorization must be submitted as part of the application to the Department. The duly authorized representative must be either an individual who has overall responsibility to operate, construct, or complete the activity, such as a contractor, construction site supervisor, or other individual of equivalent responsibility, or a person who is in a position of equivalent responsibility.

Proposed N.J.A.C. 7:7-23.2(f) addresses situations where the authorization of a representative to certify an application or report is no longer accurate. In this instance, a new authorization satisfying the requirements of proposed N.J.A.C. 7:7-23.2(e) must be submitted to the Department prior to or concurrent with any reports, information, or applications requiring

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certification under the CZM rules. This ensures that the Department is at all times aware of the individual responsible for the operation, construction, or completion of the proposed activity.

Proposed new N.J.A.C. 7:7-23.2(g) requires that if an application includes activities within a right-of-way or easement, the application must include written consent for the activity from the holder(s) of the right-of-way or easement.

Existing N.J.A.C. 7:7-4.2(a)7i(2) and 7ii(4) and 4.2(c) regarding signed and sealed plans are proposed to be deleted, with their requirements consolidated, with amendments for clarity, at proposed N.J.A.C. 7:7-23.2(h). All site plans submitted under this subchapter must be signed and sealed by a New Jersey licensed professional engineer, surveyor, or architect, as appropriate, with one exception. Where the applicant proposes an activity in a man-made lagoon or proposes the construction of a single-family home or duplex or accessory development located landward of the mean high water line, such as a patio, garage, or shed; and where the activity is one for which no survey, topography, or calculations are necessary to demonstrate compliance with the requirements of the CZM rules, the applicant may prepare his or her own site plan.

Proposed new N.J.A.C. 7:7-23.2(i) requires that any professional report, survey, calculation, environmental impact statement, or other document prepared by a consultant, engineer, architect, surveyor, attorney, scientist, or other professional must be certified in accordance with proposed N.J.A.C. 7:7-23.2(j). This certification is intended to ensure that the information in the application as well as any submitted documents is truthful, accurate, and complete, and is separate from the certification by the applicant of the application itself.

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Proposed N.J.A.C. 7:7-23.2(j) contains the language of the certification that must be provided by the applicant or duly authorized representative as well as by the preparer of any of the documents submitted as part of the application.

In accordance with proposed new N.J.A.C. 7:7-23.2(k), failure to provide complete and accurate information may result in the denial of an application, or the termination of the authorization under a general permit-by-certification or general permit or of the individual permit. It may also result in an enforcement action.

Similar to existing N.J.A.C. 7:7-1.8, which is proposed for repeal, proposed new N.J.A.C. 7:7-23.2(l) allows an applicant to submit one application where more than one coastal permit is required under the CZM rules or where an approval under the FWPA or FHACA rules is required in addition to the coastal permit, except for an application for an authorization under a general permit-by-certification. All of the respective application requirements for each of the approvals included in the single application must be met.

### **N.J.A.C. 7:7-23.3 Additional application requirements for an authorization under a general permit-by-certification**

The general application requirements at proposed N.J.A.C. 7:7-23.2 apply to applications for authorization under a general permit-by-certification. Proposed N.J.A.C. 7:7-23.3 sets forth the additional application requirements for an authorization under a general permit-by-certification. As provided at proposed N.J.A.C. 7:7-23.3(a), an authorization under a general permit-by-certification must be applied for electronically through the Department's online permitting system at <http://nj.gov/dep/online>. As mentioned earlier in the summary of proposed

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Subchapter 3, the general permits-by-certification are promulgated as rules, and each one applies to a tightly circumscribed subset of the broader range of activities that might be able to be authorized under one of the general permits. The applicant for an authorization under a general permit-by-certification must certify that the conditions of the general permit-by-certification will be met, thus enabling an automated application and issuance process.

To start the process of applying for authorization under a general permit-by-certification, an applicant will need a MyNewJersey account, will need to link that account to the NJDEP Online Site, and will need to obtain a certification PIN that will be used for certifying applications submitted through the NJDEP Online Site.

Proposed N.J.A.C. 7:7-23.3(b)1 through 8 set forth the particular information an applicant for an authorization under a general permit-by-certification must provide through the electronic application process. The applicant must provide the number and subject matter of the general permit-by-certification under which authorization is sought; the name of or other identifier for the proposed development or project; specific location information for the proposed development or project; information specific to the proposed project that relates to the requirements of the general permit-by-certification under which the application is being submitted; and contact information for both the applicant and the property owner. The application requires a certification that the site identified in the application is the actual location of the project site, that public notice of the application has been provided, that the applicant has obtained written consent from the property owner that the application can be made on the property owner's behalf, and that conditions specific to the general permit-by-certification under which the application for authorization is being submitted are or will be met. To accomplish the

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certification, the applicant must use the PIN that was issued to the applicant upon registering with the online permitting system. Last, the applicant must submit the application fee for a general permit-by-certification established under proposed N.J.A.C. 7:7-25.

Where appropriate, the application requirements include examples of the type of information to be provided in the application. At proposed N.J.A.C. 7:7-23.3(b)4, an example is given to illustrate the type of information specific to the proposed project that will be required, and at proposed N.J.A.C. 7:7-23.3(b)6iv, an example is given of the type of condition specific to the particular general permit-by-certification that the applicant must certify is or will be met.

Proposed N.J.A.C. 7:7-23.3(c) states that once an applicant successfully completes the application process, the authorization will be accessible to the applicant through the online permitting system.

#### **N.J.A.C. 7:7-23.4 Additional application requirements for an authorization under a general permit or for an individual permit**

Proposed new N.J.A.C. 7:7-23.4 sets forth additional requirements for applications for authorization under general permits and for individual permits. Proposed N.J.A.C. 7:7-23.4(a)2 through 9 replace existing N.J.A.C. 7:7-4.2(a)1 through 7 regarding individual permit applications and existing N.J.A.C. 7:7-7.3(a)1 through 8 regarding general permit authorizations. The cited existing provisions are all proposed for deletion.

Proposed N.J.A.C. 7:7-23.4(a)1 requires submission of a completed application form available from the Department at the address set forth at N.J.A.C. 7:7-1.6. This form requires basic information regarding the proposed development, including the name and address of the

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applicant and any designated agents, the specific location of the project, the types of permits or authorizations being sought, a brief description of the proposed activities, and certifications to the truth and accuracy of the information provided and ownership of the property.

Proposed N.J.A.C. 7:7-23.4(a)2 requires documentation that public notice has been provided in accordance with N.J.A.C. 7:7-24, where the requirements for public notice that an applicant must undertake are proposed to be consolidated.

Proposed N.J.A.C. 7:7-23.4(a)3 requires submission of the appropriate application fee in accordance with N.J.A.C. 7:7-25, where application fees for the various types of permits and approvals are proposed to be located.

Proposed N.J.A.C. 7:7-23.4(a)4 requires the submission of site plans and identifies the existing features and proposed activities both on the site and adjacent to the site that must be included. As explained in the summary of proposed N.J.A.C. 7:7-1.5, a definition of “site plan” is proposed, which is equivalent to the existing definition of “drawing” in the FHACA rules at N.J.A.C. 7:13-1.2. Site plans are required to include information necessary to demonstrate that the regulated activities for which an authorization is being sought satisfy the requirements of the CZM rules. For instance, existing and proposed topography is required in cases where the Department must review topography in order to determine that the proposed development meets the requirements of the CZM rules. Additional details required on site plans, which enable the Department to determine compliance with the CZM rules, include the limits of any existing or proposed tidelands instrument; details of any proposed soil erosion and sediment control measures; the location of the mean high, mean low, and spring high water lines of tidal waters; the water depths and location of navigation channels; the upper and lower limits of special areas;

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and the location of existing or proposed public access to lands and waters subject to public trust rights. The application checklist for each authorization being sought includes guidance on the specific information that must be provided on the site plans for each particular permit or authorization.

Proposed N.J.A.C. 7:7-23.4(a)5 requires the applicant to provide State plane coordinates for the site on which the activity or development is proposed. Existing N.J.A.C. 7:7-4.2(a)6i provides that State plane coordinates are not required as part of an application for development at a single family home or duplex lot that is not part of a larger development. Similarly, existing N.J.A.C. 7:7-7.3(a)6i provides that State plane coordinates are not required for applications for authorization under the general permits that address development at a single family or duplex lot. The Department is proposing to require the State plane coordinates for all sites on which regulated activities are proposed, including single family and duplex lots. The State plane coordinates for a site are easily obtainable by the public through the Department's i-MapNJ DEP interactive mapping application, which displays the State plane coordinates for a point in the lower left hand corner of the screen. An applicant can also obtain the State plane coordinates for a site by contacting the Department's GIS help desk at (609)777-0672. The State plane coordinates assist the Department in locating project sites and properly recording the location of regulated activities in its database. Existing N.J.A.C. 7:7-4.2(a)6ii, which provides guidance for locating State plane coordinates for linear projects, is relocated to proposed N.J.A.C. 7:7-23.4(a)5i(1) and (2), with clarifying changes that do not affect meaning.

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Proposed N.J.A.C. 7:7-23.4(a)6 requires, in addition to the site plan, other visual representations, such as photographs, graphs, and tables, necessary to illustrate existing site conditions and the proposed project.

Proposed N.J.A.C. 7:7-23.4(a)7 replaces existing N.J.A.C. 7:7-4.2(a)10 and 7.3(a)8, with amendments clarifying that additional information necessary to support an application will include calculations and data to demonstrate the requirements of the CZM rules are met as well as to demonstrate stormwater requirements, when applicable, are met.

Proposed N.J.A.C. 7:7-23.4(a)8 requires information concerning the anticipated impacts of the proposed development.

Proposed N.J.A.C. 7:7-23.4(a)9 requires the applicant to provide the Department with any information necessary to ensure compliance with State and/or Federal law, and/or to determine whether an application for authorization under a general permit or for an individual permit meets State and/or Federal standards.

Proposed N.J.A.C. 7:7-23.4(a)10 requires the owner of the site on which the proposed activity would occur to provide consent from the owner allowing the Department to enter and inspect the site in a reasonable manner and at reasonable times. This consent will continue in effect for the duration of the Department's review of the application and decision-making process, including for the duration of any appeal made from the permit decision. This consent is necessary to enable the Department to fully assess the proposed development's impact on coastal resources and to address issues raised in comments or objections regarding the application or project received by the Department from interested persons.

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Existing N.J.A.C. 7:7-4.2(b), which requires that applications for waterfront development and coastal wetlands permits include a copy of any tidelands instrument previously approved for the site, is proposed to be deleted. The operations of the Bureau of Tidelands Management have been integrated with the Department's New Jersey Environmental Management System (NJEMS) so that all existing tidelands grants, leases, and licenses, as well as pending applications for them, are contained in the NJEMS database. Consequently, there is no longer a need for applicants for coastal permits to provide tidelands information.

**N.J.A.C. 7:7-23.5 Compliance statement requirement for an application for authorization under a general permit**

Existing N.J.A.C. 7:7-6, which describes the requirements for submitting as part of an application for a coastal permit either an environmental impact statement (EIS) or a compliance statement, is proposed to be repealed. The requirements regarding the compliance statement, which must be submitted as part of an application for authorization under a general permit, are proposed at N.J.A.C. 7:7-23.5. The requirements regarding the EIS, which must be submitted as part of an application for an individual permit, are proposed at N.J.A.C. 7:7-23.6 (discussed below).

Proposed N.J.A.C. 7:7-23.5(a) requires that an application for a general permit authorization include a compliance statement. This single provision replaces the same provision that is repeated in the existing rules within the requirements for each specific general permit in existing Subchapter 7. Proposed N.J.A.C. 7:7-23.5(a)1 through 3 establish the content of a compliance statement.

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Based on its experience in reviewing compliance statements submitted with applications for authorization under general permits, the Department is proposing to simplify the content of compliance statements. For example, existing N.J.A.C. 7:7-6.2(b)3 requires an environmental inventory assessment describing and documenting environmental conditions at the site and in the surrounding region and assessing the probable impacts of the proposed development on the built and natural environment. However, the requirements of each general permit are established in consideration of a proposed development's impacts on the built and natural environment. Compliance with the requirements of a particular general permit will mean the requirements of the rules that apply to the development or activity governed by a particular general permit are met. Proposed N.J.A.C. 7:7-23.5(a)1, therefore, provides that the compliance statement must demonstrate that the proposed project satisfies the requirements of the general permit for which authorization is being sought.

Proposed N.J.A.C. 7:7-23.5(a)2 requires that, for an application for authorization under a CAFRA general permit, the compliance statement must demonstrate that the findings set forth in CAFRA at N.J.S.A. 13:19-10, and in these proposed CZM rules at N.J.A.C. 7:7-1.4, which must be addressed in order for the Department to issue an approval under CAFRA, can be made for the proposed development.

Proposed N.J.A.C. 7:7-23.5(a)3 requires that the compliance statement include a description of the project, including the characteristics of the site and location of all proposed activities, potential impacts from construction, and operation of the development once completed.

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**N.J.A.C. 7:7-23.6 Additional requirements specific to an application for an individual permit**

Proposed new N.J.A.C. 7:7-23.6 contains additional requirements specific to applications for individual permits. Proposed N.J.A.C. 7:7-23.6(a) explains that the requirements of the section are in addition to those at N.J.A.C. 7:7-23.2 and 23.4.

Proposed N.J.A.C. 7:7-23.6(b), which requires an environmental impact statement (EIS) with every coastal individual permit application, replaces existing N.J.A.C. 7:7-4.2(a)8, which requires the submission of an EIS as part of an individual CAFRA permit application, and the submission of a compliance statement for an individual waterfront development or coastal wetland permit application.

To simplify terminology and the application requirements for all individual coastal permit applications, the Department is proposing to require an environmental impact statement for every individual permit, whether CAFRA, waterfront development, or coastal wetland. The term “environmental impact statement” is specifically used in CAFRA at N.J.S.A. 13:19-6 to describe the statement required as part of a CAFRA permit application to provide “the information needed to evaluate the effects of a proposed development upon the environment of the coastal area.” Consequently, the existing coastal permitting provisions use the term EIS for the statement that accompanies a CAFRA individual permit. However, whether termed an EIS or a compliance statement, the purpose of the statement is to assist the applicant and the Department in assessing the effects of a proposed development or activity on the natural resources at the project site and surrounding region and in determining the proposed development’s compliance with the CZM rules. Under the proposed rule, the scope of the EIS

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for each individual permit application will be determined based on site-specific and project-specific circumstances, in other words, the scope of the project and its environmental impacts. This is equivalent to the distinction made in the existing rules between “major” projects and “minor” projects for purposes of requiring a more detailed EIS for major projects as opposed to a compliance statement (characterized in the existing rules at N.J.A.C. 7:7-6.1(b)2 as “an abbreviated form of an EIS”) for minor projects.

Proposed N.J.A.C. 7:7-23.6(b)1 through 4 set forth the contents of an EIS. In accordance with proposed N.J.A.C. 7:7-23.6(b)1, the EIS must describe, in narrative form, the proposed development or activity, the characteristics of the site and the surrounding region, the location of all proposed activities, potential impacts from construction, and operation of the development once completed.

Proposed N.J.A.C. 7:7-23.6(b)2 requires that the EIS include a discussion of the applicability of the CZM rules to the proposed development, including a detailed statement of compliance with each specific applicable rule. Proposed N.J.A.C. 7:7-23.6(b)2i provides that if the applicant believes a specific rule that would otherwise be applicable to the proposed development does not apply, the applicant must explain why the rule does not apply. Proposed N.J.A.C. 7:7-23.6(b)3 requires that an EIS for a CAFRA individual permit application demonstrate that the findings set forth in CAFRA at N.J.S.A. 13:19-10, and in these proposed CZM rules at N.J.A.C. 7:7-1.4, which must be addressed in order for the Department to issue an approval under CAFRA, can be made for the proposed development. Proposed N.J.A.C. 7:7-23.6(b)4 provides that the EIS must, as necessary based on site-specific and project-specific circumstances, provide support by relevant experts for the assessments, discussions and

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statements made in the EIS, specify the qualifications of the preparers, and provide references and citations to all information, reports, or treatises that are mentioned in the EIS but not contained in the document itself. This provision provides the flexibility, discussed above, to tailor the scope and detail of the EIS to the scope and complexity of the project for which a coastal individual permit is sought.

Under proposed N.J.A.C. 7:7-23.6(c), if the proposed development is within an area subject to the jurisdiction of the New Jersey Pinelands Commission, the application for an individual permit for the development must include certain documents issued by the Commission. This subsection replaces existing N.J.A.C. 7:7-4.2(a)9.

Proposed N.J.A.C. 7:7-23.6(d) replaces existing N.J.A.C. 7:7-4.2(e) and provides that if an activity requires mitigation, the applicant may submit a mitigation proposal as part of the application. The proposed rule also makes clear that, in accordance with the requirements of proposed new N.J.A.C. 7:7-17, Mitigation, if an applicant does not submit a mitigation proposal with the application, the mitigation proposal must be submitted at least 90 calendar days before the start of activities authorized under the permit. This requirement ensures that the mitigation proposal can be reviewed and approved prior to the start of construction of the regulated activities. The specific requirements related to the mitigation proposal at existing N.J.A.C. 7:7-4.2(e)1 through 4 are addressed in proposed new N.J.A.C. 7:7-17.

Proposed N.J.A.C. 7:7-23.6(e) requires the submission of the monitoring methodology with an application for an individual permit for wind turbines for which pre- and post-construction monitoring is required pursuant to N.J.A.C. 7:7-15.4. This subsection replaces existing N.J.A.C. 7:7-4.2(g).

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Proposed N.J.A.C. 7:7-23.6(f), which provides that an application for a waterfront development or coastal wetlands individual permit that proposes the discharge of dredged or fill material into waters of the United States constitutes an application for a State water quality certificate, replaces existing N.J.A.C. 7:7-4.2(d), with changes that do not affect meaning. As explained in the definition of water quality certificate at proposed N.J.A.C. 7:7-1.5, a water quality certificate is a determination by the Department of the consistency with the CZM rules of an activity that proposes a discharge to waters of the United States which requires a Federal license or permit pursuant to Section 401 of the Federal Clean Water Act and N.J.S.A. 58:10A-1 et seq. Activities subject to the Waterfront Development Law and Wetlands Act of 1970 may involve a discharge to waters of the United States. Where this is the case, the waterfront development or coastal wetlands permit application constitutes an application for a State water quality certificate.

#### **Subchapter 24. Requirements for an Applicant to Provide Public Notice of an Application**

The Department is proposing to consolidate the requirements for the public notice that an applicant submitting an application to the Department must provide, which currently are found in various provisions in existing N.J.A.C. 7:7, at proposed new N.J.A.C. 7:7-24, Requirements for an Applicant to Provide Public Notice of an Application.

##### **N.J.A.C. 7:7-24.1 Purpose and scope**

Proposed N.J.A.C. 7:7-24.1 explains that the subchapter sets forth the public notice requirements for an applicant submitting an application for an authorization under a general

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permit-by-certification or general permit, individual permit, major technical modification, or mitigation proposal. Proposed N.J.A.C. 7:7-24.1(b) states that the public notice requirements for a person requesting a reconsideration of the application of any CZM rule under proposed N.J.A.C. 7:7-19 are set forth at proposed N.J.A.C. 7:7-19.2(l)1ii. Proposed N.J.A.C. 7:7-24.1(c) provides that an applicant requesting an exemption letter or applicability determination, conducting an activity under a permit-by-rule, or submitting an application for an emergency authorization, an extension of the term of a permit, a transfer of a permit, or an administrative or minor technical modification is not required to provide public notice.

Proposed N.J.A.C. 7:7-24.1(d) addresses situations where a proposed development requires more than one coastal permit under the CZM rules or where an approval under the FHACA or FWPA rules is also required. In this situation, an applicant may provide combined public notice for all of the applications submitted provided the combined notice meets all of the requirements that apply to each application.

Proposed N.J.A.C. 7:7-24.1(e) gives notice that an applicant's failure to provide the public notice required under N.J.A.C. 7:7-24 is cause for the Department to cancel an application under proposed N.J.A.C. 7:7-26.7.

#### **N.J.A.C. 7:7-24.2 Timing of public notice of an application**

Proposed N.J.A.C. 7:7-24.2 sets forth the timing requirements for an applicant to provide public notice of an application.

Under proposed N.J.A.C. 7:7-24.2(a), for all applications other than an application for a CAFRA individual permit, public notice must be provided no more than 30 calendar days prior

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to submitting the application and no later than the date the application is submitted to the Department. This timing is the same as in the FHACA rules at N.J.A.C. 7:13-16.1(b) and is designed to ensure that the notice of an activity is given in a timeframe that allows for meaningful public comment. The content and recipients of this public notice are set forth at proposed N.J.A.C. 7:7-24.3, described below.

Under proposed N.J.A.C. 7:7-24.2(b), public notice of a CAFRA individual permit application is to be provided to government entities pursuant to N.J.A.C. 7:7-24.3(a), (b)1 through 5, and (e) no more than 30 calendar days prior to submitting the application and no later than the date the application is submitted to the Department. Since an applicant for a CAFRA individual permit will subsequently provide specific notice of the public comment period on the application or of a public hearing on the application to property owners within 200 feet of the site on which the development is proposed in accordance with N.J.A.C. 7:7-24.4(b)4, (c), and (e), individual notice to these property owners is not required within the time frame specified at N.J.A.C. 7:7-24.2(b). However, an applicant for a CAFRA individual permit must publish newspaper notice pursuant to N.J.A.C. 7:7-24.4(a) no more than 10 calendar days after the application is submitted to the Department. This newspaper notice is intended to provide preliminary notice to the general public that the application is being submitted.

### **N.J.A.C. 7:7-24.3 Contents and recipients of public notice of an application**

The notice requirements in existing N.J.A.C. 7:7 require that three complete copies of the application package be sent to the clerk of the municipality in which the proposed development would occur, along with a letter requesting that the clerk distribute one copy to the planning

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board and one copy to the environmental commission, with the third copy maintained in the clerk's office. To streamline these notice requirements, proposed N.J.A.C. 7:7-24.3(a) requires that a complete copy of the application must be provided only to the clerk of each municipality in which the site is located. Notice to the planning board and environmental commission of the municipality(ies) will, in accordance with N.J.A.C. 7:7-24.3(b), consist of a brief description of the project, a site plan, and the form notice letter that the Department makes available on its website. Should interested persons want to review the information contained within the application, they may contact the municipal clerk or the Department.

In addition to providing the notice to the municipal planning board and environmental commission, N.J.A.C. 7:7-24.3(b) requires that the notice be provided to the construction official of each municipality in which the site is located, the planning board of each county in which the site is located, the local Soil Conservation District (for projects disturbing at least 5,000 square feet), and all owners of real property, including easements, located within 200 feet of the property boundary of the site. Notice of the application to the recipients listed at N.J.A.C. 7:7-24.3(b) is provided in accordance with the time frames specified at N.J.A.C. 7:7-24.2.

The requirement that notice must be provided to the local Soil Conservation District is new. Because the local Soil Conservation Districts do not generally regulate or review construction activities that disturb less than 5,000 square feet of land, this requirement to give them notice is limited to those projects that are subject to the jurisdiction of the Soil Conservation District. This provision is the same as the notice requirement in the FHACA rules at N.J.A.C. 7:13-16.3(a)4. Although the notice requirements in existing N.J.A.C. 7:7 provide that an applicant for authorization under a general permit must give notice to all individual

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property owners that share a common property boundary with the proposed project site (as opposed to all owners of property within 200 feet of the site boundary), for the purposes of consistency with the notice provisions of FWPA rules as well as the notice provisions of the Municipal Land Use Law, the Department is proposing at N.J.A.C. 7:7-24.3(b) that the public notice for any coastal permit application, including applications for authorization under general permits, must be provided, in the manner set forth in the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-12.b, to all owners of property within 200 feet of the property boundary of the site. The Department is citing to this aspect of the MLUL because it makes clear how notice to certain property owners can be provided. For instance, notice to owners of condominium units can be provided to the condominium association rather than to each unit owner.

Consistent with the existing rules in N.J.A.C. 7:7 regarding notice to nearby property owners, proposed N.J.A.C. 7:7-24.3(b)6 requires that the individual property owners be those on a list certified by the municipality. To ensure the accuracy of the list, the date of certification of the list can be no earlier than one year prior to the date the application is submitted to the Department.

Proposed N.J.A.C. 7:7-24.3(c) sets forth the public notice requirements applicable to an application for a permit for a linear project of one-half mile or longer, a shore protection development of one-half mile or longer, a public development on a site of 50 acres or more, or an industrial or commercial development on a site of 100 acres or more. An applicant for a permit for one of these developments must publish newspaper notice and send individual notice to those owners of property, including easements, within 200 feet of an above ground structure that is part of the proposed development. The latter requirement is instead of sending individual notice

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to all owners of property, including easements, within 200 feet of the property boundary of the site. The rules in existing N.J.A.C. 7:7 apply this alternate notice requirement to linear developments and shore protection developments of one-half mile or longer in length, park facilities of 50 acres or more, and industrial developments of 100 acres. The Department is proposing to broaden this alternate notice requirement so that it applies to any public development of 50 acres or more, and commercial and industrial developments of 100 acres or more. Based on its experience in reviewing applications for these types of development, the Department has determined that newspaper notice and individual notice to property owners within 200 feet of an above ground structure that is part of the proposed development will ensure adequate notification to the public such that meaningful comment on the proposed development can be obtained.

Proposed N.J.A.C. 7:7-24.3(d) sets forth the contents and method of delivery of the public notice to be provided to the recipients listed at N.J.A.C. 7:7-24.3(b) and (c), other than the newspaper notice, for which the content requirements are set forth at N.J.A.C. 7:7-24.5. The public notice is to include a brief description of the proposed project; a site plan (may be on 8½ by 11 inch paper) showing the location and boundaries of the project site as well as the proposed development in relation to existing conditions; and a copy of the form notice letter that the Department will make available on its website. Rather than including the language of the form notice letter in the text of the rules as is done in existing N.J.A.C. 7:7, the Department is proposing to streamline the notice requirements by posting the form notice letter on its website and referencing the form notice letter in the rules. The form notice letter explains to readers of the letter that an application will be submitted to the Department for the specific development

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depicted on the enclosed site plan, that a complete copy of the application is available for review at the municipal clerk's office or at the Department's Trenton office, and that comments or information on the proposed development and site may be submitted to the Department within 15 calendar days of receipt of the letter.

Proposed N.J.A.C. 7:7-24.3(d)2 requires that the notice of an application must be sent by certified mail or by a form of delivery where the signature of the person to whom the notice is delivered is obtained. An applicant may secure from the specific municipal or county entity to whom notice must be provided written permission to submit the notice to that entity electronically instead of by certified mail or personal delivery. This new alternative is being proposed in response to stakeholder comments and reflects the Department's initiative to facilitate electronic communication with the public where appropriate.

If a proposed project is located within the Pinelands Preservation Area, the Pinelands Protection Area, or the Pinelands National Reserve, the applicant must, under proposed N.J.A.C. 7:7-24.3(e), provide a copy of the entire application to the New Jersey Pinelands Commission. The notice requirements in existing N.J.A.C. 7:7 require only applicants for an authorization under a general permit, a CAFRA individual permit, or a major modification to submit a copy of the complete application to the Pinelands Commission. This proposed subsection requiring all applicants for an authorization under a general permit, an individual permit, or a major technical modification for a project in the Pinelands to provide a copy of the application to the Pinelands Commission will facilitate coordination between DEP and the Pinelands Commission.

Proposed N.J.A.C. 7:7-24.3(f) provides that an applicant for a waterfront development individual permit to install submarine cables or to conduct sand mining in the Atlantic Ocean

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must, in addition to providing the notice required under N.J.A.C. 7:7-24.3(a) and (b) to local government agencies and owners of nearby property, provide notice of the application to specific entities associated with the shellfish industry. The notice to these entities must include a copy of the completed application form and a copy of the NOAA nautical chart showing the proposed cable route or the limits of the proposed sand mining area that were submitted as part of the application. The content of the notice and the recipients are the same as in existing N.J.A.C. 7:7-4.2(a)3ii, with the exception that the Commercial Fishing Communications Association is not included in the list of entities because it is no longer in existence.

#### **N.J.A.C. 7:7-24.4 Additional requirements for public notice of an application for a CAFRA individual permit**

As noted above with regard to the timing requirements for notice at N.J.A.C. 7:7-24.2(b), an applicant for a CAFRA individual permit must provide initial notice of the application to local government agencies and by newspaper to the public, and subsequently must provide notice of the public comment period or public hearing. Proposed N.J.A.C. 7:7-24.4(a) sets forth the requirement that the applicant for a CAFRA individual permit must publish initial newspaper notice that an application is being submitted to the Department. The requirements regarding the content of this initial newspaper notice are at proposed N.J.A.C. 7:7-24.5, described below.

Proposed N.J.A.C. 7:7-24.4(b) identifies the recipients of the notice of the public comment period on a CAFRA individual permit application. The recipients are the clerk, environmental commission, and planning board of the municipality in which the site is located, and all owners of real property, including easements, within 200 feet of the property boundary of

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the site. Notice to individual property owners, including easements, is to be provided in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, unless the proposed development is a linear development, public development on a site of 50 acres or more, or an industrial or commercial development on a site of 100 acres or more. If a linear development, the notice must be provided by newspaper and by individual notice to those property owners of real property, including easements, within 200 feet of an above ground structure that is part of the proposed development. The owners of real property are those on a list certified by the municipality and dated no earlier than one year before the permit application is submitted to the Department.

Like proposed N.J.A.C. 7:7-24.3(c) (described above), proposed N.J.A.C. 7:7-24.4(c) provides that for a linear project of one-half mile or longer, a shore protection development of one-half mile or longer, a public development on a site of 50 acres or more, or an industrial or commercial development on a site of 100 acres or more, the notice of the public comment period on a CAFRA individual permit application must be provided by newspaper and, in addition, by individual notice to property owners within 200 feet of any above ground structure that is part of the proposed development.

Like proposed N.J.A.C. 7:7-24.3(d) (described above), proposed N.J.A.C. 7:7-24.4(d) provides that notice of the public comment period on a CAFRA individual permit, other than newspaper notice, must include a brief description of the project, the DEP file number, a site plan showing the location and boundaries of the site as well as the development in relation to existing site conditions, and a copy of the form notice letter available from the Department's website.

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Should the Department hold a public hearing on a CAFRA individual permit application pursuant to N.J.A.C. 7:7-26.5, an applicant is required to provide notice of the public hearing on the application in accordance with proposed N.J.A.C. 7:7-24.4(e). Notice of the public hearing is to be provided in the same manner as the notice of a public comment period on a CAFRA individual permit application, and must include the date, place and time of the hearing, as set by the Department pursuant to N.J.A.C. 7:7-26.5(b).

#### **N.J.A.C. 7:7-24.5 Content and format of newspaper notice**

Under the notice requirements in existing N.J.A.C. 7:7, newspaper notice of an application must be a display advertisement of at least four inches in width. Based on stakeholder input, the Department is proposing, at N.J.A.C. 7:7-24.5(a), to allow the applicant to publish newspaper notice as either a legal notice or a display advertisement. This is consistent with the newspaper notice requirements of the FHACA and FWPA rules, and will help reduce the costs associated with newspaper notice. Proposed N.J.A.C. 7:7-24.5(a) requires that the newspaper notice must be published in the official newspaper of the municipality where the development site is located or, if there is not an official newspaper, in a newspaper of general circulation in the municipality.

Proposed N.J.A.C. 7:7-24.5(b) sets forth the contents of the newspaper notice required under N.J.A.C. 7:7-24.3(c) for an application for a permit for a shore protection development of one-half mile or longer, a public development on a site of 50 acres or more, or an industrial or commercial development on a site of 100 acres or more, as well as for the newspaper notice required under N.J.A.C. 7:7-24.4(a) for an application for a CAFRA individual permit. The

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newspaper notice must include the mailing address and telephone number of the Department; the name and address of the applicant; the approval being sought; a description of the proposed activities; the street address of the site; a list of each lot, block, municipality, and county where the proposed activities will occur; and the standard language of the form notice letter available from the Department's website.

For purposes of the newspaper notice required under N.J.A.C. 7:7-24.3(c) (certain linear developments and certain developments on large sites), proposed N.J.A.C. 7:7-24.5(b)7i provides that the form notice letter explains to readers that an application will be submitted to the Department for the specific development identified in the notice, that a complete copy of the application is available for review at the municipal clerk's office or at the Department's Trenton office, and that comments or information on the proposed development and site may be submitted to the Department within 15 calendar days of the date of the notice.

For purposes of the newspaper notice required under N.J.A.C. 7:7-24.4(a) (submittal of CAFRA individual permit application), proposed N.J.A.C. 7:7-24.5(b)7ii provides that the form notice letter explains that an application has been submitted to the Department for a specific development, that a complete copy of the CAFRA individual permit application is available to be reviewed at either the municipal clerk's office or at the Department's Trenton office, that either a 30-day public comment period or public hearing will be held on the application in the future, that individuals may request a public hearing on the application within 15 calendar days of the date of the notice, and that requests for a public hearing shall be sent to the Department and state the specific nature of the issues to be raised at the hearing.

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For the newspaper notice required under N.J.A.C. 7:7-24.4(c) of the public comment period for a CAFRA individual permit application for a linear project of one-half mile or longer, a shore protection development of one-half mile or longer, a public development on a site of 50 acres or more, or an industrial or commercial development on a site of 100 acres or more, proposed N.J.A.C. 7:7-24.5(c) provides that the notice must include a description of the proposed development, the DEP file number, the date the comment period will begin, and a statement that comments on the application must be submitted to the Department within 30 calendar days after the start of the comment period.

For the newspaper notice required under N.J.A.C. 7:7-24.4(e) for a public hearing on an application for a CAFRA individual permit, proposed N.J.A.C. 7:7-24.5(d) provides that the notice must include a description of the proposed development, the DEP file number, and the date, place, and time of the public hearing.

**N.J.A.C. 7:7-24.6 Documenting public notice of an application; documenting public notice of public comment period or public hearing on CAFRA individual permit application**

Proposed N.J.A.C. 7:7-24.6 identifies the documentation necessary for an applicant to demonstrate that the required public notice has been provided in accordance with N.J.A.C. 7:7-24, as well as the time frames under which the documentation must be submitted to the Department. This section is intended to standardize the requirements for documenting public notice in order to facilitate application processing and to ensure compliance with the public notice requirements.

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Proposed N.J.A.C. 7:7-24.6(a) identifies the public notice documentation that must be provided by an applicant as part of its application (other than an application for a CAFRA individual permit). To document public notice other than newspaper notice, proposed N.J.A.C. 7:7-24.6(a)1 provides that the applicant must submit a copy of the United States Postal Service white mailing receipt for each public notice that was mailed or other written receipt, and a certified list (date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department) of all owners of real property within 200 feet of the property boundary of the site prepared by the municipality for each municipality in which the project is located. Proposed N.J.A.C. 7:7-24.6(a)2 sets forth the documentation requirements for newspaper notice. Documentation must include a copy of the published newspaper notice and the date and name of the newspaper in which notice was published.

Proposed N.J.A.C. 7:7-24.6(b) identifies the public notice documentation that must be provided by an applicant submitting an application for a CAFRA individual permit. For public notice other than newspaper notice, the documentation required is the same as that required by N.J.A.C. 7:7-24.6(a)1, described above, and must be submitted as part of the permit application. For newspaper notice, the documentation required under N.J.A.C. 7:7-24.6(a)2 must be submitted within 10 calendar days of the date the CAFRA individual permit application is submitted.

Proposed N.J.A.C. 7:7-24.6(c) identifies the documentation that must be submitted by an applicant for a CAFRA individual permit to demonstrate that the required public notice of a public comment period or a public hearing was provided. The documentation of the notice of a public comment period and of the notice of a public hearing required under N.J.A.C. 7:7-

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24.6(c)1 and 2 is the same as that required by N.J.A.C. 7:7-24.6(a)1 and 2, described above. The documentation of the notice of the public comment period must be submitted at least 10 calendar days prior to the start of the public comment period. The documentation of the notice of the public hearing must be submitted at least three calendar days prior to the date of the public hearing.

### **Subchapter 25. Application Fees**

Existing N.J.A.C. 7:7-10, Application fees, is proposed to be recodified at N.J.A.C. 7:7-25, with amendments. As discussed in the summary of proposed N.J.A.C. 7:7-27, Permit Conditions; Modification, Transfer, Suspension, and Termination of Authorizations and Permits, the Department is proposing at new N.J.A.C. 7:7-27.3 to allow one extension of any coastal general permit authorization, and also to allow one extension of a waterfront development individual permit for activities located waterward of the mean high water line. Accordingly, the Department is proposing new fees for these extensions. While these are additional, new fees for the regulated community, they represent a substantial savings in comparison to the cost of paying the full permit application fee.

The proposed fee for an extension of any coastal general permit authorization is \$240.00. This fee is proposed at N.J.A.C. 7:7-25.2(f)1 for waterfront development general permit authorizations; at N.J.A.C. 7:7-25.3(c) for coastal wetlands general permit authorizations; and at N.J.A.C. 7:7-25.4(g) for CAFRA general permit authorizations. The Department is establishing this fee in the same amount as the fee for the extension of a general permit authorization under the FWPA rules at N.J.A.C. 7:7A-11.1.

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The proposed fee at N.J.A.C. 7:7-25.2(f)2 for an extension of a waterfront development individual permit for activities located waterward of the mean high water line is 25 percent of the original permit application fee. This fee is less than the fee for a new application because the Department's experience has shown that the review of an extension takes less time and effort. However, a review is necessary to ensure existing site conditions have not changed and that the impacts to environmental resources are the same as the originally permitted activities. Because individual permit application fees under the CZM rules are capped at \$30,000 (see existing N.J.A.C. 7:7-10.2(d), proposed to be recodified at N.J.A.C. 7:7-25.2(d)), the Department is proposing to cap the fee for a request to extend a waterfront development individual permit for activities located waterward of the mean high water line at \$3,000, which is 10 percent of the permit application fee cap. Most waterfront development individual permits issued for projects waterward of the mean high water line are for docks and piers at single family homes and the fees for them do not approach the maximum fee of \$30,000; therefore the cap is not applied very often. However, if there is a large development waterward of the mean high water line for which the permit needs to be extended, the proposed \$3,000 cap will minimize the cost to the permittee of seeking the extension and also reflects that the review by the Department is limited to an assessment of the site to ensure that site conditions have not changed and that the scope of the project and its environmental impacts are the same as approved in the original permit.

On April 17, 2006, the Department adopted amendments to existing N.J.A.C. 7:7-10.2(a), 10.3(b), and 10.4(e) which eliminated the fee for the general permit for habitat creation and enhancement activities (see 38 N.J.R. 1657(a); April 17, 2006). However, the changes to N.J.A.C. 7:7-10.3(b) and 10.4(e) were inadvertently deleted from the New Jersey Administrative

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Code when these applicable Code provisions were updated to reflect a subsequently-adopted rulemaking. To correct this administrative error and reflect the changes to the title and codification of the general permit for habitat creation and enhancement activities, the Department is proposing amendments to N.J.A.C. 7:7-25.3(b) and 25.4(e).

The existing fee for an authorization under a coastal general permit is \$600.00. At N.J.A.C. 7:7-25.2(a), 25.3(d), and 25.4(h), the Department is proposing the same fee amount for an authorization under the new coastal general permit-by-certifications proposed at N.J.A.C. 7:7-5.

Proposed N.J.A.C. 7:7-25.6 sets forth the fees for permit modifications and is recodified from N.J.A.C. 7:7-10.6, with amendments reflecting the changes in terminology for permit modifications proposed at N.J.A.C. 7:7-27.5. No amendments to the existing fees are proposed. Accordingly, at proposed N.J.A.C. 7:7-25.6(a)1, the fee for a minor technical modification of a coastal individual permit is \$250.00. At proposed N.J.A.C. 7:7-25.6(a)2, the fee for a major technical modification of a coastal individual permit is 20 percent of the total original permit application fee, with a minimum fee of \$600.00 and a maximum fee of \$12,000, plus the additional fee for major development, if applicable. At proposed N.J.A.C. 7:7-25.6(a)3, the fee for a minor or major technical modification of a general permit authorization is \$250.00. No application fee is required for an administrative modification of any coastal permit because this type of modification applies only to a change to a site plan or other document on which the original permit was based but does not alter the design or layout of the project and therefore no technical review is required for the Department to process these administrative modification.

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### **Subchapter 26. Application Review**

Proposed new N.J.A.C. 7:7-26 contains the review procedures for applications for authorization under general permits and for individual permits and replaces existing N.J.A.C. 7:7-4 (regarding individual permit applications) and existing N.J.A.C. 7:7-7.3 (regarding general permit authorization applications), which, as explained previously, are proposed to be repealed. The substance of the existing rules is continued in proposed new N.J.A.C. 7:7-26. Where the new rules are proposed to be changed in a substantive way from the existing rules, the changes are explained below.

#### **N.J.A.C. 7:7-26.1 General application review provisions**

Proposed N.J.A.C. 7:7-26.1(a) states that the subchapter contains the general provisions governing the review of applications for general permit authorizations and individual permits, as well as applications for water quality certificates. As provided at proposed N.J.A.C. 7:7-23.6(f), an application for a waterfront development or coastal wetlands individual permit for an activity that proposes the discharge of dredged or fill material into waters of the United States also constitutes an application for a State water quality certificate. Further, N.J.A.C. 7:7-1.1(a) and 1.2(e) explain that the CZM rules are used to review water quality certificates. Therefore, the review process set forth in this subchapter also applies to the review of an application for a water quality certificate. The procedures for reviewing applications for other determinations and approvals under the CZM rules are found elsewhere in the chapter, as noted at proposed N.J.A.C. 7:7-26.1(b).

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Similar to existing N.J.A.C. 7:7-4.1(c), proposed N.J.A.C. 7:7-26.1(c) provides that the applications that are reviewed in accordance with the procedures in N.J.A.C. 7:7-26, which are those under CAFRA, the Wetlands Act of 1970, and the Waterfront Development Law, are subject to the application review requirements of the Construction Permits Law, N.J.S.A. 13:1D-29 et seq., and states that the subchapter incorporates those requirements and is consistent with that law.

Under proposed N.J.A.C. 7:7-26.1(d), an applicant may submit a revised application at any time during the review process. If a revised application is submitted, the applicant must send a copy of the revised portions of the application to the municipal clerk of each municipality in which the development site is located and must send notice explaining the revisions to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the revised application. This provision will ensure the application previously sent to the clerk in accordance with N.J.A.C. 7:7-24.3(a) is complete and up to date and that any person whom the Department determines would likely be affected by the revised application is also notified of the revisions. The applicant must document that this notice was provided as required. Proposed N.J.A.C. 7:7-26.1(d)1 requires that, if an applicant submits a revised application within 30 calendar days prior to the deadline for decision on the application, the revised application must state that the applicant consents to a 30-calendar day extension so that the Department will have sufficient time to review the revised application and render a decision.

Proposed N.J.A.C. 7:7-26.1(e) is a “time of decision” provision. The rule provides that the rules in effect at the time an application is declared complete for review will govern the review of the permit application. This provision ensures that an application for which substantial

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time and effort has been invested by the applicant and the Department will continue through the review process to decision and not be subject to changes brought about by amendments to the CZM rules that might be promulgated after the point of technical completeness.

Proposed N.J.A.C. 7:7-26.1(f) provides that an application cannot be declared complete for review unless the applicant possesses all tidelands instruments required for occupation of State-owned tidelands. The existing regulation on this topic, at N.J.A.C. 7:7-4.6(e), also provides that the Department may issue a decision on the application before the tidelands instrument is received by the applicant, provided an application for the tidelands instrument has been received by the Department's Bureau of Tidelands Management. At new N.J.A.C. 7:7-26.1(f), the Department is proposing to simplify this provision without changing the meaning, by allowing an application to be declared complete for review (and therefore proceed to decision) so long as the applicant has submitted a complete application for the necessary tidelands instrument. The Department will be able to verify the receipt or approval of an application for a tidelands instrument by checking its NJEMS database. If the tidelands instrument is not obtained by the applicant prior to the approval of the permit application, the issued coastal permit will contain a condition that states that regulated activities authorized under the permit shall not commence unless and until the required tidelands instrument to use and occupy State-owned tidelands is obtained.

Proposed N.J.A.C. 7:7-26.1(g) provides that the Department will publish in the DEP Bulletin notice of receipt of each new application, the status of the application during review (that is, administratively complete, technically complete, and so on), and the decision to approve or deny the application. Proposed N.J.A.C. 7:7-26.1(g) states that publication in the DEP

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Bulletin constitutes constructive notice to interested persons of Department actions on coastal permits. The Department is proposing to also explain in this provision that actual notice of the decision on a permit application will be provided to the applicant and to persons who have requested specific notice, cross-referencing N.J.A.C. 7:7-26.6, which describes the procedures related to the Department's decision on an application.

**N.J.A.C. 7:7-26.2 Applications for all coastal general permit authorizations and applications for waterfront development and coastal wetlands individual permits – completeness review**

Proposed N.J.A.C. 7:7-26.2 sets forth the process for the completeness review of applications for all coastal general permit authorizations and for waterfront development and coastal wetlands individual permits. As explained with regard to N.J.A.C. 7:7-26.1(c) above, the review of these types of applications is governed by the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. CAFRA establishes additional specific timeframes and application review requirements for CAFRA individual permits. Therefore, the completeness and other review requirements applicable to CAFRA individual permit applications are addressed separately at proposed N.J.A.C. 7:7-26.3 through 26.5.

Proposed N.J.A.C. 7:7-26.2(a) describes the actions the Department will take within 20 working days after receiving an application. If the application is determined administratively and technically complete (as those terms are defined at proposed N.J.A.C. 7:7-1.5), the Department will issue notification to the applicant that the application is complete for review (as that term is defined at N.J.A.C. 7:7-1.5). If the application is determined administratively

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complete but technically incomplete, such that the Department cannot continue review on the merits of the application, the Department will issue notification to the applicant and request the necessary information. If the application is determined to be administratively incomplete, the Department will return it to the applicant. Proposed N.J.A.C. 7:7-26.2(b) describes the actions the Department will take within 15 calendar days after receiving any additional information requested for a technically incomplete application. If the information submitted is sufficient, the Department will determine the application is complete for review and so notify the applicant. If the information is not sufficient, the Department will issue notification to the applicant and once again specify the additional information required and the deadline by which it must be submitted. If the applicant does submit all of the information requested in this notification, the Department will determine the application complete for review.

Proposed N.J.A.C. 7:7-26.2(c) requires that the applicant must send the additional information necessary to complete the application to the municipal clerk of the municipality(ies) in which the project is located and notice explaining that additional information has been submitted to the Department to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the additional information. The applicant must document that the additional information and notice were provided as required.

Proposed N.J.A.C. 7:7-26.2(d) provides that the applicant has 90 calendar days to submit the information requested for purposes of completing the application under N.J.A.C. 7:7-26.2(a) or (b). If the applicant does not submit the information within the prescribed timeframe, the Department, pursuant to proposed N.J.A.C. 7:7-26.7, will cancel the application unless, as that

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section provides, the applicant demonstrates good cause for not timely providing the information.

In that event, the Department will extend the time to submit the necessary information.

Proposed N.J.A.C. 7:7-26.2(e) and (f) are new and address the situations where the Department does not either declare an application complete for review or request necessary additional information within the 20-day and 15-day time frames at N.J.A.C. 7:7-26.2(a) and (b), respectively. The Construction Permits Law at N.J.S.A. 13:1D-30 requires that the Department promptly review all applications for construction permits (which include waterfront development and coastal wetlands permits) and that, within 20 working days following the filing of an application for a permit, the Department must request any additional information it determines is necessary. N.J.S.A. 13:1D-31 provides that the Department must approve, condition, or disapprove an application within 90 calendar days following the date the application is complete. Proposed N.J.A.C. 7:7-26.2(e) and (f) ensure that the Department takes action to declare an application complete as filed or as supplemented by additional information and the start of the 90-calendar day review period for the Department to reach its decision to approve or deny the application is unambiguous.

Specifically, proposed N.J.A.C. 7:7-26.2(e) provides that if the Department does not act within the time frame at N.J.A.C. 7:7-26.2(a) to determine administrative and technical completeness, the application will be declared complete for review effective as of the date the application was received by the Department. The Department will thereafter make its decision to approve or deny the application by the applicable deadline at N.J.A.C. 7:7-26.6, that is, 90 calendar days from the effective date of completeness for review. N.J.A.C. 7:7-26.6 additionally

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provides that the 90-day period can be extended once by 30 calendar days with the mutual consent of the Department and the applicant.

Similar to proposed N.J.A.C. 7:7-26.2(e), proposed N.J.A.C. 7:7-26.2(f) provides that if the Department does not act within the time frame at N.J.A.C. 7:7-26.2(b) to determine technical completeness based on the submittal of additional information, the application will be declared complete for review as of the date the information was received. The Department will thereafter make its decision to approve or deny the application within 90 calendar days of the date of completeness, plus one 30-calendar-day extension if applicable.

Proposed N.J.A.C. 7:7-26.2(g) provides that the Department will hold a fact finding meeting on a waterfront development or coastal wetlands individual permit application when it determines that, based on public comment received and/or its review of the project's scope and/or environmental impact, additional information is necessary to assist in the evaluation of the potential impacts, and this information can only be obtained by holding a fact finding meeting. Existing N.J.A.C. 7:7-4.5 provides that the Department will hold a public hearing on applications for all coastal individual permits in that circumstance. However, the existing rule's procedural requirements and time frames related to holding a public hearing on these applications are those established by CAFRA specifically for applications for CAFRA permits. These requirements and time frames include that an application for a CAFRA individual permit cannot be declared complete for review until after the public hearing (or, if a hearing is not held, after the public comment period), at which point CAFRA establishes a 60-calendar day review period before the Department's decision to approve or deny is due. The time frame for decision on waterfront development and coastal wetlands permit applications is set not by CAFRA but by the

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Construction Permits Law, and runs 90 calendar days from the date the application is declared technically complete. This time frame makes it difficult to accommodate for waterfront development and coastal wetlands applications the public hearing process which is statutorily mandated only for CAFRA applications. Consequently, the Department is proposing to decouple waterfront development and coastal wetlands applications from CAFRA applications with respect to holding a public hearing.

Proposed N.J.A.C. 7:7-26.2(h) provides that once an application for authorization under a general permit or an application for a waterfront development or a coastal wetland individual permit is complete for review, the Department must make a decision to approve or deny the application by the applicable deadline set forth at proposed N.J.A.C. 7:7-26.6, which is 90 calendar days from the date of completeness, with the possibility of a single 30-calendar-day extension where the applicant and the Department mutually consent.

#### **N.J.A.C. 7:7-26.3 CAFRA individual permit application – initial completeness review**

Proposed N.J.A.C. 7:7-26.3(a) states that, as required by N.J.A.C. 7:7-24.4, an applicant for a CAFRA individual permit must publish newspaper notice that an application has been submitted to the Department. If the required documentation that the newspaper notice has been published is not received by the Department within 10 calendar days of submittal of the application to the Department, the application shall not be declared complete for public comment or public hearing until a minimum of 20 calendar days after publication of the notice and until the required documentation has been submitted to the Department. The 20 calendar days will

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allow for 15 calendar days in which the public may respond to the notice and five calendar days for mailing and Department review of the documentation that the required notice was provided.

Proposed N.J.A.C. 7:7-26.3(b) describes the actions the Department will take within the initial 20 working days after receiving an application for an individual CAFRA permit. If the application is determined administratively and technically complete (as those terms are defined at proposed N.J.A.C. 7:7-1.5), the Department will notify the applicant that the application is complete for public comment or for public hearing (as those terms are defined at N.J.A.C. 7:7-1.5). If the application is determined administratively complete but technically incomplete, such that the Department cannot continue review on the merits of the application, the Department will notify the applicant and request the necessary information. If the application is determined to be administratively incomplete, the Department will return it to the applicant.

Proposed N.J.A.C. 7:7-26.3(c) describes the actions the Department will take within 15 calendar days after receiving additional information requested for a technically incomplete application. If the information submitted is sufficient, the Department will determine the application is complete either for public comment or for public hearing, and so notify the applicant. If the information is not sufficient, the Department will notify the applicant and once again specify the additional information required and the deadline by which it must be submitted. If the applicant does submit all of the information requested in this notification, the Department will determine the application complete for public comment or for public hearing.

Proposed N.J.A.C. 7:7-26.3(d) requires that the applicant must send the additional information necessary to complete the application to the municipal clerk of the municipality(ies) in which the project is located and notice explaining that additional information has been

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submitted to the Department to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the additional information. The applicant must document that the additional information and notice were provided as required.

Proposed N.J.A.C. 7:7-26.3(e) provides that the applicant has 90 calendar days to submit the information requested for purposes of completing the application under N.J.A.C. 7:7-26.3(b) or (c). If the applicant does not submit the information within the prescribed time frame, the Department, pursuant to proposed N.J.A.C. 7:7-26.7, will cancel the application unless, as that section provides, the applicant demonstrates good cause for not timely providing the information. In that event, the Department will extend the time to submit the necessary information.

Similar to N.J.A.C. 7:7-26.2(e) and (f), proposed N.J.A.C. 7:7-26.3(f) and (g) provide that if the Department does not act within the time frames specified at N.J.A.C. 7:7-26.3(b) to determine administrative and technical completeness and at N.J.A.C. 7:7-26.3(c) to determine technical completeness based on the submittal of additional information, the application will be declared complete for public comment or public hearing effective as of the date the application was received under N.J.A.C. 7:7-26.3(b), or the date the additional information requested pursuant to N.J.A.C. 7:7-26.3(c) was received by the Department. These provisions ensure that the Department takes action to declare an application complete for public comment or public hearing as filed or as supplemented by additional information so that the starting points for the CAFRA-mandated periods for public comment or hearing as well as for the Department's period to review an application in order to reach its decision to approve or deny it are unambiguous.

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Proposed N.J.A.C. 7:7-26.3(h) provides that in the event that the Department does not hold a public hearing on an application for an individual permit, the Department will hold a 30-calendar-day public comment period as required by CAFRA.

**N.J.A.C. 7:7-26.4 CAFRA individual permit application – public comment period**

The time frames established in proposed N.J.A.C. 7:7-26.4 for the public comment period on an application for a CAFRA individual permit are those set by the CAFRA statute. Proposed N.J.A.C. 7:7-26.4(a) provides that the Department will schedule the public comment period within 15 calendar days of declaring the application complete for public comment and will so notify the applicant. The public comment period will begin no later than 60 calendar days after the Department declared the application complete for public comment. The public comment period is 30 calendar days. The Department will publish notice of the comment period in the DEP Bulletin. The applicant must provide notice of the public comment period as required by N.J.A.C. 7:7-24.4(b).

Proposed N.J.A.C. 7:7-26.1(b) addresses the actions to be taken by the Department within 15 calendar days of the close of the comment period on a CAFRA individual permit application. The Department will either determine the application is complete for review, effective as of the date the comment period ended, or notify the applicant in writing that the application is not complete for review, and specify the additional information required and the deadline for submittal of such information. If the applicant does submit all of the information requested in this notification, the Department will determine the application complete for review.

Similar to N.J.A.C. 7:7-26.3(e), proposed N.J.A.C. 7:7-26.4(c) provides that the applicant

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has 90 calendar days to submit the information required under N.J.A.C. 7:7-26.4(b). If the applicant does not submit the information within the specified time frame, the Department, pursuant to proposed N.J.A.C. 7:7-26.7, will cancel the application, unless as that section provides, the applicant demonstrates good cause for not timely providing the information. In that event, the Department will extend the time to submit the necessary information.

Proposed N.J.A.C. 7:7-26.4(d) provides that once an application for a CAFRA individual permit for which a public comment period was held is declared complete for review, the Department will make its decision to approve or deny the application by the deadline established in proposed N.J.A.C. 7:7-26.6.

#### **N.J.A.C. 7:7-26.5 CAFRA individual permit application – public hearing**

The time frames established in proposed N.J.A.C. 7:7-26.5 for a public hearing on an application for a CAFRA individual permit are those set by the CAFRA statute. Proposed N.J.A.C. 7:7-26.5(a) provides that the Department will hold a fact-finding public hearing on an application for a CAFRA individual permit if it determines that additional information is necessary to assist in the review of the application based on public comment received in response to the newspaper notice of the application required under N.J.A.C. 7:7-24.4(a) and/or a review of the project's scope and/or environmental impact and that such information can only be obtained through a public hearing.

Proposed N.J.A.C. 7:7-26.5(b) provides that the Department will set the date, place and time of a public hearing within 15 calendar days after declaring the application complete for public hearing. The public hearing date will be no later than 60 calendar days after the

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application is declared complete for public hearing. The public hearing must be held in the municipality in which the project is located, if possible. The Department will publish notice of the public hearing in the DEP Bulletin. The applicant must provide notice of the public hearing as required by N.J.A.C. 7:7-24.4(e). The applicant is required to provide a court reporter, bear all costs associated with the public hearing, and submit to the Department an electronic copy of the hearing transcript. The presiding official of the public hearing has broad discretion to place reasonable limits on oral and written presentations to allow every person the opportunity to speak and insure the maintenance of an orderly forum. The applicant will be afforded the opportunity to respond to comments from interested persons.

Similar to proposed N.J.A.C. 7:7-26.4(b), proposed N.J.A.C. 7:7-26.5(c) addresses the actions to be taken by the Department within 15 calendar days of the public hearing on an application for a CAFRA individual permit. The Department will either determine the application is complete for review, effective as of the date the public hearing was held, or notify the applicant in writing that the application is not complete for review, and specify the additional information required and the deadline for submittal of such information. If the applicant does submit all of the information requested in this notification, the Department will determine the application complete for review.

Similar to proposed N.J.A.C. 7:7-26.3(e) and 26.4(c), proposed N.J.A.C. 7:7-26.5(d) provides that the applicant has 90 calendar days to submit the information required under N.J.A.C. 7:7-26.5(b) or the Department, pursuant to proposed N.J.A.C. 7:7-26.7, will cancel the application unless, as provided by that section, the applicant demonstrates good cause for not timely providing the information. In that event, the Department will extend the time to submit

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the necessary information.

Proposed N.J.A.C. 7:7-26.5(e), provides that once an application for a CAFRA individual permit is declared complete for review, the Department will make its decision to approve or deny the application by the deadline established in proposed N.J.A.C. 7:7-26.6.

The Department is proposing to delete provisions at existing N.J.A.C. 7:7-4.4(a)5 and 4.5(h) and (j) concerning the public hearing on an application for a CAFRA individual permit based on its experience holding public hearings over time. These changes are intended to streamline the rules while not affecting the review or decision-making process on an application for a CAFRA individual permit.

Existing N.J.A.C. 7:7-4.4(a)5 provides that prior to the public hearing the Department will prepare a preliminary analysis of the project based on the staff analysis and recommendations as well as comment from other agencies and interested persons. The Department has determined that preparing such an analysis is an unnecessary use of resources and does not add value because the issues that would be addressed in a preliminary analysis are those that the Department identifies during its technical review of the application. The Department will notify the applicant of any additional information required to be submitted to address those issues and the proposed amended rules regarding public notice (explained above) require the applicant to provide the additional information to the municipal clerk and provide notice about the additional information to those persons who would likely be affected by it. Accordingly, at the point at which the public hearing is scheduled, the application that will be discussed at the hearing has been revised to address issues that, in the preliminary analysis, would have been reflected in the staff analysis and recommendations as well as comment from

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other agencies and interested persons who reviewed the initial application materials. In addition, at the public hearing, the Department will, in its opening remarks, give an overview of the application and the review history to date.

Existing N.J.A.C. 7:7-4.5(h), which requires the Department to maintain a copy of the hearing transcript and all written comments received for inspection in the Trenton office, is not continued in the new rules because the Department maintains these as part of the administrative record of the permit application. They are government records available for review in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. Existing N.J.A.C. 7:7-4.5(j), which concerns how the presiding DEP official will conduct the public hearing, is now addressed at proposed N.J.A.C. 7:7-7.26.5(b). As indicated in the summary of proposed N.J.A.C. 7:7-7.26.5(b) above, the presiding official of the public hearing has broad discretion to place reasonable limits on oral and written presentations to allow every person the opportunity to speak and insure the maintenance of an orderly forum. The applicant will be afforded the opportunity to respond to comments from interested persons.

#### **N.J.A.C. 7:7-26.6 Department decision on an application that is complete for review**

The time frames established in N.J.A.C. 7:7-26.6 for a final decision by the Department on an application that is complete for review are those set by the Construction Permits Law and CAFRA. Proposed N.J.A.C. 7:7-26.6(a) describes the actions the Department will take within 90 calendar days after declaring an application for authorization under a general permit or a waterfront development or coastal wetlands individual permit complete for review. If the application meets the requirements of the CZM rules, the Department will issue an authorization

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or permit approving the application in writing. Such approval will include conditions necessary to ensure compliance with the rules. If the application does not meet the requirements of the CZM rules, the Department will deny the application in writing. The decision to deny the application will include the reasons for the denial.

Proposed N.J.A.C. 7:7-26.6(b) and (c) describe the actions the Department will take within 60 calendar days after declaring an application complete for review where no additional information was required to be submitted after the public comment period or public hearing. The Department will either approve the application in writing, with any necessary conditions, or deny the application in writing, with an explanation of the reasons for the denial.

Similarly, proposed N.J.A.C. 7:7-26.6(d) describes the actions the Department will take within 90 calendar days after declaring an application complete for review for which additional information was required to be submitted after the public comment period or public hearing. The Department will either approve the application, with any necessary conditions, or deny it and explain the reasons for the denial.

As provided by the Construction Permits Law, N.J.S.A. 13:1D-31, proposed N.J.A.C. 7:7-26.6(e) allows for one 30-calendar-day extension of the deadlines for decision at N.J.A.C. 7:7-26.6(a) through (d), by mutual agreement of the applicant and the Department. An applicant consenting to an extension must do so in writing. A deadline cannot be extended by less than or more than 30 calendar days.

Also in accordance with the Construction Permits Law, N.J.S.A. 13:1D-32, proposed N.J.A.C. 7:7-26.6(f) provides that if the Department does not make a decision to approve or deny an application within the time frames specified at N.J.A.C. 7:7-26.2(a) through (d), the

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application will be deemed approved as of that deadline. However, for activities that require a tidelands instrument, regulated activities cannot commence unless and until all required tidelands instruments to use and occupy State-owned tidelands are obtained. An authorization or permit issued under this subsection will include the standard conditions set forth at N.J.A.C. 7:7-27.2. An authorization or permit issued under this subsection does not prevent the Department from taking enforcement action for any regulated activity undertaken in violation of the CZM rules.

Proposed N.J.A.C. 7:7-26.6(g) provides that the Department will publish notice of its decision on an application in the DEP Bulletin and will provide notice to any person who specifically requested notice of the decision on a particular application.

Proposed N.J.A.C. 7:7-26.6(h) provides that the Department will not waive the time frames for review and decision on an application established by the Construction Permits Law or CAFRA. This provision makes it clear that an applicant cannot forgo timely review of its application under the statutes and thereby avoid or indefinitely extend the review period for its application.

#### **N.J.A.C. 7:7-26.7 Cancellation of an application**

Proposed N.J.A.C. 7:7-26.7(a) identifies the reasons for which the Department will cancel an application. The Department will cancel an application if an applicant does not submit the additional information within the time frame prescribed by the Department for an application that has been determined to be technically incomplete; or if the applicant does not submit the required fee under N.J.A.C. 7:7-25, or the Department cannot collect the fee for any reason; or if the applicant does not provide the required public notice of the application.

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Proposed N.J.A.C. 7:7-26.7(b) sets forth the procedure the Department will use to cancel an application. The Department will send the applicant a written notice of its intent to cancel the application and request that the missing fee and/or information be provided within 15 calendar days of receipt of the notice. If, during this 15-calendar-day period, the applicant submits a written statement providing good cause for a delay in providing the requested fee and/or additional information, the Department will extend the time required for submittal. If the applicant does not submit the requested fee and/or information or a statement of good cause for delay, the Department will cancel the application and so notify the applicant in writing.

#### **N.J.A.C. 7:7-26.8 Withdrawal of an application**

An applicant may withdraw an application in writing at any time during the Department's review of the application. The Department will acknowledge the withdrawal in writing.

#### **N.J.A.C. 7:7-26.9 Re-submittal of an application after denial, cancellation, or withdrawal**

If an application is denied or cancelled by the Department, or is withdrawn by the applicant, the applicant may re-submit the application in accordance with the application requirements of N.J.A.C. 7:7-23. The Department will treat a re-submitted application as a new application, and review it in accordance with the requirements of N.J.A.C. 7:7-26.

#### **N.J.A.C. 7:7-26.10 Fee refund or credit when an application is returned, withdrawn, or cancelled**

The Department will refund or credit an application fee in certain circumstances. As

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provided at proposed N.J.A.C. 7:7-26.10(a), the applicant must request a refund in writing. The Department will fully refund a fee if the Department returns an application because it is not administratively complete; or the applicant withdraws the application within 60 calendar days of submitting it to the Department and the application is not technically complete; or the applicant withdraws the application within 20 working days of submitting it to the Department, whether or not the application is administratively or technically complete. The fee is fully refundable in these circumstances because the Department has not started its technical review of the application and has, therefore, not invested the significant time and resources necessary to review the application for compliance with the rules applicable to the proposed development.

Proposed N.J.A.C. 7:7-26.10(b) identifies the circumstances under which the Department will not refund a fee. Specifically, a fee will not be refunded where the Department has rendered a decision to approve or deny an application, or if an application fee has been previously credited under the circumstances described at N.J.A.C. 7:7-26.10(c).

Proposed N.J.A.C. 7:7-26.10(c) provides that the Department will credit an application fee that was paid to the Department if the application is withdrawn under circumstances other than those described at N.J.A.C. 7:7-26.10(a)2 or 3, that is, where the application is withdrawn within 60 calendar days of submittal and is not technically complete, or is withdrawn within 20 working days of submittal whether or not it is administratively or technically complete. The Department will also credit the application fee if the Department cancelled the application under N.J.A.C. 7:7-26.7. The application fee will be credited toward the application fee for one new application, provided the new application is submitted within one year of cancellation or withdrawal, by the same applicant, and for the same site and same project. If an applicant

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chooses to resubmit the application more than one year from the date it was cancelled or withdrawn, the applicant must submit a new application in accordance with the requirements of N.J.A.C. 7:7-23.

## **Subchapter 27. Permit Conditions; Modification, Transfer, Suspension, and Termination of Authorizations and Permits**

### **N.J.A.C. 7:7-27.1 Purpose and scope**

Proposed N.J.A.C. 7:7-27.1 provides that this subchapter sets forth the conditions that apply to all coastal permits and sets forth the procedures for the extension, transfer, modification, suspension, and termination of authorizations and permits.

### **N.J.A.C. 7:7-27.2 Conditions that apply to all permits**

Proposed N.J.A.C. 7:7-27.2(a) explains that the Department places certain conditions on a coastal permit to ensure that the approved project complies with the CZM rules. It further states that conditions that apply to all coastal permits are set forth at N.J.A.C. 7:7-27.2(c) and that additional conditions that apply to all coastal permits except permits-by-rule are set forth at N.J.A.C. 7:7-27.2(d).

Proposed N.J.A.C. 7:7-27.2(b) provides that where a permittee undertakes any regulated activity approved under a coastal permit, such action constitutes acceptance of the permit in its entirety, including all conditions.

Proposed N.J.A.C. 7:7-27.2(c) contains the conditions that apply to all coastal permits. The conditions that apply to all coastal permits are currently codified at existing N.J.A.C. 7:7-

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1.5(b). The Department is proposing to refine the conditions in the existing rule and to propose new conditions based on its experience implementing the coastal permitting program and for consistency with the FWPA and FHACA rules.

Proposed N.J.A.C. 7:7-27.2(c)1 provides that the issuance of a permit does not expose the Department to liability for the sufficiency of the design of any structures or construction, or for any loss or life or property that may occur as a result of the development. This condition is similar to existing N.J.A.C. 7:7-1.5(b)3, with an amendment clarifying that the development is the one authorized under the permit.

Proposed N.J.A.C. 7:7-27.2(c)2 is new. It specifies that a permit does not convey any property rights or any exclusive privilege. This condition is consistent with N.J.A.C. 7:13-8.2(b)9 in the FHACA rules and N.J.A.C. 7:7A-13.1(a)7 in the FWPA rules.

Proposed N.J.A.C. 7:7-27.2(c)3 is new. It specifies that a permittee must obtain all applicable Federal, State, and local approvals prior to commencing activities under the permit. This condition makes clear that the issuance of a coastal permit does not relieve the permittee of the obligation to obtain all other required approvals.

Proposed N.J.A.C. 7:7-27.2(c)4 is similar to existing N.J.A.C. 7:7-1.5(b)17, and addresses how aspects of an activity or development involving soil disturbance, creation of drainage structures, or changes in natural contours are to be conducted. The condition is proposed to be amended to replace the requirement that these activities be conducted in accordance with the latest version of the "Standards for Soil Erosion and Sediment Control in New Jersey" by the State Soil Conservation Committee with a requirement that a permittee obtain any required approvals from the Soil Conservation District or designee having jurisdiction

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over the site. The Soil Conservation District or its designee, rather than the Department, is the appropriate agency for determining compliance with these standards.

Proposed N.J.A.C. 7:7-27.2(c)5 is new. It requires the permittee to take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the coastal permit or from noncompliance with the permit. This condition is consistent with N.J.A.C. 7:13-8.2(b)4 in the FHACA rules and N.J.A.C. 7:7A-13.1(a)4 in the FWPA rules.

Proposed N.J.A.C. 7:7-27.2(c)6 which requires the permittee to immediately notify the Department of any unanticipated adverse effects on the environment is the same as existing N.J.A.C. 7:7-1.5(b)7.

Proposed N.J.A.C. 7:7-27.2(c)7 is new. This condition specifies that the permittee must immediately inform the Department through the Warn DEP Hotline of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee must inform the Division of Land Use Regulation of any other noncompliance by telephone within two working days of the time the permittee becomes aware of the noncompliance, and follow up the telephone notice with a written notice within five working days. This condition is intended to ensure that the Department becomes immediately aware of any noncompliance that may endanger health or the environment so that actions can be taken quickly to address the immediate risk. This condition is similar to N.J.A.C. 7:13-8.2(b)12 in the FHACA rules.

Proposed N.J.A.C. 7:7-27.2(c)8 provides that noncompliance with a permit constitutes a violation and is grounds for enforcement action as well as, in the appropriate case, suspension

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and/or termination of the permit. It is similar to language included in existing N.J.A.C. 7:7-1.5(b).

Proposed N.J.A.C. 7:7-27.2(c)9 is new. It provides that in an enforcement action, the permittee cannot use as a defense that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. This condition is similar to N.J.A.C. 7:13-8.2(b)3 in the FHACA rules and N.J.A.C. 7:7A-13.1(a)3 in the FWPA rules.

Proposed N.J.A.C. 7:7-27.2(c)10 is similar to existing N.J.A.C. 7:7-1.5(b)16 and requires the permittee to minimize noise during construction.

Proposed N.J.A.C. 7:7-27.2(c)11 is new. This condition makes it clear that the issuance of a coastal permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.

Proposed N.J.A.C. 7:7-27.2(c)12 is similar to existing N.J.A.C. 7:7-1.5(b)19 and provides that a coastal permit does not relinquish the public's right to access and use tidal waters and their shores.

Similar to existing N.J.A.C. 7:7-1.5(b)4, proposed N.J.A.C. 7:7-27.2(c)13 requires that the permittee must allow an authorized representative of the Department, upon the presentation of credentials, to enter the site, have access to and copy any records that must be kept under the conditions of the permit, and inspect at reasonable times any facilities, equipment, or operations regulated or required under the permit. Failure to do so will be considered a violation of the CZM rules and subject the permittee to an enforcement action pursuant to proposed N.J.A.C.

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7:7-29. This condition is consistent with N.J.A.C. 7:13-8.2(b)11 in the FHACA rules and N.J.A.C. 7:7A-13.1(a)9 in the FWPA rules.

Proposed N.J.A.C. 7:7-27.2(d) contains conditions that are additional to those listed in N.J.A.C. 7:7-27.2(c) and that apply to all coastal permits except permits-by-rule. These conditions do not apply to a permit-by-rule because the conditions address issues such as compliance with site plans and documents approved under a permit, recordation, mitigation, monitoring, modification, transfer, suspension, and termination. A permit-by-rule does not involve the issuance by the Department of a document authorizing a particular person to conduct regulated activities. There is no approval of site plans, or imposition of monitoring or mitigation under a permit-by-rule. A permit-by-rule cannot be transferred or suspended, and it can be terminated only by rulemaking.

Proposed N.J.A.C. 7:7-27.2(d)1 requires that the permittee and its contractors and subcontractors comply with all the conditions of the permit, including all supporting documents and site plans approved by the permit. It is similar to language included in existing N.J.A.C. 7:7-1.5(b).

Proposed N.J.A.C. 7:7-27.2(d)2 is similar to existing N.J.A.C. 7:7-1.5(b)8, and provides that site plans, specifications, supporting documents, and conditions imposed by a permit remain in full force and in effect for the life of the project unless the permit is modified.

Proposed N.J.A.C. 7:7-27.2(d)3 requires recording of the permit with the Office of the County Clerk in the county(ies) in which the site is located, and is similar to existing N.J.A.C. 7:7-1.5(b)15. The Department is proposing amendments that require that the permit must be recorded within 30 calendar days of receipt by the permittee, except if the permit authorizes

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activities within two or more counties, in which case the permit must be recorded within 90 calendar days of receipt. County clerks require that the original, signed permit document be recorded and will not accept photocopies. The process of recording generally takes the clerk's office about three weeks, after which the clerk's office will mail the original permit back to the permittee. The proposed 30-day time frame should accommodate the practice of most clerks' offices. A permit for activities in more than one county is required to be recorded in each county. In this instance, the proposed 90-day time frame is intended to accommodate the three weeks or so each clerk's office generally will need to accomplish recording the permit and returning it to the permittee. Also, an amendment is proposed requiring that on completion of all recording, a copy of the recorded permit must be forwarded to the Department. These amendments ensure that there is a clear public record of the Department's actions relating to the specific property.

Proposed N.J.A.C. 7:7-27.2(d)4 is the same as existing N.J.A.C. 7:7-1.5(b)2, and requires that the permittee notify the Department in writing five working days prior to beginning operation of a CAFRA individual permit, and certify that all conditions of the permit that must be met prior to operation of the development have been met.

Proposed N.J.A.C. 7:7-27.2(d)5 is new. It specifies that where mitigation is required, it must be conducted prior to, or concurrently with, the regulated activity. This will ensure that mitigation is accomplished as near in time as possible to the occurrence of the impacts.

Proposed N.J.A.C. 7:7-27.2(d)6 is similar to existing N.J.A.C. 7:7-1.5(b)9, and requires that where a condition or permit is determined to be legally unenforceable, the Department may

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impose modifications and additional conditions as necessary to protect public health, safety, and welfare, or the environment.

Proposed N.J.A.C. 7:7-27.2(d)7 is similar to existing N.J.A.C. 7:7-1.5(b)14, and requires when permit conditions must be satisfied. While many permit conditions contain specific timeframes within which they must be satisfied (for example, the condition must be satisfied before the commencement of any site activities, including grading), other permit conditions do not include specific timeframes. This paragraph continues to require that where a time frame by which a condition must be satisfied is not specified, the condition must be satisfied within six months of the effective date of the permit.

Similar to existing N.J.A.C. 7:7-1.5(b)6, proposed N.J.A.C. 7:7-27.2(d)8 requires that a copy of the permit and all site plans and supporting documents must be maintained on site and made immediately available on request of the Department or its designated agents.

Proposed N.J.A.C. 7:7-27.2(d)9 specifies that the permittee must provide monitoring reports to the Department at the intervals specified in the permit.

Proposed N.J.A.C. 7:7-27.2(d)10 replaces existing N.J.A.C. 7:7-1.5(b)13 and provides that a permit can be transferred to another person only in accordance with the rules governing the transfer of permits at proposed N.J.A.C. 7:7-27.4. The remaining substance of existing N.J.A.C. 7:7-1.5(b)13 is incorporated into proposed N.J.A.C. 7:7-27.4.

Proposed N.J.A.C. 7:7-27.2(d)11 is new. It provides that a permit can be suspended or terminated by the Department for cause. Proposed N.J.A.C. 7:7-27.7 and 27.8, described below, govern permit suspension and termination.

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Proposed N.J.A.C. 7:7-27.2(d)12 is also new. This condition provides that the submittal by the permittee of a request to modify a permit, or the permittee's notification to the Department of planned changes or anticipated noncompliance, does not stay any condition of a permit.

Proposed N.J.A.C. 7:7-27.2(d)13 is new. It requires that if a permittee becomes aware that it did not submit relevant facts in its application, or that it submitted incorrect information in its application or in any report, the permittee must promptly submit such facts or information. The failure to submit relevant information or the submission of incorrect information may result in the issuance of a permit for a development or regulated activity that does not in fact meet the requirements of the CZM rules. This condition ensures that the Department is notified so that it can take the appropriate steps to correct the problem, including modifying the permit or, if necessary, suspending or terminating the permit.

Proposed N.J.A.C. 7:7-27.2(d)14, like existing N.J.A.C. 7:7-1.5(b)1, requires the permittee to notify the Department in writing at least three working days before starting site preparation or construction. The Department is proposing amendments identifying the office in the Department to which this notice must be provided, and specifying that the notice must be provided at least three working days prior to the start of site preparation or the start of regulated activities, whichever occurs first.

**N.J.A.C. 7:7-27.3 Extension of an authorization under a general permit or a waterfront development individual permit for activities waterward of the mean high water line**

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Proposed new N.J.A.C. 7:7-27.3 sets forth the standards that apply to the extension of certain authorizations under general permits and to the extension of waterfront development individual permits for activities waterward of the mean high water line. The Department is proposing that the five-year term of these permits can be extended one time for another five years. This section is modeled after the permit extension provisions at N.J.A.C. 7:7A-14.6 in the FWPA rules.

Proposed N.J.A.C. 7:7-27.3(a) explains that a permittee may request a one-time five-year extension of an authorization under a general permit, provided the authorization is one governed by N.J.A.C. 7:7-3.7, which establishes the duration of general permit authorizations for which the application will have been deemed complete for review on or after the effective date of these rules. A permittee may also request an extension of a waterfront development individual permit for activities waterward of the mean high water line. The duration of these individual permits is governed by N.J.A.C. 7:7-8.2(a).

N.J.A.C. 7:7-27.3 does not apply to an authorization under a general permit-by-certification or to an individual permit for activities located landward of the mean high water line (waterfront development or CAFRA). As discussed in the summary of N.J.A.C. 7:7-5 regarding the duration of authorizations under general permits-by-certification, a general permit-by-certification applies to a tightly circumscribed set of activities that the Department has determined are straightforward in nature and therefore easily completed within five years. As discussed in the summary of N.J.A.C. 7:7-8.2(b) through (d), an individual permit for activities landward of the mean high water line is valid for five years from the date of issuance and will

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continue to be valid until the project is completed provided the requirements of those rules are met.

Proposed N.J.A.C. 7:7-27.3(b) identifies the situations under which the Department will issue an extension. The Department will issue an extension only if it receives an extension request prior to the expiration of the authorization under a general permit or waterfront development individual permit, and the permittee demonstrates that there has been no significant change in the overall conditions of the site, including special areas; the regulated activities approved under the authorization or waterfront development individual permit have not been revised or amended unless the permittee has obtained a permit modification; and, for an individual permit, the rules governing the regulated activities have not been amended such that the activities do not meet the rules as amended. If the activities do not meet the amended rules, the individual permit will expire on the date specified in the permit.

Proposed N.J.A.C. 7:7-27.3(c) identifies the information required for an extension request. This includes a completed application form, the appropriate application fee, and a narrative demonstrating that the requirements of N.J.A.C. 7:7-27.3(b) are met.

Proposed N.J.A.C. 7:7-27.3(d) sets forth the actions the Department will take after receiving an extension request as well as the timeframes under which these actions must occur. Specifically, within 15 calendar days of receiving an extension request for an authorization under a general permit whose duration is established pursuant to N.J.A.C. 7:7-3.7 or within 30 calendar days of receiving a request for an individual waterfront development permit for activities located below the mean high water line, the Department will either determine the

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request meets the requirements of this section and issue an extension, or determine the request meets the criteria for denial set forth at N.J.A.C. 7:7-27.3(e) and deny the extension request.

Proposed N.J.A.C. 7:7-27.3(e) sets forth the reasons that the Department will deny an extension request. These are that the request is for an authorization or individual permit that cannot be extended; the request is received more than one year prior to the expiration date of the authorization or permit; the request is received after the expiration date of the authorization or permit; the authorization or permit has been extended before; the applicant fails to demonstrate that the requirements of N.J.A.C. 7:7-27.3(b) are met; the request did not include all required information; or the authorization or individual permit has been terminated.

Proposed N.J.A.C. 7:7-27.3(f) provides that where the Department denies a request, the authorization or individual permit will expire on its original expiration date or on the date of receipt of the denial by the permittee, whichever is later, and all regulated activities must stop and cannot resume unless and until a new permit is obtained.

Proposed N.J.A.C. 7:7-27.3(g) provides that where the Department determines the requirements have been met it will issue an extension of the authorization or individual permit for one five-year period, beginning on the original expiration date of the authorization or permit. The extension will be in writing and will include any conditions necessary to ensure continued compliance with the CZM rules.

**N.J.A.C. 7:7-27.4 Transfer of an emergency authorization, an authorization under a general permit, or an individual permit**

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Proposed N.J.A.C. 7:7-27.4(a) provides that if a site on which regulated activities are authorized under an emergency authorization, a general permit or individual permit is transferred to a new owner, the authorization or permit including all conditions is automatically transferred, provided the authorization or permit is valid on the date the site is transferred to the new owner.

Proposed new N.J.A.C. 7:7-27.4(b) addresses the information required to be submitted to the Department by the new owner within 30 calendar days of a change in ownership. This information includes the new owner's name, address, and contact information, and documentation that the transfer will neither alter a condition upon which the original approval was based nor otherwise circumvent any requirement of the CZM rules. This information is necessary to ensure that the Department will continue to have accurate information as to the owner and the activities being conducted on the site to which the transferred permit applies.

#### **N.J.A.C. 7:7-27.5 Modification of an authorization under a general permit or individual permit**

Proposed new N.J.A.C. 7:7-27.5 sets forth the procedures for the modification of an authorization under a general permit or an individual permit. It replaces existing N.J.A.C. 7:7-4.10 and 7.3A. The existing rules establish criteria by which changes in activities landward of the mean high water line under waterfront development and CAFRA individual permits will qualify for a minor or a major permit modification, or when the changes will require a new permit. For activities waterward of the mean high water line, the existing rules establish criteria by which changes in those activities will qualify for an individual permit modification or a new

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individual permit. Modifications to general permit authorizations are allowed under the existing rules only if the changes do not significantly affect special areas. Otherwise a new authorization must be obtained. The existing rules also provide that, to address construction-related problems, an individual permit may be modified up to one year after construction is completed.

The Department is proposing to simplify the criteria and procedures for modifications. Proposed N.J.A.C. 7:7-27.5 establishes three types of modifications: administrative, minor technical, and major technical. A permit may be modified at any time while it continues to be valid, as described in the duration provisions at N.J.A.C. 7:7-3 for general permit authorizations and at N.J.A.C. 7:7-8 for individual permits.

Existing N.J.A.C. 7:7-4.10(a) allows permittees to submit a request for a modification of an authorization or permit during the term of validity of the permit and within one year of completion of construction in order to address construction-related problems. This provision recognizes that it may not be possible or feasible to follow through with an approved construction plan due to unanticipated issues such as the discovery of an unexpected utility line or changes in materials or construction techniques. For example, an underground utility line may be discovered at an unexpected location during construction, necessitating a minor adjustment in the location of a building foundation or stormwater inlet; or a permittee may discover during construction that the originally approved grading plan does not provide for positive drainage around a proposed building as well as anticipated, necessitating minor changes in topography. Changes in materials or construction techniques are also common when details of the site are made known to contractors during construction. However, such design and layout changes can sometimes increase the amount of development coverage on a site, shift proposed structures

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closer to surface waters or adjacent properties, affect stormwater management, or increase impacts to special areas. Therefore, rather than allowing a permit to be modified to reflect such changes after construction has been completed, the Department has determined that such changes should be reviewed before they are implemented so as to ensure that the requirements of the CZM rules are met. Therefore, the Department is proposing to incorporate the types of construction-related changes authorized under existing N.J.A.C. 7:7-4.10(a) into proposed N.J.A.C. 7:7-27.5(c), (d), and (e), and to require permittees to seek approval of these changes during the period when the authorization or permit is valid rather than up to one year after completion of construction.

The Department is proposing one set of standards for the modification of authorizations under a general permit and the modification of individual permits. The proposed rule does not differentiate between activities located landward or waterward of the mean high water line. The approach is based on the premise that if a proposed change in the activity or project meets the criteria for the type of modification sought, the type of permit or the location of the activity or project will not affect the determination to approve the modification.

Proposed N.J.A.C. 7:7-27.5(a) provides that only a valid authorization under a general permit or a valid individual permit can be modified, identifies the three types of modifications, and states that an authorization under a general permit-by-certification cannot be modified. As discussed under N.J.A.C. 7:7-5, general permits-by-certification authorize a tightly circumscribed set of activities and are issued electronically through the Department's website. There is no individualized review of the proposed project by Department staff; rather, the applicant for a general permit-by-certification certifies in an on-line application that the project

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meets the requirements of the particular general permit-by-certification. If a person receives authorization under a general permit-by-certification and then decides to alter the design of the project, the person can apply electronically for a new authorization under the general permit-by-certification, provided the project as modified meets the requirements of the general permit-by-certification and the person so certifies. However, if the modification is such that the project as modified will not meet the requirements of the general permit-by-certification, then the person must proceed by applying for the appropriate general permit authorization or individual permit. Therefore, proposed N.J.A.C. 7:7-27.5 does not provide for the modification of an authorization under a general permit-by-certification.

Proposed N.J.A.C. 7:7-27.5(b) establishes that the term of an authorization or permit cannot be extended by a modification. An extension can be issued only under the circumstances established by and in accordance with the procedures set forth at N.J.A.C. 7:7-27.3.

Proposed N.J.A.C. 7:7-27.5(c) describes administrative modifications. An administrative modification applies to a change to a site plan or other document on which the original authorization or individual permit was based but which does not alter the design or layout of the project. An administrative modification may include, for example, correcting a drafting or typographical error on a plan or report; improving topographical data in order to make the permit more accurately reflect the site and/or permitted activities; or adding notes, labels or other clarifying information to the approved site plan if required by the Department or another government entity.

Proposed N.J.A.C. 7:7-27.5(d) describes a minor technical modification. A minor technical modification applies to a change in the design or layout of a project, including any

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associated changes to an approved plan or other document, which does not result in new or additional impacts to any special areas other than a special urban area, governed by N.J.A.C. 7:7-9.41, the Hudson River waterfront area, governed by N.J.A.C. 7:7-9.46, and Atlantic City, governed by N.J.A.C. 7:7-9.47. Minor technical modifications may include, for example, changes in materials or construction techniques; a reduction in the intensity of development on the site, such as the elimination of a permitted structure or activity or a reduction in the footprint of the project; or certain changes to dredging and dredged material management projects.

A change in the design or layout of a project located within one of the above-listed three special areas can be approved through a minor technical modification of the permit because these three areas were designated as special areas due to their importance to human use and are particular in their planning requirements such that they merit focused attention and special management rules. Special urban areas are those municipalities defined in urban aid legislation as qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The special urban area rule encourages development within this special area that will help to restore the economic viability of these communities. The Hudson River waterfront area rule sets forth standards for development within the populous northeast part of the State along the waterfront where development pressures are intense, and recognizes the highly developed nature of the area. The Atlantic City special area rule recognizes the city's unique position as the only city along the Atlantic Ocean with legalized casino gambling, and therefore facilitates certain types of development in order to encourage the redevelopment of the city. Because development within these three special areas is encouraged, additional impacts to these special areas do not create the same concerns that development in the other special areas,

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which are designed to protect natural resources, would create, so long as the development complies with the standards of the respective special area rules.

Whereas under existing N.J.A.C. 7:7-4.10(d), (e), and (h) a cumulative increase in the area covered by buildings, asphalt, or concrete pavement of no more than 0.25 acres is a minor modification of an individual permit, under proposed N.J.A.C. 7:7-27.5(d), a minor technical modification is not available where there is any increase in the area covered by development. An increase in the amount of area covered by, for example, buildings, asphalt, or concrete pavement would now be considered a major technical modification under these rules because it may require the review of calculations to ensure compliance with the Stormwater Management rules, N.J.A.C. 7:8.

Existing N.J.A.C. 7:7-4.10(c)3 provides that a change to a permitted development that would result in new or relocated development within 200 feet of any property sharing a common property boundary with the property or properties on which the proposed development would occur requires a major permit modification. Under proposed N.J.A.C. 7:7-27.5(d), new or relocated development which does not result in new or additional impacts to special areas other than those described by N.J.A.C. 7:7-9.41, 9.46, and 9.47 can be approved under a minor technical modification of the permit. As set forth at N.J.A.C. 7:7-27.5(d)1 and 2, such a project change would include a change in materials or construction techniques or a reduction in the intensity of development on the site. The detailed review conducted for purposes of a major technical modification to a permit is not necessary for these kinds of project changes because reducing development intensity or changing construction materials or techniques does not increase the potential for impacts to the coastal resources protected by the permit. Similarly,

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notice to property owners within 200 feet of the property boundary, as would be required for a major technical modification, is not necessary for these project changes because such changes do not increase the potential for impacts to the coastal resources protected by the permit such that property owners nearby should have the opportunity to provide input on the proposed changes.

The Department is also proposing amendments regarding changes in location of dredging activities that would qualify for a minor technical modification of a waterfront development permit. These are currently addressed at existing N.J.A.C. 7:7-4.10(e)3iii. The Department is proposing to make explicit that in order for a change in location of the placement of dredged material to constitute a minor technical permit modification, the applicant must ensure that the proposed processing facility or proposed disposal or beneficial use site has all necessary local, State, and Federal approvals, and that a letter of acceptance is received from the proposed processing facility or the proposed disposal or beneficial use site. This is the demonstration that an applicant for a permit modification must necessarily make under existing N.J.A.C. 7:7-4.10(e)3 in order to show that the new location for the placement of dredged material is acceptable and has capacity. Under the proposed rule, if the proposed change in the location for placement of dredged material is to a location that does not have all necessary approvals and the applicant cannot obtain a letter of acceptance, the permittee must apply for a major technical permit modification for which the Department would conduct a detailed review of the acceptability of the placement site.

Proposed N.J.A.C. 7:7-27.5(e) describes a major technical modification and replaces existing N.J.A.C. 7:7-4.10(c) and (g). The existing rules require a major modification to an individual permit when the proposed change to the project does not meet the criteria for a minor

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modification or for new permit. Similarly, under the proposed rule, a major technical modification applies to any change in a project, including any associated change to an approved site plan or other document, that does not meet the definition of an administrative modification or a minor technical modification and that does not require a new permit.

Proposed N.J.A.C. 7:7-27.5(f) explains when the proposed changes to the project are such that a new authorization or permit is required, and replaces existing N.J.A.C. 7:7-4.10(b), (e), and (f). Existing N.J.A.C. 7:7-4.10(b) requires a new CAFRA or waterfront development permit where the proposed change results in greater than a cumulative 50 percent increase in the area covered by buildings, asphalt, or concrete pavement or if the proposed change would result in development on a lot or lots which were not included in the original permit. A new waterfront development permit for development waterward of the mean high water line is required under existing N.J.A.C. 7:7-4.10(e) if the proposed change results in additional filling or filling of an area not authorized under the permit; if the proposed change is a change in a dredging activity other than a change in method, volume of material to be dredged without a change in the specific area authorized to be dredged, or location of placement of dredged material; or if the proposed change modifies more than the structure and would result in development on another lot. A new coastal wetlands permit is required under existing N.J.A.C. 7:7-4.10(f) if a permittee proposes a change in the development that would result in either additional excavation or filling, or excavation or filling in areas not authorized under the permit.

Proposed N.J.A.C. 7:7-27.5(f) establishes that the determination that a new permit must be obtained instead of a permit modification turns on whether the permittee is proposing a change that constitutes a substantial redesign of the project or will significantly increase the

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environmental impact of the project. Where the proposed change meets that standard, a new permit is required. Proposed N.J.A.C. 7:7-27.5(f)1 through 7 list the types of changes that meet this standard. They include a change to the basic purpose or use of a project, such as a change from the construction of a hospital to an apartment complex; an expansion of the project beyond that which was described in the public notice of the permit application; a substantial redesign of the project or its stormwater management system which requires a new engineering analysis of the site and/or the project; a significant change in the size or scale of the project, such as the addition of structures; a significant change in the project's impact to special areas; an excavation or filling of water areas or wetlands significantly beyond that which was approved under the authorization or permit; or a change that would result in impacts to a site not owned or controlled by the permittee.

Proposed N.J.A.C. 7:7-27.5(g) requires the permittee to record the modified authorization under a general permit or the modified individual permit with the Office of the County Clerk in the county(ies) in which the site is located. This requirement will ensure that there is a clear public record of all of the Department's actions relating to a specific property. This provision is consistent with proposed N.J.A.C. 7:7-27.2(d)3.

#### **N.J.A.C. 7:7-27.6 Application for a modification**

Proposed N.J.A.C. 7:7-27.6(a) explains that the section sets forth the requirements for an application for a modification, and states that the general application requirements at N.J.A.C. 7:7-23.2 also apply. The general application requirements at N.J.A.C. 7:7-23.2 establish who

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may submit an application and contain certification requirements for the applicant and for the professionals and consultants who prepare components of an application.

Existing N.J.A.C. 7:7-4.10(i) and (j) and 7.3A(d) and (e) identify the information to be included in a request for a modification, which includes a complete application; a fee; a copy of the permit to be modified and the approved site plans; a detailed description of the authorized development and the reason for the change; an amended environmental impact statement or compliance statement; proof that public notice of the proposed modification was provided; and any additional information necessary to review the proposed change.

Proposed N.J.A.C. 7:7-27.6(b) identifies the information required as part of an application for an administrative modification of an authorization under a general permit and individual permit. This information includes a description of the proposed change, the site plans approved as part of the authorization or permit revised to illustrate the proposed change, a copy of the previously issued authorization or permit, and any other information necessary to ensure compliance with State and/or Federal Law. Due to the minor nature of this type of modification, public notice and an application fee are not required.

Proposed new N.J.A.C. 7:7-27.6(c) identifies the information required as part of an application for a minor technical modification to an authorization under a general permit or individual permit. The information required for this type of modification is the same as required under existing N.J.A.C. 7:7-4.10(i) and (j), with the following changes. Proof of public notice is not required because the changes to the activities are minor in nature and do not increase the potential for impacts to the coastal resources protected by the permit such that property owners nearby should have the opportunity to provide input on the proposed changes. Also, the

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Department is proposing that an application must include any visual representations, such as photographs, graphs, and tables which illustrate the proposed change, as applicable, and any information necessary to ensure compliance with State and/or Federal law. This information will assist the Department in ensuring that the proposed change does not result in new or additional impacts to special areas other than those described at N.J.A.C. 7:7-9.41, 9.46, and 9.47.

Proposed N.J.A.C. 7:7-27.6(d) identifies the information required as part of an application for a major technical modification. The information required for this type of modification is the same as required under existing N.J.A.C. 7:7-4.10(i) and (j), with the following changes. The Department is proposing to require submittal of other visual representations, as applicable, such as photographs, sketches, graphs, and tables, to illustrate the proposed project changes, as well as engineering calculations and related materials necessary to demonstrate that the modified project will comply with the CZM rules and, if applicable, the Department's Stormwater Management rules at N.J.A.C. 7:8. This information will assist the Department in ensuring that the proposed change does not constitute a substantial redesign of the project or significantly increase the environmental impact of the project.

The Department is also proposing to amend the public notice requirements for a major technical modification. Under existing N.J.A.C. 7:7-4.10(j), public notice is dependent upon the type of modification, that is, minor or major, as well as the permit types and whether the regulated activity is located landward or waterward of the mean high water line. Under proposed N.J.A.C. 7:7-26.6(d)2, the applicant must submit proof that notice of an application for a major technical modification was provided in accordance with N.J.A.C. 7:7-24. This simplifies the rules by making the public notice requirements the same as those for an application for an

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authorization under a general permit-by-certification or general permit, an individual permit, or a mitigation proposal that is not submitted as part of an application for an individual permit.

**N.J.A.C. 7:7-27.7 Suspension of an authorization under a general permit, an individual permit, or an emergency authorization**

Proposed N.J.A.C. 7:7-27.7 addresses the suspension of a permit or approval, and replaces existing N.J.A.C. 7:7-4.11(a).

Proposed N.J.A.C. 7:7-27.7(a) identifies the circumstances in which the Department will suspend authorization under a general permit, individual permit, or emergency authorization for good cause. Under existing N.J.A.C. 7:7-4.11(a), a permit can be suspended for good cause such as for violations of a permit condition; significant changes being made to the plan for the development after a permit is issued that are not explicitly authorized in writing by the Department; the applicant's failure to correctly identify project impacts; or unanticipated adverse effects caused by the development. Proposed N.J.A.C. 7:7-27.7(a) includes as examples of causes to suspend the causes set forth in the existing rule, amending them for clarity and consistency, and in addition spells out several specific additional scenarios in which suspension would be appropriate. The proposed rule adds the following causes: the approval was based on false or inaccurate information; the permittee has undertaken activities on the site that violate the CZM rules; the permittee has misrepresented or failed to fully disclose all relevant facts pertaining to the approval; or the suspension is necessary for emergency reasons or to protect public health, safety, and welfare, or the environment.

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Similar to existing N.J.A.C. 7:7-4.11(a)1, proposed N.J.A.C. 7:7-27.7(b) provides that the Department will furnish written notice of a suspension by certified mail to the permittee. The proposed rule also provides that if a permit is suspended for emergency reasons, the Department will instead contact the permittee by telephone or by any practical method, and then will follow up with a written notice.

Proposed new N.J.A.C. 7:7-27.7(c) identifies the contents of a suspension notice and adds specificity and context to these requirements, which are currently found in existing N.J.A.C. 7:7-4.11(a)1 through 3. The notice of suspension will state that the approval is suspended upon the permittee's receipt of the notice; include the reasons for the suspension; state that all regulated activities authorized under the suspended approval must stop immediately upon the permittee's receipt of the notice; and notify the permittee of the right to, within 10 calendar days after receiving the notice, either request a meeting with the Department to discuss the suspension and/or request an adjudicatory hearing.

Proposed N.J.A.C. 7:7-27.7(d) expands on a provision in existing N.J.A.C. 7:7-4.11(a)1 that requires the permittee to offer a plan to remedy the violations that prompted the suspension notice and a time frame for its implementation. The proposed rule requires that the permittee must, within 30 calendar days after receiving the Department's suspension notice, submit a written strategy to remedy the cause(s) of the suspension. The Department is proposing to change the timeframe from 10 calendar days to 30 calendar days because it has been the Department's experience in implementing this requirement that 10 days is not sufficient for a permittee to develop and submit an acceptable strategy for remedying the problem. The written strategy must describe how the strategy will remedy the cause(s) of the suspension; demonstrate

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that the strategy will bring the project into compliance with the CZM rules; and identify a timeframe within which the permittee will execute the strategy.

Proposed N.J.A.C. 7:7-27.7(e) explains the actions the Department will take within 30 calendar days of receiving the written strategy from the permittee. The actions are: (1) accept the strategy, reinstate the suspended approval, and require the permittee to implement the strategy within the prescribed time frame; (2) determine that the strategy is insufficient and request additional information and/or changes to the strategy, or (3) determine that the strategy is unacceptable and notify the permittee of the Department's intent to terminate the approval.

Where the permittee provides additional information or changes to the strategy in response to the Department's determination that the strategy is insufficient, the Department will, within 15 calendar days of receipt of the additional information, either accept the strategy, reinstate the suspended approval, and require the permittee to implement the strategy within the prescribed time frame, or else determine that the strategy is unacceptable and/or insufficient and notify the permittee of its intent to terminate the approval.

Proposed N.J.A.C. 7:7-27.7(f) provides that noncompliance with any of the requirements of the section will constitute cause for the Department to terminate the authorization under a general permit, an individual permit or an emergency authorization in accordance with proposed N.J.A.C. 7:7-27.8.

**N.J.A.C. 7:7-27.8 Termination of an authorization under a general permit, an individual permit, or an emergency authorization**

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Proposed N.J.A.C. 7:7-27.8 establishes the process for the Department to terminate an authorization under a general permit, an individual permit, or an emergency authorization for cause. It replaces existing N.J.A.C. 7:7-4.11(b). Under the existing rule, prior to revocation, the Department will provide written notice to the permittee by certified mail of its intent to revoke the permit and the permittee's right to a hearing. If the permittee does not request a hearing within 10 days of receipt of the notice, the permit will automatically be revoked. Where a permit is revoked, the permittee must take all reasonable efforts to restore the site to pre-construction conditions. The Department is proposing to replace the term "revoke" with "terminate," which is the terminology used in the FWPA and FHACA rules. The Department is also proposing to add specificity regarding the causes for which the Department will terminate an approval, the process for notifying the permittee of its intent to terminate the approval, the permittee's right to request an adjudicatory hearing, and the actions the permittee must take should the Department terminate an approval.

Proposed N.J.A.C. 7:7-27.8(a) provides that the Department will terminate a suspended approval for good cause. Three examples of good cause are listed: if the permittee has not ceased all regulated activities authorized by the suspended approval as required; if the permittee has not submitted a written strategy to remedy the causes of suspension as required; or if the Department has determined that the strategy to remedy the cause of suspension is unacceptable. An approval will be terminated only after the permittee has been given every reasonable opportunity to present and act on a strategy to correct the problem that gave rise to the suspension.

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Similar to existing N.J.A.C. 7:7-4.11(b)1 and 2, proposed N.J.A.C. 7:7-27.8(b) provides that the Department will notify the permittee by certified mail of its intent to terminate an authorization under a general permit, an individual permit, or an emergency authorization. Proposed N.J.A.C. 7:7-27.8(c) provides that the permittee may request an adjudicatory hearing within 10 calendar days after receiving the notification. If the permittee does not request a hearing, or if the hearing request is denied, proposed N.J.A.C. 7:7-27.8(d) provides that the authorization under the general permit, individual permit, or emergency authorization will automatically terminate, effective 10 calendar days after the permittee received the notice of the Department's intent to terminate the approval.

Proposed N.J.A.C. 7:7-27.8(e) identifies the actions the permittee must take where the Department does terminate an authorization under the general permit, individual permit, or emergency authorization. The actions are intended ensure that any adverse effects of the project are eliminated and/or properly mitigated. The permittee must remedy any changes to the site made in violation of the CZM rules; remedy any adverse impacts to special areas and the environment caused by the regulated activities on the site; and restore, to the maximum extent practicable, the site to its condition prior to the start of permitted activities. The permittee's failure to take all of above actions will constitute a violation and subject the permittee to enforcement action.

## **Subchapter 28. Requests for Adjudicatory Hearings**

Proposed N.J.A.C. 7:7-28 describes the process and requirements for requesting an adjudicatory hearing to contest the Department's decision. These new rules replace the rules in

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existing N.J.A.C. 7:7-5, which are proposed to be repealed. As explained earlier in this Summary, this rulemaking is one part of an effort to restructure and align the rules governing the permitting processes of the coastal permitting program, the flood hazard area permitting program, and the freshwater wetlands permitting program, to the extent the respective enabling statutes allow. The provisions regarding requests for adjudicatory hearings on permit decisions are generally the same in the existing rules of these three programs. The proposed new rules at N.J.A.C. 7:7-28 present the hearing request requirements according to the flow of the processing of a hearing request, from submittal through eventual resolution, including steps for dispute resolution, stays of the permit appealed, and notice of settlements.

#### **N.J.A.C. 7:7-28.1 Procedure to request an adjudicatory hearing; decision on the request**

Proposed N.J.A.C. 7:7-28.1(a) states that the subchapter establishes the rules for requesting an adjudicatory hearing to contest a Department decision on a coastal permit. A person seeking to contest an administrative order and/or penalty assessment resulting from an enforcement action must follow the process set out in proposed N.J.A.C. 7:7-29, Enforcement.

Proposed N.J.A.C. 7:7-28.1(b) requires that an adjudicatory hearing request be submitted within 30 calendar days of notice of the Department's permit decision in the DEP Bulletin. If a hearing request is not submitted within this 30-calendar-day period, it will be denied.

Proposed N.J.A.C. 7:7-28.1(c) and (d) identify the information required as part of the adjudicatory hearing request and to whom this information must be submitted. This information is identified on the adjudicatory hearing request form, which is available on the Division of Land Use Regulation's website.

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Proposed N.J.A.C. 7:7-28.1(e) states that the rules are not to be construed to provide a right to an adjudicatory hearing in contravention of the provisions in the Administrative Procedure Act (APA) that prohibit an agency from promulgating a rule that would allow a third party to appeal a permit decision, except as required by Federal law or by a statute that specifically allows a third party appeal.

Proposed N.J.A.C. 7:7-28.1(f) provides that the Department will notify the requester if the hearing request is granted or denied. If the hearing is granted, the Department will refer the matter to the Office of Administrative Law for proceedings consistent with the APA and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, which are promulgated by the Office of Administrative Law.

Proposed N.J.A.C. 7:7-28.1(g) states that a final decision issued by the DEP Commissioner after the proceedings in the Office of Administrative Law is a final agency action for purposes of the APA, and is appealable to the Superior Court, Appellate Division, in accordance with the Court Rules.

#### **N.J.A.C. 7:7-28.2 Procedure to request dispute resolution**

Proposed N.J.A.C. 7:7-28.2 provides that a person who is requesting an adjudicatory hearing may also request that the Department determine whether the matter is suitable for mediation by the Department's Office of Dispute Resolution. If the Department determines that the matter is suitable for mediation, the Department will notify the requester of the procedures and schedule for mediation. The Department's Office of Dispute Resolution facilitates the

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resolution of disputes by informal collaborative problem-solving, which, in the appropriate case, can obviate the need for potentially lengthy formal legal proceedings and the attendant costs.

#### **N.J.A.C. 7:7-28.3 Effect of request for hearing on operation of permit or authorization**

Proposed N.J.A.C. 7:7-28.3 addresses the stay of a permit for which a hearing is requested. If the hearing request is filed by the permittee, the operation of the permit or authorization is automatically stayed in its entirety, and all permitted activities must cease unless the Department issues an exception to the stay for good cause as supported by the permittee in writing. The automatic stay prevents a permittee from undertaking activities while permit conditions, which are integral to the Department's finding that the permit application meets the standards for approval under the rules, are contested. If a hearing request is filed by a person other than the applicant, the operation of the permit or authorization is not automatically stayed; however, the Department will stay operation of the permit or authorization if it determines good cause to do so exists.

#### **N.J.A.C. 7:7-28.4 Notice of certain settlement discussions on a coastal permit decision; notice of settlement agreement**

Proposed N.J.A.C. 7:7-28.4(a) is a new provision that implements the requirement incorporated into CAFRA by P.L. 2009, c. 171 (see N.J.S.A. 13:19-45) regarding notice to coastal municipalities when the Department engages in certain settlement discussions. N.J.S.A. 13:19-45 requires the Department to provide notice to the governing body of a coastal

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municipality where the Department enters into settlement discussions regarding a property containing dunes or other environmentally sensitive areas.

Under the statutory provision, the Department would be required to notify a coastal municipality's governing body of any settlement discussions concerning a property on which dunes or other environmentally sensitive areas are located, regardless of whether the proposed project would impact these areas. To implement the purpose of the legislation, which the Department interprets as requiring notification to the governing body of a municipality in the CAFRA area regarding settlement discussions concerning a proposed project that will impact a dune or environmentally sensitive area, proposed N.J.A.C. 7:7-28.4(a) provides that, should the Department enter into settlement discussions regarding a project in a municipality in the CAFRA area that will impact a dune or other environmentally sensitive area, the Department will notify the governing body of that municipality. The notice will provide the specific location of the property on which the project is proposed, describe the nature of the settlement discussions, and offer the governing body of the municipality the opportunity to participate in the settlement discussions.

N.J.S.A. 13:19-45 defines a "coastal municipality" as a municipality in the coastal area, which is the area specifically described in CAFRA at N.J.S.A. 13:19-4. Because in the CZM rules "CAFRA area" is a defined term at proposed N.J.A.C. 7:7-1.5 and means the coastal area defined under CAFRA at N.J.S.A. 13:19-4, the Department is using the term "municipality in the CAFRA area" in proposed N.J.A.C. 7:7-28.4(a) where N.J.S.A. 13:19-45 uses the term "coastal municipality." Further, for purposes of this provision, the Department is identifying "environmentally sensitive area" as a special water's edge area (N.J.A.C. 7:7-9.6 through 9.30),

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an endangered or threatened wildlife or plant species habitat (N.J.A.C. 7:7-9.36), a critical wildlife habitat (N.J.A.C. 7:7-9.37), or the Pinelands National Reserve and Pinelands Protection Area (N.J.A.C. 7:7-9.42). “Dune” is a defined term at proposed N.J.A.C. 7:7-1.5 and refers to the special area rule at N.J.A.C. 7:7-9.16.

Proposed N.J.A.C. 7:7-28.4(b) establishes the procedures for providing public notice if the Department and the person requesting an adjudicatory hearing agree to a settlement that may result in the issuance of a coastal permit for a regulated activity. The person who requested the hearing must send notice of the intent to settle by certified mail to each person who was sent specific notice of the original permit application and to each person who commented on the permit application while it was under Department review. The Department will publish notice of the intent to settle in the DEP Bulletin and will accept public comment on the notice for at least 30 calendar days. Upon closure of the comment period, if the settlement is finalized, the Department will publish a notice of the final settlement in the DEP Bulletin.

### **Subchapter 29. Enforcement**

Proposed N.J.A.C. 7:7-29 describes the procedures for enforcement of the CZM rules, including the process for requesting an adjudicatory hearing to contest administrative orders and/or penalty assessments. This subchapter is recodified from N.J.A.C. 7:7-8 with amendments to incorporate and implement the Environmental Enforcement Enhancement Act (EEEA), P.L. 2007, c. 246. The EEEA became effective January 4, 2008, and modified and enhanced the Department's enforcement powers under various environmental protection statutes, including CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970 (coastal statutes).

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Prior to passage of the EEEA, each of these statutes contained different enforcement provisions. The EEEA addressed this issue by making the enforcement provisions of the coastal statutes consistent to the extent possible. Therefore, most of the distinctions in this subchapter between the enforcement provisions under CAFRA, the Waterfront Development Law, and the Wetlands Act of 1970 have been eliminated and one set of procedures established. As a consequence, in various provisions in the subchapter, the Department is proposing amendments to cite all three coastal statutes. Also, existing N.J.A.C. 7:7-8.1(b) and 8.2(b), and N.J.A.C. 7:7-8.8 through 8.12, which contain separate enforcement provisions for violations under the Waterfront Development Law and the Wetlands Act of 1970, are proposed to be deleted or repealed.

Among other changes, the EEEA increased the maximum penalties assessed under the coastal statutes to \$25,000 and lengthened the time period for a person who receives an administrative enforcement action to request a hearing from 20 calendar days to 35 calendar days. The Department is proposing amendments in various provisions in the subchapter to reflect the change in maximum penalty and the timing for submittal of a hearing request. During the period prior to adoption of these proposed amendments the Department will, on a case-by-case basis, using the criteria set forth in the coastal statutes as amended by the EEEA (see N.J.S.A. 12:5-6.e, 13:9A-9.d, and 13:19-18.), assess civil administrative penalties up to a maximum of \$25,000 per day for each violation.

#### **N.J.A.C. 7:7-29.1 General provisions**

The heading of N.J.A.C. 7:7-29.1 is proposed to be modified to better reflect its content. Similar to existing N.J.A.C. 7:7-8.1(a), proposed N.J.A.C. 7:7-29.1(a) lists the actions that the

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Department may take when it finds a person in violation of the coastal statutes. The Department is proposing to add a new, fifth action to this list, that is, petitioning the Attorney General to bring a criminal action in accordance with new N.J.A.C. 7:7-29.9, explained in greater detail below.

Existing N.J.A.C. 7:7-8.1(c) is recodified at N.J.A.C. 7:7-29.1(b) with amendments reflecting the language in the EEEA regarding the Department's ability to access sites for purposes of conducting compliance inspections.

Consistent with the EEEA amendments to the coastal statutes, proposed new N.J.A.C. 7:7-29.1(c) requires an applicant or permittee to provide, upon request by the Department, any information required to determine compliance with the provisions of the coastal statutes or any rule or regulation adopted, or permit or order issued pursuant thereto.

#### **N.J.A.C. 7:7-29.2 Issuance of an administrative order**

Proposed N.J.A.C. 7:7-29.2, which describes the process for issuing an administrative order, is recodified from N.J.A.C. 7:7-8.2 with amendments reflecting the EEEA. The heading of this section is proposed to be simplified for clarity.

#### **N.J.A.C. 7:7-29.3 Assessment, settlement, and payment of a civil administrative penalty**

Proposed N.J.A.C. 7:7-29.3, which sets forth the procedures for assessment, settlement, and payment of civil administrative penalties for violations, is recodified from N.J.A.C. 7:7-8.3, with amendments to reflect the EEEA as discussed above. The section heading is proposed to be simplified for clarity.

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Proposed N.J.A.C. 7:7-29.3(b)1 and 2 are proposed to be amended to reflect that the time period within which to request a hearing is 35 days, as established by the EEEA. Cross-references in N.J.A.C. 7:7-29.3(b)2 and 3 to provisions in N.J.A.C. 7:7-29.4 are proposed to be amended to include language describing the content of those provisions.

Proposed N.J.A.C. 7:7-29.3(c) provides that in addition to the amount of the civil administrative penalty, the violator must also pay to the Department interest on the amount of the penalty if the penalty is not paid timely in accordance with the final administrative penalty order or with a payment schedule entered into with the Department. Under existing N.J.A.C. 7:7-8.4(c)1 and 2, such interest is assessed if the payment is not made within 30 days of the date the payment is due. The Department is proposing to amend these paragraphs to change the 30-day time period to 90 calendar days, consistent with the EEEA.

**N.J.A.C. 7:7-29.4 Procedures to request and conduct an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment**

Proposed N.J.A.C. 7:7-29.4, which sets forth the procedures to request and conduct an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment, is recodified from N.J.A.C. 7:7-8.4, with amendments. The section heading is proposed to be simplified for clarity. Existing N.J.A.C. 7:7-8.4(a) and (b) provide that a violator may request an adjudicatory hearing to contest an administrative order and/or notice of civil administrative penalty assessment, identify the information that must be provided in such a request, and set forth the time frame for submittal. Existing N.J.A.C. 7:7-8.4(b) is proposed to

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be deleted because the time frame for submittal and that a late-submitted hearing request will be denied are proposed to be incorporated into N.J.A.C. 7:7-29.4(a).

Proposed new N.J.A.C. 7:7-29.4(b) identifies the information that must be submitted in a request for an adjudicatory hearing, and the paragraphs therein are recodified from N.J.A.C. 7:7-8.4(a) with amendments to align the information requirements with those for hearing requests to challenge permitting decisions at proposed N.J.A.C. 7:7-28, Requests for adjudicatory hearings. In addition, the Department is proposing at N.J.A.C. 7:7-29.4(b)5 that the hearing request include a statement as to whether the violator agrees to delay transfer of a granted hearing request for the purpose of engaging in settlement negotiations, as provided for in the Uniform Administrative Procedures Rules. This will give DEP and violators flexibility and time to settle cases before hearing proceedings are initiated in the Office of Administrative Law.

Proposed new N.J.A.C. 7:7-29.4(c) identifies the Department offices to which the hearing request must be submitted.

#### **N.J.A.C. 7:7-29.5 Civil administrative penalties for failure to obtain a permit prior to conducting regulated activities**

Proposed N.J.A.C. 7:7-29.5, which describes how the Department determines the amount of a civil administrative penalty assessment for violations resulting from the failure to obtain a permit prior to conducting regulated activities, is recodified from N.J.A.C. 7:7-8.5, with amendments revising the point values and distribution for various categories of violation. The proposed changes in point values are necessary and appropriate because the current rules do not adequately reflect the greater environmental harm that results from violations of a larger scale, or

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the higher deterrent factor necessary for knowing (versus unknowing) violations. Creating a wider point spread, which results in a wider range of per-day penalty assessments, enables the Department to assess a penalty that better reflects the degree of harm or potential harm caused by the particular violation and allows for a more precise penalty calculation based on the specific conditions of the violation. The revised point assignments will result in proportionately higher penalties for knowing violations and for violations within defined special areas.

Existing N.J.A.C. 7:7-8.5(a) provides that the Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-2.1 (CAFRA). The Department is proposing to recodify this provision as N.J.A.C. 7:7-29.5(a) and modify it to apply to the failure to obtain a permit prior to conducting a regulated activity under N.J.A.C. 7:7-2.2, 2.3, and 2.4 (CAFRA, coastal wetlands, and waterfront development). Consistent with the EEEA, a penalty cannot exceed \$25,000 for each violation of any of the coastal statutes. For the purposes of N.J.A.C. 7:7-29.5, permit means an authorization under a general permit-by-certification, authorization under a general permit, individual permit, emergency authorization, letter of authorization, memorandum of agreement, or other written authorization or other approval issued pursuant to the coastal statutes.

Proposed N.J.A.C. 7:7-29.5(b) is recodified from N.J.A.C. 7:7-8.5(b) with amendments providing that each violation of N.J.A.C. 7:7-2.2, 2.3, and 2.4, which establish when a permit is required under each of the three coastal statutes, constitutes an additional, separate, and distinct violation.

Consistent with the EEEA, proposed new N.J.A.C. 7:7-29.5(c) provides that each day the violation continues or remains in place without the required permit constitutes an additional,

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separate and distinct offense. This provision makes clear that each day a violation remains in place without being authorized under a permit is an additional offense. Coastal permits are construction permits and the CZM rules are designed to protect certain critical, rare, and sensitive resources of the coastal zone. Where these resources have been displaced or destroyed by unauthorized development, each day that the development remains in place and the resource is not restored or mitigated, the coastal environment is damaged as the functions and values of the resource are reduced. The permits administered under the CZM rules are different from operating permits issued by the Department under other regulatory programs that allow a discharge of prescribed levels of pollutants into the air or water and where a distinct discharge in violation of a permit limit may continue for several days. Consequently, to reconcile the EEEA's language that "each day during which a violation continues shall constitute an additional, separate and distinct offense" with the harm and degradation caused by unlawful construction, the Department will consider each day that the impact of the development goes unrestored, unmitigated and/or unauthorized by a permit as an additional, separate, and distinct offense for the purposes of penalty calculation.

The procedure for assessing a civil administrative penalty is set forth at existing N.J.A.C. 7:7-8.5(c) through (g). In determining the base penalty, the Department assigns points based on the conduct of the violator, the area of the impact, and whether the activity was conducted within a special area. The civil administrative penalty may be adjusted by the Department based on the mitigating penalty component; compliance history of the violator; frequency with which any violation occurred; the deterrent effect of the penalty; and/or any other mitigating, extenuating, or aggravating circumstances.

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The Department is proposing to replace the procedure for determining the amount of a civil administrative penalty as described above with a new procedure which uses two factors, conduct and serious, as described in the summary of N.J.A.C. 7:7-29.5(d) through (i) below. To facilitate the new method for determining the amount of the civil administrative penalty, the Department is proposing to delete existing N.J.A.C. 7:7-8.5(c) and (d), which set forth the method for determining the civil administrative penalty based on the conduct of the violator, the area of impact, and whether the activity was conducted in a special area, and recodify the table of administrative base penalties from existing N.J.A.C. 7:7-8.5(e) to N.J.A.C. 7:7-29.5(f) as described below.

Proposed new N.J.A.C. 7:7-29.5(d) is similar to existing N.J.A.C. 7:7-8.5(c) in that it describes the process to be used to determine the amount of a civil administrative penalty. In determining this amount, the Department will use two factors, conduct and seriousness. These factors are assigned points which are then totaled to determine the base penalty amount per day.

Proposed new N.J.A.C. 7:7-29.5(e) sets forth the number of points assigned to each violation using the conduct and seriousness factors. Proposed N.J.A.C. 7:7-29.5(e)1 sets forth the point values for the conduct factor. At N.J.A.C. 7:7-29.5(e)1i, the points assigned for major conduct are proposed to be increased from three to five points to emphasize the importance of this factor in the overall penalty assessment. The points assigned to moderate conduct (unintentional but foreseeable act or omission) and minor conduct (any conduct not considered moderate or major) at proposed N.J.A.C. 7:7-29.5(e)1ii and iii are two and one, respectively, and are the same as under existing N.J.A.C. 7:7-8.5(e)1ii and iii. The Department believes that persons who knew, or should have known, that the activities they were conducting were in

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contravention of the coastal statutes should be assessed a higher penalty than persons who did not realize their actions were in violation.

The points assigned to the area of disturbance of the violation at existing N.J.A.C. 7:7-8.5(d)2 and the points assigned for an unauthorized activity within special areas at existing N.J.A.C. 7:7-8.5(d)3 are proposed to be combined into one factor, “seriousness” of the violation. The seriousness of the violation will also be based on whether the activity constitutes a Tidelands violation. The points assigned for the seriousness of the violation are proposed at N.J.A.C. 7:7-29.5(e)2, which replaces existing N.J.A.C. 7:7-8.5(d)2 and (d)3.

In order to better and more fairly assess penalties for violations of all sizes and seriousness, the point values are proposed to be amended. Under existing N.J.A.C. 7:7-8.5(d)2, a maximum of five points is assigned to impacts exceeding 20,000 square feet, and a minimum of one point is assigned to impacts of less than 270 square feet. Under proposed N.J.A.C. 7:7-29.5(e)2i, the points range from a maximum of 13 points for a violation impacting more than 200,000 square feet to a minimum of one point for impacts of 50 square feet or less.

Proposed N.J.A.C. 7:7-29.5(e)2i sets forth the points assessed for violations located in the CAFRA area or upland waterfront development area. Proposed N.J.A.C. 7:7-29.5(e)2ii sets forth the points assessed for violations within areas subject to the Waterfront Development Law that are located waterward of the mean high water line as well as areas subject to the Wetlands Act of 1970. Under proposed N.J.A.C. 7:7-29.5(e)2ii, points are assigned based on the square footage of the violation and for dredging a natural or man-made waterway. The assessed points are higher for impacts in areas subject to the Waterfront Development Law located waterward of the mean high water line and Wetlands Act of 1970 than impacts in the upland waterfront

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development and CAFRA areas because the environmental damage is potentially greater from a violation conducted in these areas.

In addition, at proposed N.J.A.C. 7:7-29.5(e)2iii, a violation will be assessed an additional one point if located in a State-owned Tidelands area for which a current Tidelands instrument has not been obtained or for which payment has not been kept current. At proposed N.J.A.C. 7:7-29.5(e)2iv, an additional one point will be assessed for a violation located in a special area, for each special area affected. Overall, the changes to this subsection reflect the greater harm associated with impacts to larger areas of resource disturbance, provide greater incentive to comply and restore the resource to its pre-disturbance and functional condition, and provide a greater deterrent to future violations, while also resulting in a lower penalty for smaller structural violations with less environmental impact.

Proposed N.J.A.C. 7:7-29.5(f), which sets forth the civil administrative base penalty, replaces existing N.J.A.C. 7:7-8.5(e). To calculate the base penalty, the points assigned to the conduct of the violator and the seriousness of the violation are totaled. The Department is proposing to increase the maximum point total from nine to 23 or more, and to provide a range of points that will result in the same base penalty, reflecting the changes to the point assessments at proposed N.J.A.C. 7:7-29.5(e) described above. Corresponding to the additional point ranges, increased and additional levels of base penalties are proposed between the minimum of \$500.00 and the maximum of \$25,000.

Similar to the existing rules, the base penalty may be modified by the Department. Proposed N.J.A.C. 7:7-29.5(g), which provides a penalty mitigating factor multiplier to be

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applied to the base penalty, is recodified from N.J.A.C. 7:7-8.5(f) with amendments that do not affect meaning.

Proposed N.J.A.C. 7:7-29.5(h) is recodified from N.J.A.C. 7:7-8.5(g) with amendments.

This provision establishes the Department's discretion to adjust the amount of any penalty assessed pursuant to N.J.A.C. 7:7-29.5(f) or (g) based upon compliance history of the violator, frequency of violation, deterrent effect of the penalty; and/or other mitigating circumstances.

The Department is proposing to delete the provision prohibiting the reduction of the penalty to less than 25 percent of the base penalty or more than the statutory limit. The floor unnecessarily restricts flexibility, and the statutes set the maximum penalty, which therefore does not need to be stated for purposes of this provision.

Proposed new N.J.A.C. 7:7-29.5(i) implements the EEEA and provides that the Department may add to the assessed civil administrative penalty the amount of economic benefit in dollars that the violator realized as the result of not complying, or by delaying compliance, with an applicable law and/or condition.

#### **N.J.A.C. 7:7-29.6 Civil administrative penalties for violations other than failure to obtain a permit prior to conducting regulated activities**

Existing N.J.A.C. 7:7-8.6 is proposed to be recodified at proposed N.J.A.C. 7:7-29.6 with amendments, and provides for the assessment of a civil administrative penalty for violations other than the failure to obtain a permit before conducting regulated activities. This section addresses more fairly and appropriately the variety of impacts to the program and regulatory requirements that are not reflected in the penalty assessment criteria identified in proposed

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N.J.A.C. 7:7-29.5 and that may not be directly related to the physical size of a violation. The potentially significant environmental or programmatic harm that occurs when a permit condition is violated may not be measurable by area of impact and thus a penalty assessment based upon the size of a resource disturbance may not be appropriate or reflect the impact of the violation.

Existing N.J.A.C. 7:7-8.6(a) through (c) are proposed to be recodified at N.J.A.C. 7:7-29.6(a) through (c) with amendments to make clear that violations of conditions of permits or other authorizations issued under the CZM rules are subject to this section.

Existing N.J.A.C. 7:7-8.6(d), (e), and (f) are proposed to be recodified at N.J.A.C. 7:7-29.6(d), (e), and (f) with amendments. These subsections describe how the Department will determine the base daily civil administrative penalty based on conduct and seriousness for violations other than the failure to obtain a permit. The seriousness of the violation is determined under N.J.A.C. 7:7-29.6(e), and the conduct of the violator is determined under N.J.A.C. 7:7-29.6(f). The applicable daily penalty amount is determined using the base daily penalty matrix at N.J.A.C. 7:7-29.6(d).

The proposed amendments to the matrix at N.J.A.C. 7:7-29.6(d) establish that the statutory maximum penalty of \$25,000 will be assessed for a violation of major seriousness and major conduct. For a violation of less than major seriousness and less than major conduct, the Department will assess the penalty that reflects the applicable combination of seriousness and conduct warranted by the violation. For a violation of minor seriousness and minor conduct, the proposed penalty is \$1,000; and for a violation of moderate seriousness and moderate conduct, the proposed penalty is \$7,500. In the existing matrix, there is a range of penalty amounts for each combination of seriousness and conduct. The proposed amendments eliminate the ranges of

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penalties for each combination of seriousness and conduct and, for other than the three violations already discussed, instead establish the starting amount of each current penalty range as the single penalty amount for each combination. This eliminates the subjectivity of assessing a penalty amount within a range, and will result in a predictable penalty assessment under the rule and improve consistency among penalty assessments.

Proposed N.J.A.C. 7:7-29.6(e) explains that the seriousness of a violation will be determined as major, moderate or minor. Proposed N.J.A.C. 7:7-29.6(e)1 defines “major” seriousness. The Department is proposing to amend this paragraph to not only apply to violations that have caused or have the potential to cause serious harm to human health or the environment but also violations that have caused or have the potential to cause harm to safety, the environment, or the coastal regulatory program, or a violation which seriously deviates from the applicable law and/or condition. Serious deviations are further defined as including, but not limited to, those violations that are in complete contravention of the law, requirement, and/or condition, and/or severely impair or undermine the protection, operation, or intent of the law, requirement, and/or condition. The Department also is proposing at N.J.A.C. 7:7-29.6(e)1 that the types of violations that are considered major include unauthorized activities that occur within or impact a special area as described at N.J.A.C. 7:7-9.

Proposed N.J.A.C. 7:7-29.6(e)2 defines “moderate” seriousness as any violation which has caused or has the potential to cause substantial harm to human health or the environment. The Department is proposing to include violations which have caused or have the potential to cause substantial harm to safety, the environment, or the coastal regulatory program, or that substantially deviate from the applicable law and/or condition. Substantial deviations are further

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defined as including, but not limited to, those violations that are in substantial contravention of the law, requirement, and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement, and/or condition. Violations limited solely to upland areas that are not designated as a wetland or other special areas as described at N.J.A.C. 7:7-9 will be considered of moderate seriousness.

Proposed N.J.A.C. 7:7-29.6(e)3, which defines minor seriousness as applying to any violation not included in the definitions of major or moderate, is recodified from N.J.A.C. 7:7-8.6(e)3 without change.

Proposed N.J.A.C. 7:7-29.6(f) describes how the Department will determine the conduct of a violator as major, moderate, or minor and is recodified from N.J.A.C. 7:7-8.6(f) with amendments. “Major conduct” is defined at proposed N.J.A.C. 7:7-29.6(f)1. The Department is proposing language to make clear that all violations of Department permits or authorizations, including emergency authorizations, exemptions pursuant to N.J.S.A. 12:5-3.a (commonly referred to as “Zane exemptions”), applicability determinations, and/or Tidelands instruments, or any conditions thereof are presumed to be knowing violations; however, that presumption is rebuttable. “Moderate” conduct and “minor” conduct are defined at proposed N.J.A.C. 7:7-29.6(f)2 and 3, which are recodified from existing N.J.A.C. 7:7-8.6(f)2 and 3 with no changes in text.

Proposed new N.J.A.C. 7:7-29.6(g) sets forth the total amount of the penalty. For the reasons described above with regard to proposed N.J.A.C. 7:7-29.5(c), the total civil administrative penalty is the daily penalty determined by N.J.A.C. 7:7-29.6(d) through (f) above,

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multiplied by the number of calendar days during which each violation continues or remains in place without the required permit.

The Department is proposing to eliminate N.J.A.C. 7:7-8.6(g) since, as described above with regard to the proposed amendments to N.J.A.C. 7:7-8.6(d), proposed N.J.A.C. 7:7-29.6(d), the range of penalty amounts for each combination of seriousness and conduct is proposed to be eliminated. Therefore, there is no need to include criteria for adjusting the penalty amount within a range.

Proposed new N.J.A.C. 7:7-29.6(h) implements the EEEA and provides that the Department may add to a civil administrative penalty the amount of economic benefit in dollars that the violator realized as the result of not complying, or by delaying compliance, with an applicable law and/or condition.

### **N.J.A.C. 7:7-29.7 Civil penalties**

Proposed N.J.A.C. 7:7-29.7, which addresses civil penalties for violations of CAFRA, is recodified from N.J.A.C. 7:7-8.7, with amendments consistent with the EEEA to provide the Department with authority to assess civil penalties under all three coastal statutes. Also consistent with the EEEA, N.J.A.C. 7:7-29.7(a) is proposed to be amended to establish a civil penalty for individuals who knowingly make any false or misleading statement on any application, record, report, or other document required to be submitted to the Department.

Proposed N.J.A.C. 7:7-29.7(b) is amended to update the reference to the Penalty Enforcement Law. The sentence regarding jurisdiction to enforce the Penalty Enforcement Law is proposed to be modified to delete reference to the municipal court for consistency with the

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EEEE which removed jurisdiction from the municipal court to enforce the provisions of the Penalty Enforcement Law.

### **N.J.A.C. 7:7-29.8 Civil actions**

Proposed N.J.A.C. 7:7-29.8 is recodified from N.J.A.C. 7:7-8.13. It describes how the Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of the coastal statutes or any regulation, rule, permit, order, or settlement agreement adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner.

Under the existing rule, relief may include singly or in combination, the following: a temporary or permanent injunction; an assessment against the violator for any costs incurred by the Department in removing, correcting, or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or a requirement that the violator restore the site of the violation to the maximum extent practicable and feasible. The Department is proposing to amend the forms of relief as follows. Existing N.J.A.C. 7:7-8.13(a)2 and 3 and (b) are proposed to be deleted and replaced with four new forms of relief, all of which are provided for under the EEEA. Proposed new N.J.A.C. 7:7-29.8(a)2 incorporates the recovery of costs of any investigation, monitoring, and the reasonable costs of bringing such civil action. Proposed new N.J.A.C. 7:7-29.8(a)3 incorporates the recovery of costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action is brought. Proposed new N.J.A.C. 7:7-29.8(a)4

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incorporates the recovery, by the Department, of compensatory damages for any loss or destruction of natural resources or historic or archeological resources. Proposed N.J.A.C. 7:7-29.8(a)5 incorporates the execution of an order requiring restoration of the site to pre-violation conditions to the maximum extent practicable and feasible, or where not practicable or feasible, provision of off-site restoration as approved by the Department.

Proposed N.J.A.C. 7:7-29.8(b) states that the recovery of damages and costs under N.J.A.C. 7:7-29.8(a) shall be paid to the State Treasurer. This is a requirement of the EEEA.

#### **N.J.A.C. 7:7-29.9 Criminal action**

Consistent with the EEEA, proposed new N.J.A.C. 7:7-29.9 establishes the Department's ability to pursue criminal actions for certain violations of the coastal statutes or the CZM rules. Proposed N.J.A.C. 7:7-29.9(a) explains that the Department, upon petitioning the Attorney General, may bring a criminal action in court for certain violations of the coastal statutes, or of regulations, rules, permits, or orders adopted or issued pursuant thereto.

Proposed N.J.A.C. 7:7-29.9(b) provides that a person who knowingly, purposely, or recklessly violates the coastal statutes, or any regulation, rule, permit, or orders adopted or issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and subject to a fine ranging from \$5,000 to \$50,000 per day of violation, or imprisonment, or both. Under proposed N.J.A.C. 7:7-29.9(c), criminal action under this section can be brought if a person knowingly, purposely, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the coastal statutes, or any regulation, rule, permit, or order adopted or issued pursuant thereto; or if a person

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falsifies, tampers with, or purposely, recklessly, or knowingly renders inaccurate, any monitoring device or method required to be maintained under the coastal statutes, or any regulation, rule, permit, or order adopted or issued pursuant thereto.

#### **N.J.A.C. 7:7-29.10 Grace period applicability; procedures**

Proposed N.J.A.C. 7:7-29.10, which establishes grace period applicability and procedures, is recodified from N.J.A.C. 7:7-8.14 with amendments to reference all of the coastal statutes. Proposed N.J.A.C. 7:7-29.10(f) and Table A designate violations of the coastal statutes and the CZM rules as “minor” or “non-minor.” Existing Table A is proposed to be deleted and replaced with a new Table A is proposed at N.J.A.C. 7:7-29.10(f), within which the violations are arranged in citation order in accordance with the codification in the proposed CZM rules. The violations listed in the table reflect amendments proposed throughout the CZM rules, including to the conditions that apply to all permits and the new mitigation requirements in N.J.A.C. 7:7-17. In general, violations that constitute administrative or “paperwork” violations are proposed to be designated as “minor” (M). Minor violations are those that do not pose an actual or potential physical threat to the environment and can be corrected within the allowed grace period. Minor violations are subject to a 30-day grace period, with a possible extension to 90 days, before civil administrative penalties would be assessed for noncompliance. Violations that have the potential to cause or that do have an actual physical impact to coastal resources are designated as “non-minor” (NM). Non-minor violations are not subject to a grace period, and civil administrative penalties may be assessed upon discovery of noncompliance.

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For example, many coastal permits require that a conservation restriction be recorded to protect a sensitive resource, such as endangered species habitat, in perpetuity. The recording of the conservation restriction places the current and any future landowner on notice that the particular coastal resource is protected. Therefore, the failure to record the required conservation restriction is designated a non-minor violation because it has the potential to result in actual physical impact to the resource intended to be protected. However, the failure to provide verification that a required conservation restriction has been recorded, when it has indeed been recorded, can be easily corrected within the allowed grace period and does not impair protection of the resource. Therefore, the failure to submit required documentation that a conservation restriction has been recorded is designated a minor violation.

Other minor violations include failing to provide proper notice of an application, failure to submit required monitoring reports, failure to record a permit, and failure to notify the Department of a change in ownership of property subject to a permit. None of these infractions poses an actual physical threat to the coastal environment and all can be cured by completing the required administrative task. For example, if a development is built in strict conformance with a coastal permit but the permit is not recorded, no unauthorized physical harm to the environment has occurred. However, the administrative recordkeeping is lacking, such that a future owner would not know that a coastal permit was indeed issued for the construction. Once the permit is recorded, the administrative recordkeeping is complete; no physical harm to the coastal environment has resulted from the violation.

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Non-minor violations such as falsifying information or not providing all relevant information in a permit application, failing to perform required mitigation, or exceeding the work authorized by a permit threaten or result in environmental harm. A permit based on inaccurate or incomplete information is likely to result in environmental impacts because aspects of the project will not have been fully evaluated for compliance with the CZM rules. Some permits require mitigation to offset impacts authorized by a permit in order to preserve the integrity of the coastal environment; when the required mitigation is not performed, the coastal environment suffers. Exceeding the limits of a permit or authorization will result in a physical impact that was not evaluated by the Department during the permit review and/or an impact that the Department would not have authorized because it is inconsistent with the protection of coastal resources. The impacts for these various violations usually cannot be quickly or easily corrected and in some cases may be irreversible. Consequently, these violations are designated non-minor and subject to a civil administrative penalty assessment as a deterrent.

#### **N.J.A.C. 7:7-8.15 Severability**

Existing N.J.A.C. 7:7-8.15 contains the severability conditions for existing Subchapter 8, and as discussed in the summary of proposed N.J.A.C. 7:7-1.8, is proposed to be deleted.

#### **Appendix A. Illustration of the Waterward Side Of Development**

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**Appendix B. Illustration of Intervening Development for Proposed Development other than a Single-Family Home or Duplex**

**Appendix C. Illustration for Intervening Development for Proposed Single-Family Home or Duplex**

N.J.A.C. 7:7 Appendix A, Illustration of the Waterward Side of Development, Appendix B, Illustration of Intervening Development for Proposed Development other than a Single-Family Home or Duplex, and Appendix C, Illustration for Intervening Development for Proposed Single-Family Home or Duplex, depict how the waterward side of a development is determined and depict how intervening development is determined. Amendments are proposed to the headings of these appendices for consistency with the proposed rules.

**Appendix D. Coastal Wetlands Maps**

Proposed new N.J.A.C. 7:7 Appendix D, Coastal Wetlands Maps, contains the list of wetlands maps promulgated under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. Appendix D is proposed to be incorporated by reference at N.J.A.C. 7:7-2.3(c). The list of these maps is currently codified at N.J.A.C. 7:7-2.2(c). No changes in the list are proposed.

**Appendix E. Illustration Regarding the Construction of a Single Noncommercial Dock, Pier, or Boat Mooring Pursuant to N.J.A.C. 7:7-9.2(d)3ii**

Proposed new N.J.A.C. 7:7 Appendix E, Illustration Regarding the Construction of a Single Noncommercial Dock, Pier, or Boat Mooring Pursuant to N.J.A.C. 7:7-9.2(d)3ii, depicts how to

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determine the maximum length of a proposed single noncommercial dock or pier, or the location of a boat mooring within shellfish habitat at a single-family dwelling pursuant to N.J.A.C. 7:7-9.2(d)3ii. In determining the maximum length of the dock or pier, or location of the boat mooring under N.J.A.C. 7:7-9.2(d)3ii, a straight line is drawn from the outside corners of the outermost end of decking of the two nearest adjacent existing legal docks or piers. The infill dock pier or boat mooring may not extend past, or be located outshore of that line.

#### **Appendix F. Illustration of Construction of a New Commercial Marina Pursuant to N.J.A.C. 7:7-9.2(d)5**

Proposed new N.J.A.C. 7:7 Appendix F, Illustration of construction of a new commercial marina pursuant to proposed N.J.A.C. 7:7-9.2(d)5, depicts how an “infill” situation is determined. Under proposed N.J.A.C. 7:7-9.2(d)5, the construction of a new commercial “infill” marina within shellfish habitat is conditionally acceptable in certain circumstances. A commercial “infill” marina is a marina that is located between two legally existing and operating marinas where the distance between the docks or piers of the existing marinas closest to the proposed new “infill” marina property lines is no more than 500 feet.

#### **Appendix G. The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey’s Tidal Waters**

The Department’s dredging manual titled, “The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey’s Tidal Waters,” (the manual) was prepared by the Department’s Dredging Task Force. The manual has been used as part of the

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Department's program for review of proposed dredging activities and the management of dredged material. The manual provides Department staff and project applicants with information regarding sampling, testing, and permitting of proposed dredging projects and various dredged material management/disposal/use alternatives.

Because the manual is familiar to the regulated public in its existing format, the Department is proposing to incorporate the manual by reference into the proposed CZM rules in its current format as regulatory Appendix G. The Department has updated references, deleted text that is duplicative of text in the proposed CZM rules, and deleted certain attachments. Three attachments are not being proposed as part of the new appendix: existing attachment 2, which currently is part of Appendix A of the manual; existing Appendix C; and existing Appendix D. Existing attachment 2 contains surface water quality criteria, which are outdated. Existing Appendix C is the Dredged Material Data Form (DMDF-997), which identifies the specific sampling and testing requirements for a proposed dredging project and/or the management of the dredged material. Appendix C of the manual serves as a checklist for applicants proposing dredging projects. As the Department directs all applicants to the appropriate checklists in N.J.A.C. 7:7-23.2 and describes the information needed in N.J.A.C. 7:7-23.2 for proposed dredging projects, retaining Appendix C would be unnecessary and duplicative. Finally, existing Appendix D in the manual, which contains a brief description of applicable laws, statutes, regulations, and permits, is also proposed for deletion. Since the manual is proposed as an appendix to the CZM rules, this information is unnecessary and duplicative.

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An overview of Appendix G follows:

**Chapter I - Purpose:** Appendix G establishes the procedures under which the Department will conduct reviews of applications for permits for dredging activities in tidal waters of the State and the management of dredged material.

**Chapter II – Overview:** This chapter discusses the authorities under which the Department regulates dredging activities and the management/disposal/use of dredged material. It also includes a discussion of the permit review process and solid waste issues related to the regulation of dredged material.

**Chapter III – Information Required of All Projects:** This chapter identifies the information that must be submitted as part of an application for a permit for dredging or dredged material management activities. This chapter is divided into four sections: background information, geographical regions, testing exclusions, and sampling of sediments. The background information section identifies the information necessary for the Department to determine the specific sampling and testing required for a given project. The geographical region section divides the State into three geographical regions. These regions are used in the evaluation of a project and determining sampling requirements. The testing exclusion section sets forth scenarios where testing of the dredged material is not required. The sampling of sediment section discusses the development and implementation of sediment sampling plans and composting schemes.

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**Chapter IV – Management of Dredging Activities and Dredged Material:** This chapter addresses management of dredging activities and transport of dredged material, open water alternatives, upland confined disposal facilities, subaqueous disposal pits, and containment areas. The management of dredging activities and transport of dredged material section discusses the Department’s program for managing and regulating dredging operations, including the use of Best Management Practices and the overland transport of dredged material. The open water alternatives section discusses various open water disposal options. The USACE and USEPA regulate disposal of dredged material in ocean waters. The Department will coordinate its review of proposed ocean disposal operations with these agencies. The upland confined disposal facilities section discusses the design, construction, operation, closure, and permitting of upland confined disposal facilities. The subaqueous disposal pits section discusses the use of subaqueous disposal pits for contaminated dredged material. Long-term monitoring of the subaqueous disposal pit, its final cap, and the surrounding environment is required. The contaminated areas section discusses the construction and use of in water/aquatic containment areas of dredged material. The permitting requirements for these areas are similar to those associated with upland confined disposal facilities.

**Chapter V – Use Alternatives:** This chapter discusses potential use alternatives for dredged material. Potential uses include beach nourishment, structural and non-structural fill, habitat development, landfill cover, agricultural uses, and capping open water disposal sites. The

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suitability for dredged material for any of these uses will depend on its characteristics, particularly grain size and degree of contamination.

**Chapter VI - References:** This chapter provides a bibliography for all of the documents referenced within Appendix G. These documents are incorporated by reference into the appendix and chapter. As stated previously, in the proposed appendix, the Department has updated references that are cited in the manual. The Department has also included the web address from which these documents can be obtained. The following documents are incorporated by reference by Chapter VI:

“Beneficial Uses of Dredged Material.” Department of the Army - U.S. Army Corps of Engineers 1987. Beneficial Uses of Dredged Material, Engineer Manual EM 1110-2-5026, 30 June 1987.

“Confined Disposal Guidance for Small Hydraulic Maintenance Dredging Projects - Design Procedures.” Schaefer, T.E. and P.R. Schroeder 1988. “Confined Disposal Guidance for Small Hydraulic Maintenance Dredging Projects - Design Procedures.” U.S. Army Corps of Engineers Waterways Experiment Station Environmental Effects of Dredging Technical Note EEDP-02-8, December, 1988.

“Confined Disposal of Dredged Material, Engineer Manual.” Department of the Army - U.S. Army Corps of Engineers 1987. Confined Disposal of Dredged Material, Engineer Manual EM 1110-2-5027, September 1987.

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National Marine Fisheries Service. 1996. “Contaminant Levels in Muscle and Hepatic Tissue of Lobster from the New York Bight Apex.”

“Design Requirements for Capping”, Dredging Research Technical Note.” Palermo, M.R. 1991a. "Design Requirements for Capping", Dredging Research Technical Note DRP-5-03, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, February 1991.

“Dredged Material Evaluation and Disposal Procedures: A Users Manual for the Puget Sound Dredged Disposal Analysis (PSSDA) Program.” U.S. Army Corps of Engineers - Seattle District, U.S. Environmental Protection Agency - Region 10, Washington Department of Natural Resources, and Washington Department of Ecology 1997. Dredged Material Evaluation and Disposal Procedures: A Users Manual for the Puget Sound Dredged Disposal Analysis (PSSDA) Program, July 1, 1997.

“Engineer Manual for Hydrographic Surveying.” U.S. Army Corps of Engineers 2002. Engineer Manual for Hydrographic Surveying, EM 1110-2-1003, 31 January 1, 2002.

“Equipment and Placement Techniques for Capping,” Dredging Research Technical Note.” Palermo, M.R. 1991c. “Equipment and Placement Techniques for Capping,” Dredging Research Technical Note DRP-5-05, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, November 1991.

“Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.-Testing Manual (Inland Testing Manual).” U.S. Environmental Protection Agency and Department of the

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Army-U.S. Army Corps of Engineers, 1998. Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.-Testing Manual (Inland Testing Manual). EPA 823-B-98-004, February 1998.

“Evaluation of Dredged Material Proposed for Ocean Disposal - Testing Manual.” U.S. Environmental Protection Agency and Department of the Army - U.S. Army Corps of Engineers 1991. Evaluation of Dredged Material Proposed for Ocean Disposal - Testing Manual, EPA-503/8-91/0001, February 1991.

“Field Sampling Procedures Manual.” New Jersey Department of Environmental Protection 2005.

“Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal,” U.S. Army Corps of Engineers - New York District and Environmental Protection Agency - Region II 1992. “Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal,” Draft - 18 December 1992.

“Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring.” U.S. Environmental Protection Agency. “Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring,” OWRS QA-1, Office of Water Regulations and Standards.

“Handbook - Stream Sampling for Waste Load Allocation Applications.” U.S. Environmental Protection Agency.

“Incidence of Adverse Biological Effects Within Ranges of Chemical Concentrations in Marine and Estuarine Sediments.” Long, E.R., D.D. MacDonald, S.L. Smith, and F.D. Calder

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"Leachate Testing and Evaluation of Freshwater Sediments." Brannon, J.M., T.E. Meyers, and B.A. Tardy 1994. "Leachate Testing and Evaluation of Freshwater Sediments," Miscellaneous Paper D-94-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, April 1994.

"Long-term Evaluation of Plants and Animals Colonizing Contaminated Estuarine Dredged Material Placed in Upland and Wetland Environments." Brandon, D.L., C.R. Lee, and J.W. Simmers 1992. "Long-term Evaluation of Plants and Animals Colonizing Contaminated Estuarine Dredged Material Placed in Upland and Wetland Environments," Environmental Effects of Dredging Information Exchange Bulletin D-92-4, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, September 1992.

"Method 1613 – Tetra- through octa-chlorinated dioxins and furans by isotope dilution HRGC/HRMS." "U.S. Environmental Protection Agency 1994. Method 1613 – Tetra- through octa-chlorinated dioxins and furans by isotope dilution HRGC/HRMS. October 1994, 89 pp.

"Method 8290 – Polychlorinated dibenzodioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) by high-resolution gas chromatography/high-resolution mass

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“Monitoring Considerations for Capping.” Palermo, M.R., T. Fredette, and R.E. Randall 1992. “Monitoring Considerations for Capping,” Dredging Research Technical Note DRP-5-07, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, June 1992.

“Petrology of Sedimentary Rocks.” Folk, R.L. 1980. Petrology of Sedimentary Rocks, Hemphall Publishing Co., Austin, Texas.

“Potential Application of Geosynthetic Fabric Containers for Open-water Placement of Contaminated Dredged Material.” Clausner, J. M. Palermo, D. Banks, and J. Palmerton 1996.

“Potential Application of Geosynthetic Fabric Containers for Open-water Placement of Contaminated Dredged Material”, Environmental Effects of Dredging Technical Note EEDP-01-39, U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MS, March 1996.

“QA/QC Guidance for Sampling and Analysis of Sediments. Water. and Tissues for Dredged Material Evaluations.” U.S. Environmental Protection Agency and U.S. Army Corps of Engineers. 1995. QA/QC Guidance for Sampling and Analysis of Sediments. Water. and Tissues for Dredged Material Evaluations. EPA 823-B-95-001.

“Sampling and Analytical Methods of the National Status and Trends Program. National Benthic Surveillance and Mussel Watch Projects 1984 - 1992.”\_Sloan, N.; G. Adams; R. Pearce; D. Brown; and S-L Chan. 1993. Sampling and Analytical Methods of the National Status and

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“Sediment quality of the NY/NJ Harbor system.” Adams, D.A., J.S. O’Connor, and S.B. Weisberg 1998. Sediment quality of the NY/NJ Harbor system. EPA/902-R-98-001, March 1998.

“Sediment Resuspension During Clamshell Dredging, Dredged Material Research.” Raymond, G.J. 1983. “Sediment Resuspension During Clamshell Dredging”, Dredged Material Research D-83-1, U.S. Army Corps of Engineers Waterways Experiment Station, Vicksburg, MS, January 1983.

“Site Selection Considerations for Capping,” Dredging Research Technical Note.” Palermo, M.R. 1991b. “Site Selection Considerations for Capping,” Dredging Research Technical Note DRP-5-04, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, November 1991.

“Soil Washing Potential at Confined Disposal Facilities”, Environmental Effects of Dredging Information Exchange Bulletin.” Olin, T.J. and D.W. Bowman 1996. “Soil Washing Potential at Confined Disposal Facilities”, Environmental Effects of Dredging Information Exchange Bulletin D-96-3, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, September 1996.

“The Hydrologic Evaluation of Landfill Performance (HELP) Model: User’s Guide for Version 3. Schroeder, P.R., N.M. Aziz, C.M. Lloyd, and P.A. Zappi 1994. The Hydrologic Evaluation of Landfill Performance (HELP) Model: User’s Guide for Version 3. U.S.

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“Update: Evaluating Ecosystem Development at Contaminated Dredged Material Placement Sites.” Brandon, D.L., C.R. Lee, and J.W. Simmers 1996. “Update: Evaluating Ecosystem Development at Contaminated Dredged Material Placement Sites,” Environmental Effects of Dredging Information Exchange Bulletin D-96-2, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS, June 1996.

“U.S. Army Corps of Engineers Waterways Experiment Station Environmental Effects of Dredging Technical Note EEDP-04-2.” Palermo, M.R. 1985. Interim guidance for predicting quality of effluent discharged from confined dredge material disposal areas – test procedures. U.S. Army Corps of Engineers Waterways Experiment Station Environmental Effects of Dredging Technical Note EEDP-04-2, June 1985.

**Chapter VII - Glossary:** This chapter provides a list of terms and their meanings as used within this appendix. The terms “dredged material,” “dredging,” and “New Jersey Coastal Zone” currently in the manual are not proposed for inclusion within Appendix G, as these terms are proposed to be defined at N.J.A.C. 7:7-1.5. The definition in the manual’s glossary for “dredging” defines “maintenance dredging” and “new dredging.” These definitions have been retained in proposed Appendix G’s glossary but amended for consistency with proposed N.J.A.C. 7:7-12.6 and 12.7. A new definition for “environmental dredging” is proposed for consistency with proposed new N.J.A.C. 7:7-12.8. The definition of “mitigation” is amended for

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consistency with proposed N.J.A.C. 7:7-17.1, where mitigation is defined. The definition of “permit(s)” is amended to clarify that the definition in Chapter VII applies only to the term as it is used in the proposed appendix.

**Attachments:** Appendix G contains seven attachments:

**Attachment A – Sampling Methodology and Sampling Requirements:** This attachment discusses the required sediment sampling methodologies.

**Attachment B - Summary of Recommended Procedures for Sample Collection, Preservation, and Storage:** This attachment discusses proper procedures and holding times for sample collection. Currently, this information appears in Attachment 1 of Appendix A of the manual.

**Attachment C – Analytical Procedures and Associated Quality Assurance/Quality Control Measures:** This appendix presents the analytical procedures and associated quality assurance/quality control measures. Currently, this information appears as Appendix B in the manual.

**Attachment D - Target Analyte List:** This attachment provides a list of analytes and identifies the limits of detection in both water and soil. Currently, this information appears in Attachment 1 of Appendix B of the manual.

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**Attachment E - Retention Time References, Quantitation References, Relative Retention**

**Times, and Minimum Levels for CDDs and CDFs:** This attachment presents the retention times and quantification reference and relative retention times for compounds relative to water, solids and extracts. Currently, this information appears in Attachment 2 of Appendix B of the manual.

**Attachment F- Toxicity Equivalent Factor:** This attachment provides the toxicity equivalent factor guidance for specific compounds. Currently, this information appears in Attachment 3 of Appendix B of the manual.

**Attachment G – Dredged Material Acceptable Use Determination Process:** This attachment contains the Dredged Material Acceptable Use Determination Process, which the Department applies to authorize the use of dredged material. An acceptable use determination is attached to the Waterfront Development permit issued for a particular dredging operation or a dredged material processing facility. Currently, this information appears as Appendix E in the manual.

**Appendix H. Boundaries of Non-Mainland Coastal Centers in the CAFRA Area**

Proposed N.J.A.C. 7:7 Appendix H, Boundaries of non-mainland coastal centers in the CAFRA area, which sets forth the boundaries of the non-mainland coastal centers in the CAFRA area for the purposes of proposed N.J.A.C. 7:7-13, existing N.J.A.C. 7:7E-5, 5A, and 5B, is recodified from N.J.A.C. 7:7E, Appendix 3, Boundaries of non-mainland coastal centers in the

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CAFRA area, with minor changes reflecting the consolidation of the coastal rules into one chapter.

### **Appendix I. CAFRA Centers**

Proposed N.J.A.C. 7:7 Appendix I, CAFRA Centers, is a non-regulatory appendix containing the list of CAFRA centers the boundaries of which have been accepted by the Department in accordance with proposed N.J.A.C. 7:7-13 and have been incorporated into and shown on the CAFRA Planning Map. It is recodified from N.J.A.C. 7:7E Appendix 5, CAFRA Centers, with minor changes reflecting the consolidation of the coastal rules into one chapter.

### **Appendix J. Boundaries of Mainland Coastal Centers in the CAFRA Area Re-established under the Permit Extension Act of 2008 as Amended January 18, 2010, and September 19, 2012**

Proposed new N.J.A.C. 7:7, Appendix J, Boundaries of Mainland Coastal Centers in the CAFRA Area Re-established under the Permit Extension Act of 2008 as Amended January 18, 2010, and September 19, 2012, sets forth the boundaries of the mainland coastal centers whose March 15, 2007, expiration has been extended under the Permit Extension Act of 2008, and the January 18, 2010, and September 19, 2012, amendments to that Act (collectively, the Permit Extension Act). These boundaries are utilized for the purposes of proposed N.J.A.C. 7:7-13 (existing N.J.A.C. 7:7E-5 and 5B). In accordance with proposed N.J.A.C. 7:7-13.3(d) (existing N.J.A.C. 7:7E-5.3(c)), the non-porous cover allowed on a site within a mainland coastal center

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must be placed on the net land area of the site, as determined under proposed N.J.A.C. 7:7-13.3(e) (existing N.J.A.C. 7:7E-5.3(d)). The placement of non-porous cover on a site in a coastal center may be further restricted by proposed N.J.A.C. 7:7-13.19(d) and the Permit Extension Act. Specifically, the areas listed at proposed N.J.A.C. 7:7-13.19(d) (existing N.J.A.C. 7:7E-5B.6(e)) are not considered part of a mainland coastal center. In addition, the areas that are within the “environmentally sensitive area” defined by the Permit Extension Act were not extended by the Act and therefore are not part of the mainland coastal center. Information regarding the Permit Extension Act and the environmentally sensitive areas is provided on the Department’s webpage at [www.state.nj.us/dep/permitextension/peaesa.html](http://www.state.nj.us/dep/permitextension/peaesa.html). Environmentally sensitive areas include the State Planning Areas 5 (Environmental Sensitive) and 4B (Rural/Environmentally Sensitive), and critical environmental sites.

## **Chapter 7E. Coastal Zone Management Rules**

As stated previously, the Coastal Permit Program rules and the CZM rules will be integrated into a single chapter of rules, the Coastal Zone Management rules, N.J.A.C. 7:7, such that the permit application and issuance procedures will be in the same set of rules as the substantive review standards under which permitting decisions are made. To accomplish this consolidation, the Department is recodifying the existing CZM rules at N.J.A.C. 7:7E to N.J.A.C. 7:7, with amendments.

### **Subchapter 1. Introduction**

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N.J.A.C. 7:7E-1, Introduction, is proposed for recodification at N.J.A.C. 7:7-1 with amendments as discussed in the summary for proposed N.J.A.C. 7:7-1.

N.J.A.C. 7:7E-1.3, Severability, which addresses severability of the chapter, is proposed for repeal because it is redundant with proposed N.J.A.C. 7:7-1.8.

N.J.A.C. 7:7E-1.6, Mitigation, which addresses mitigation as a means of compensation for the loss or degradation of a particular natural resource, is proposed for repeal. It is being replaced by N.J.A.C. 7:7-17.2(a).

N.J.A.C. 7:7E-1.7, Correspondence with the Department, which contains the Department's address, is being proposed for repeal. This section is proposed to be replaced with proposed N.J.A.C. 7:7-1.6, Forms, checklists, information; Department address and website.

N.J.A.C. 7:7E-1.8, Definitions, contains the definitions for the current CZM rules. Many of the definitions are proposed to be replaced with definitions at N.J.A.C. 7:7-1.5, as discussed in detail in the summary for proposed N.J.A.C. 7:7-1.5.

### **Subchapter 3. Special Areas**

N.J.A.C. 7:7E-3, Special Areas, is recodified at N.J.A.C. 7:7-9 with amendments.

### **Subchapter 3A. Standards for Beach and Dune Activities**

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N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities, is recodified at N.J.A.C. 7:7-10 with minor changes to facilitate the consolidation of the coastal rules into one chapter.

### **Subchapter 3B. Information Required in Tidal Wetland and Intertidal and Subtidal**

#### **Shallows Mitigation Proposals**

Subchapter 3B sets forth the standards for mitigation proposals submitted pursuant to the intertidal and subtidal shallows rule, N.J.A.C. 7:7E-3.15, and the wetlands rule, N.J.A.C. 7:7E-3.27. The Department is proposing to repeal this subchapter and replace it with a new subchapter, proposed N.J.A.C. 7:7-17, Mitigation. See discussion at proposed N.J.A.C. 7:7-17.

### **Subchapter 3C. Standards for Conducting and Reporting the Results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and/or Endangered or Threatened Wildlife Species Habitat Evaluation**

N.J.A.C. 7:7E-3C, Standards for Conducting and Reporting the Results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and/or Endangered or Threatened Wildlife Species Habitat Evaluation, is proposed to be recodified at N.J.A.C. 7:7-11, with minor changes to facilitate the consolidation of the coastal rules into one chapter.

### **Subchapter 4. General Water Areas**

N.J.A.C. 7:7E-4, General Water Areas, is proposed to be recodified at N.J.A.C. 7:7-12 with amendments as discussed in the summary for proposed N.J.A.C. 7:7-12.

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## **Subchapter 5. Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas**

### **Subchapter 5A. Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area**

### **Subchapter 5B. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area**

N.J.A.C. 7:7E-5, Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas; N.J.A.C. 7:7E-5A, Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area; and N.J.A.C. 7:7-5B, Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area, are proposed to be consolidated and recodified at N.J.A.C. 7:7-13 with amendments.

## **Subchapter 6. General Location Rules**

N.J.A.C. 7:7E-6, General Location Rules, is proposed to be recodified at N.J.A.C. 7:7-14 with minor changes to facilitate the consolidation of the coastal rules into one chapter.

## **Subchapter 7. Use Rules**

N.J.A.C. 7:7E-7, Use Rules, is proposed to be recodified at N.J.A.C. 7:7-15 with amendments.

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### **N.J.A.C. 7:7E-7.3A Marina development**

N.J.A.C. 7:7E-7.3A, which contains the standards and guidelines for new marina development, is proposed for repeal. The standards and guidelines adopted as rule on July 18, 1994, (see 26 N.J.R. 2990(a), July 18, 1994) were based on a report entitled Developing a Marina in New Jersey: A Handbook, dated 1982, and prepared by Rogers, Golden & Halpern under contract by the Department. These guidelines were intended to assist applicants in the design of marinas and in the preparation of permit applications for marina related projects, addressing issues such as parking, restroom facilities, channel and slip sizes, marina related services, public access, and other marina development activities. These guidelines, nearly 18 years old, do not reflect current Department practices and guidance and are overly prescriptive and redundant.

The marina development rule has been criticized for being overly prescriptive with respect to its design criteria, especially with respect to restroom requirements. The rule is also redundant. Many of the provisions contained within the current rule are also addressed in other sections of the CZM rules, such as Resort/recreational uses (marinas), proposed N.J.A.C. 7:7-15.2, Coastal engineering, proposed N.J.A.C. 7:7-15.11, Water quality, proposed N.J.A.C. 7:7-16.3, and Traffic, proposed N.J.A.C. 7:7-16.12.

### **Subchapter 8. Resource Rules**

N.J.A.C. 7:7E-8, Resource Rules, is recodified at N.J.A.C. 7:7-16 with amendments.

### **Appendix 1. Design Standards and Specifications**

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Appendix 1 consists of 15 Figures which depict various special areas, waterbody types, and OCS oil and gas leasing areas. Under this proposal, the Department is proposing to repeal Appendix 1 because many of the figures are outdated and no longer relevant.

### **Appendix 3. Boundaries of Non-Mainland Coastal Centers in the CAFRA Area**

Appendix 3, Boundaries of Non-Mainland Coastal Centers in the CAFRA Area, currently codified as N.J.A.C. 7:7E Appendix 3, has been recodified, with minor changes to facilitate the combining of N.J.A.C. 7:7 and into one chapter, at N.J.A.C. 7:7 Appendix H.

### **Appendix 5. CAFRA Centers**

Appendix 5, CAFRA Centers, currently codified as N.J.A.C. 7:7E Appendix 5, has been recodified, with minor changes to facilitate the combining of N.J.A.C. 7:7 and 7:7E into one chapter, at N.J.A.C. 7:7 Appendix I.

## **Social Impact**

As stated above, the Department is proposing to combine N.J.A.C. 7:7E and 7:7 into one chapter, which will be headed Coastal Zone Management Rules and will be codified at N.J.A.C. 7:7. This consolidation will establish a comprehensive and streamlined set of rules governing land use in the coastal area. In addition to consolidation of the two sets of coastal rules with this proposal, and through anticipated rulemaking to amend the FWPA and FHACA rules, the Department intends to align the rules governing the permitting processes of all three programs to the extent the respective enabling statutes allow. The rules governing the process for obtaining a

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permit will be standardized across all three chapters and will be organized in a uniform order and format. These amendments, repeals, and new rules will make the rules easier to understand and use, and will lead to increased compliance.

This proposal includes two new permits-by-rule, one new general permit, amendments to several existing general permits, and the creation of two general permits-by-certification. The proposed two new permits-by-rule will have a positive social impact by facilitating regulated activities which the Department has determined will cause only minimal environmental impacts, provided the activity is conducted in accordance with the specific requirements of the permit-by-rule. The addition of these permits-by-rule will simplify the coastal permitting process for persons undertaking certain activities, such as the application of pesticides in coastal wetlands to control invasive plant species on an area of 0.25 acres or less in size or the construction a swimming pool, spa, or hot tub and associated decking on a bulkheaded lot without wetlands. Conducting activities in accordance with the requirements of the permit-by-rule will eliminate the need to apply for and receive a permit from the Department prior to conducting the activity, thus eliminating the application costs (both the application fee and costs associated with the preparation of the application) and time associated with the coastal permitting process.

The addition of one new general permit and proposed amendments to several existing general permits will also have a positive social impact by allowing a more efficient processing of applications for activities that the Department has determined do not need the level of review provided to an individual permit application if the activities are undertaken in accordance with the limitations specified in the particular general permit. The new general permit provides a

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simplified permitting process for those persons proposing to conduct activities involving the management of invasive plant species in coastal wetlands through the application of pesticide on an area greater than 0.25 acres in size while assuring that the Department is provided with the minimum information necessary to assure the activities will be conducted in a manner protective of the environment. In some instances, the proposed amendments to existing general permits expand the scope of the activities authorized under such permits. For example, the proposed amendments to the general permit for the construction of a single-family or duplex dwelling would allow the construction of two single-family or duplex dwellings rather than the currently allowed one single-family or duplex dwelling, and the proposed amendments to the general permits for the construction or reconstruction of bulkheads would allow the beneficial use of the dredged material as fill. In other instances, the amendments are intended to add flexibility, such as the proposed amendments to the general permit for the construction of piers, docks (including jet ski ramps), pilings, and boatlifts in man-made lagoons which allow for alternative dock design rather than prescribing specific plank spacing requirements.

The electronic submission and processing of applications for general permits-by-certification will have a positive social impact as it streamlines the permitting process for these applications and leverages technology so as to eliminate paperwork for individuals who, for example, are seeking authorization to reconstruct a bulkhead in place or to construct a pier on a man-made lagoon.

Marinas are an essential component of the State's waterfront communities as they provide necessary infrastructure and services, such as boat storage, repair and maintenance

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facilities, fuel sales, pumpout facilities, and retail sales of boating and related supplies, to the boating public. Over the past five years, the State has lost more than 500 marina slips and 17 marinas to development, such as condominiums or housing, resulting in a loss of jobs, revenue, and services. The proposed amendments allowing for the expansion of marinas and construction of new “infill” marinas in shellfish habitat in limited circumstances are intended to preserve existing marinas and the services they provide while minimizing their impacts to coastal resources. The proposed amendments allowing for the construction of a restaurant at certain new or existing marina facilities will expand the public’s opportunity for both visual and physical access to New Jersey’s tidal waters providing them with a positive social benefit. The preservation of marinas will also have a positive social impact on boaters as marinas will be able to continue to provide the services needed by the boating public.

Safe navigation is critical to the State’s recreational and commercial boating industry and marine commerce. Dredging is necessary to provide and maintain adequate water depths for the safe passage and berthing of recreational and commercial vessels; to facilitate the removal of contaminants from a water area as part of a remediation plan; or for the purposes of installing submerged pipelines or cables. To facilitate safe navigation by focusing on the significance of dredging, the proposed amendments and new rules provide clarity and flexibility in determining what types of activities are considered new and maintenance dredging; introduce a new type of dredging, environmental dredging; promote the State’s policy of encouraging the beneficial use of dredged material; and protect existing dredged material management areas so that these areas will be available for future use. These amendments and new rules will have a positive social

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impact on the recreational and commercial boating industry and marine commerce. Failure to maintain navigational depths creates a hazard to all boating traffic and can impede growth of, or actually reduce, commercial and recreational activities in coastal communities. Similarly, failure to maintain adequate water depths at marinas may impede recreational boating opportunities.

The proposed changes to the procedural requirements and time frames relating to public hearings for waterfront development and coastal wetlands permit applications are not expected to have a social impact. Provisions for public notice of applications and public comment periods will continue to afford adequate opportunity for public comment and input in permit decisions and will ensure that public concerns are addressed as part of the coastal permit review process. Furthermore, the Department will have the ability to hold a fact-finding meeting on a waterfront development or coastal wetlands permit application in cases where the scope of the project and public's interest so warrant.

### **Economic Impact**

The current Coastal Permit Program rules provide an orderly and efficient method for preparing, reviewing, issuing, and enforcing coastal permit applications and coastal permit decisions. These rules contain the permits-by-rule, general permits, and Long Branch Redevelopment Zone Permit. The current CZM rules represent the State's standards for the use, development, and protection of resources in New Jersey's coastal zone and are used in reviewing coastal permit applications under the Coastal Permit Program rules. The proposed amendments,

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repeals, and new rules consolidating the coastal rules into a single chapter, rewording and reorganizing text, eliminating repetitive provisions, and moving technical detail from the rules to application checklists will streamline the rules governing land use within the coastal area. Consequently, the rules will be easier to understand and use, thus having a positive economic impact by reducing the cost of compliance with the rules.

The proposed amendments, repeals, and new rules are anticipated to have a positive economic impact on persons seeking to perform regulated activities in the coastal area. The restructuring of N.J.A.C. 7:7 and the alignment of the CZM rules, FWPA rules, and FHACA rules will provide greater consistency amongst the land use rules, thus making compliance with the multiple land use rules on a single site easier, which will be a benefit to prospective applicants.

The proposed two new permits-by-rule will have a positive economic impact on persons proposing certain activities as they will reduce the costs associated with obtaining a coastal permit. By permitting certain activities through a permit-by-rule, the costs associated with the application fee and the preparation of a permit application are eliminated, as no formal application to the Department is required provided the requirements of the permit-by-rule are satisfied. The proposed amendment to the existing single-family general permit and addition of one new general permit will also have a positive economic impact on persons proposing activities subject to the general permit. For those conducting activities that would now be covered by the proposed new general permit, there will be a reduction in the application fee and the permit application requirements as compared to the process applicable to obtaining an individual permit.

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The proposed amendments to the general permits for the construction or reconstruction of bulkheads within V zones will facilitate the cost-effective repair and reconstruction of economically important facilities and structures in areas damaged by Superstorm Sandy or that might be damaged in future flood events. For example, while the requirement that splash pads be part of the design of a bulkhead in a V zone was based on the best engineering expertise available at the time of the adoption of this requirement, subsequent experience has shown that such pads may not be structurally appropriate in all situations.

As stated previously, as part of the transformation of the operations of the land use permitting programs, the Department is proposing two general permits-by-certification as part of its electronic permitting system. The processing of permits electronically will reduce the Department's review and processing time, thereby benefitting applicants both temporally and economically.

The Department is proposing to allow for the one-time extension of a valid general permit authorization or individual waterfront development individual permit for activities occurring waterward of the mean high water line for an additional five-year period and is proposing a new fee for the processing of an extension request. The proposed fee for the extension of a general permit authorization is \$240.00 and the fee for an extension to a waterfront development individual permit for activities occurring waterward of the mean high water line is 25 percent of the original application fee with a maximum fee of \$3,000. As noted in the section-by-section summary, these fees are consistent with those of the FWW rules. The ability to extend a valid permit for a fee that is significantly less than the fee associated with a

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new permit application is economically beneficial for applicants whose permit may otherwise expire.

Proposed amendments to the enforcement subchapter, N.J.A.C. 7:7-29, reflect the requirements of the EEEA. The EEEA and the proposed amendments herein outline the Department's enforcement responsibilities under the coastal permitting program. There will be no general economic impact as a result of the proposed amendments in N.J.A.C. 7:7-29. Additionally, there will be no individual economic impact for those applicants and permittees who comply with the Department's permitting requirements and therefore are not subject to the penalties associated with violations. For violators, however, there is a likely negative economic impact resulting from their violation.

Marinas are an essential component of the State's waterfront communities as they provide necessary infrastructure and services to the boating public. However, over the past several years, the State has seen a decrease in the number of marina facilities as evidenced by the Marine Trades Association of New Jersey statistics which indicated that as of 2011, New Jersey had lost over 500 boat slips and 17 marinas. New Jersey's marina industry has been further impacted by Superstorm Sandy, with docks, marine equipment, and buildings significantly damaged or destroyed. The Marine Trades Association of New Jersey conducted a survey to assess the damage to marinas and recreational boating related businesses affected by Sandy. One hundred nine businesses responded to the survey. As reported by the Marine Trades Association of New Jersey, damage to facilities, including buildings, property, and docks, exceeded \$35.5 million, while total losses of inventory, equipment, supplies, buildings, property and docks exceeded \$54.6 million. Using the information provided from the surveys submitted, the Marine

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Trades Association of New Jersey estimates that including anticipated damages to other marinas that did not complete the survey, uninsured losses are in excess of \$100 million. The amendments proposed herein are intended to preserve existing marinas, make them economically viable, and assist in the continued recovery of marinas from Superstorm Sandy. The proposed amendments to allow the expansion of marinas within shellfish habitat in limited situations will have a positive economic impact on certain marinas while minimizing environmental impacts. Further, the proposed amendments allowing for the construction of a restaurant at certain new or existing marina facilities are intended to assist in the economic recovery of marinas after Superstorm Sandy and to preserve existing marinas by providing them with a year-round use making them more economically viable.

Dredging is necessary to provide and maintain adequate water depths for the safe passage of recreational and commercial vessels. It is anticipated that the proposed amendments to the dredging and dredged material management rules will have a positive economic impact on prospective dredging applicants, dredgers, and dredged material facility operators. The proposed amendments and new rules also promote the State's policy of encouraging the beneficial use of dredged material. For example, in many areas of the State, existing dredged material management areas are at capacity or will be in the near future, preventing needed dredging projects from moving forward due to a lack of disposal facilities. As a result, negative economic impacts can occur through the loss of use of the areas in need of dredging, such as navigation channels, marinas and ports. The beneficial use of dredged material that was previously placed in dredged material management areas will result in added capacity at such facilities allowing needed dredging projects to move forward.

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The Department does not anticipate that the administrative alignment of the mitigation requirements of the Coastal Zone Management rules, N.J.A.C. 7:7, with the Freshwater Wetlands rules, N.J.A.C. 7:7A, will have any significant general economic impact. The administrative alignment of these requirements will help streamline the rules. The requirement to provide mitigation currently exists within both the Coastal Permit Program Rules and the Coastal Zone Management Rule, and is therefore not a new requirement. In addition to aligning the administrative requirements of these rules, the proposed amendments also provide clarity and consistency for mitigation projects proposed in New Jersey. Further, as part of the administrative alignment, the proposed amendments to the mitigation subchapter provide several additional mitigation alternatives that may decrease the cost of mitigation.

### **Environmental Impact**

It is anticipated that the consolidation of the coastal rules into a single chapter will have a positive impact on the environment as it is expected to increase compliance with rules that address the potential impacts of development on numerous land and water resources.

The proposed new permits-by-rule, general permits-by-certification, and general permits, and proposed amendments to existing general permits contain specific acceptability standards and requirements that will ensure the environmental impact of new developments and activities authorized under these permits is minimized. The activities regulated by these proposed new permits-by-rule, general permits-by-certification, and general permits, and proposed amendments to existing general permits will have only minimal adverse environmental impacts when

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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 areas from inappropriate development.

The proposed new permit-by-rule and general permit regulating the management of invasive plant species within wetlands will ensure greater protection of wetlands and the wildlife species that inhabit them.

The proposed new permits-by-rule and general permits-by-certification, and the amendments to general permits that enable property owners to install or construct accessory structures on their property by, for instance, placing a pool, spa, or hot tub on their bulkheaded lot or constructing a pier on a man-made lagoon, will have minimal environmental impacts. The requirements under which the regulated activities are permitted to commence will assure that special areas and special aquatic habitats remain protected, and in some instances gain further protection, because they limit the scope of the activities and where they may occur.

The proposed amendments and new rules relating to beneficial use of dredged material and the proposed new special area protecting existing dredged material management areas will have a positive environmental impact in that these dredged material management areas will be preserved, reducing the need for the creation of new management areas. The beneficial use of dredged material provides renewed capacity by opening up existing dredged material management areas to accept dredged material from future dredging projects. The proposed new special area rule protecting existing dredged material management areas will have a positive environmental impact in that these areas will be preserved and new dredged material management areas, which in most cases must be located within close proximity to the proposed

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dredging activity, may not be necessary. As stated in the summary of proposed N.J.A.C. 7:7-12.6, the proposed amendments to the maintenance dredging rule will result in more dredging projects being considered maintenance dredging. Any adverse impacts resulting from amendments making more dredging activity possible will be minimized by conditions applicable under the permits contained in this chapter, as described in the summary of those proposed amendments.

The proposed amendments expanding the general permit for the construction of a single-family home or duplex to apply to the construction of one or two single-family homes or duplexes will have a minimal environmental impact. It is common for the Department to receive applications for the construction of two single-family homes or duplexes associated with the subdivision of a single lot. Typically, these lots are small bulkheaded lots located in existing residential backbay areas, are already disturbed, and, in some instances, may have an existing single-family home that will be replaced with two homes.

The proposed amendments to the general permits addressing the construction and reconstruction of bulkheads will continue to ensure the environmental impact associated with the construction of bulkheads in V zones authorized under these general permits is minimized. The removal of the requirement that a splash pad be provided will allow flexibility in the design of the bulkhead and is intended to address the potential undermining of the structure which could result in erosion of the land behind the bulkhead into the adjacent water body. Because the rule will continue to require that a professional engineer certify that the structure will be able to withstand V-force waves, environmental impacts associated with the failure of the bulkhead will be negated.

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The proposed amendments to the shellfish habitat rule allowing for the expansion of marinas and construction of new marinas in shellfish habitat in infill situations may have an impact on the shellfish growing water classification of the waters located within the new marina or marina expansion as the waters will be automatically condemned and reduced to “prohibited” status pursuant to N.J.A.C. 7:12-2.1(a)1ii if they are not already condemned or “prohibited.” However, because the proposed amendments prohibit dredging associated with the new marina construction or marina expansion, the shellfish and habitat will remain. This proposed change is intended to preserve existing marinas and allow for the construction of new marinas in limited situations where resources are already currently affected. In both instances, mitigation is required as a means of compensating for adverse impacts to shellfish habitat and associated ecosystems. The Department expects positive environmental impacts to result from shellfish habitat restoration, enhancement, and research projects funded in whole or in part by moneys deposited into the dedicated account for shellfish habitat mitigation. Together, the requirements of the amended rule will ensure that the impacts to shellfish habitat and the marine ecosystem are minimized.

The proposed new mitigation subchapter will have a positive environmental impact. Currently, New Jersey has two different mitigation standards: one for freshwater wetlands and one for tidal wetlands. Under this proposal, the mitigation standards of the CZM rules will be amended to reflect the standards and concepts of the FWPA rules as those rules reflect current science and are at least as stringent and in some cases more stringent than the Federal standards used throughout the country. This will provide consistency for all mitigation projects throughout

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the State and will increase the likelihood of success, thereby having a positive environmental benefit.

The proposed amendments to the enforcement subchapter, proposed N.J.A.C. 7:7-29, will have a positive environmental impact because they will ensure that those proposing to conduct regulated activities do so in accordance with CAFRA, the Waterfront Development Law, the Wetlands Act of 1970, and the proposed CZM rules at N.J.A.C. 7:7. The strengthened enforcement capabilities and increased maximum penalties incorporated into the rules to reflect the Environmental Enforcement Enhancement Act amendments to the above statutes are anticipated to have a positive environmental impact through increased deterrence and restoration of illegally disturbed regulated areas. Further, the penalties have been structured commensurate with the real or potential environmental or programmatic impact in order to better protect coastal resources.

Overall, the proposed amendments will enable the Department to implement the coastal management program in a more effective and efficient manner. 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.

### **Federal Standards Statement**

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to

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include in the rulemaking document a Federal standards analysis. The Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq., (Federal CZMA) does not set specific regulatory standards or requirements for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. The general requirements for what a state coastal management program must include are found at 15 CFR Part 923. The requirements do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. The guidelines simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the proposed new rules, amendments, and repeals do not exceed any Federal standards or requirements of the Federal CZMA.

As discussed previously in the summary of proposed N.J.A.C. 7:7-17, in 2008, the USEPA and USACE adopted the Federal Mitigation Rule. The Federal Mitigation Rule contains the same standards for both freshwater and tidal wetlands located within New Jersey's coastal zone. In 1993, the Department entered into an assumption agreement with the USEPA to administer the permit program established pursuant to Section 404 of the Federal Clean Water Act. The assumption agreement obligates the State to maintain program compatibility, which means the State's freshwater wetland regulatory program must be as strict as the Section 404 Federal program. While the Federal CZMA does not contain such a requirement for coastal wetlands, the Department is proposing to amend the mitigation standards of the CZM rules to reflect the standards and concepts of the FWPA rules because they reflect current science. The

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proposed changes to the mitigation standards in the CZM rules do not exceed the standards in the Federal Mitigation Rule.

### **Jobs Impact**

The Department anticipates that the proposed new rules, amendments, and repeals will have a positive effect on the number of jobs in the State. As New Jersey continues to recover from the devastating effects of Superstorm Sandy, the amendments, repeals, and new rules proposed herein will further streamline the Department's implementation of its coastal program as well as the permitting process, allowing employers to invest more time, energy, and resources into their businesses and employees. The proposed amendments, repeals, and new rules streamlining the permitting process through the creation of new permits-by-rule and the processing of approvals through the Department's electronic permitting system will result in the elimination of the costs associated with submitting paper applications for permits. The proposed amendments, repeals, and new rules consolidating the coastal rules into a single chapter, rewording and reorganizing text, eliminating repetitive provisions, and moving technical detail from the rule to application checklists will streamline the rules governing land use within the coastal area. This will result in lesser costs for the preparation of permit applications, quicker processing times, and a reduction in compliance costs thereby allowing businesses to invest that time and money into expanding their businesses. The rules will also be easier to understand and use, thus having a positive effect on small businesses. This will allow expanding businesses to invest this money into their business, and thereby facilitate job growth.

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The Department anticipates that the proposed amendments and new rules relating to marinas and dredging will have a positive impact on jobs. The proposed amendments allowing for the expansion of existing marinas and the construction of new marinas in limited infill situations in shellfish habitat, and the amendments allowing for the construction of a restaurant at certain marina facilities, will provide marina owners with the opportunity to grow their business which may in turn result in additional employment opportunities. As a result of Superstorm Sandy, many navigation channels, boat slips, and marinas have become unusable. The proposed amendments to the CZM rules concerning dredging and dredged material management modifying the definition of maintenance dredging, protecting existing dredged material management areas, and encouraging the beneficial reuse of dredged material will facilitate dredging activities and the demand for dredging related jobs.

### **Agriculture Industry Impact**

The Department does not anticipate that the amendments, repeals, and new rules will have an impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules and amendments will positively impact a significant number of “small businesses,” as that term is defined in the Act. The

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proposed amendments consolidating the coastal rules into a single chapter, rewording and reorganizing text, eliminating repetitive provisions, and moving technical detail from the rules to application checklists will streamline the rules governing land use within the coastal area. Consequently, the rules will be easier to understand and use, thus having a positive effect on small businesses. The proposed new permits-by-rule, general permits-by-certification, and general permits, and amendments to existing general permits will provide greater flexibility to small businesses that are planning to undertake regulated activities within the coastal area. They will additionally simplify, streamline, and reduce the costs associated with the permitting process for small businesses seeking to perform certain regulated activities in the coastal zone. For small businesses seeking to comply with the criteria of the proposed permits-by-rule, the costs associated with applying for a coastal permit, which would otherwise be required to perform these regulated activities, would be eliminated because no plans, application forms, photographs, or application fees must be submitted to perform the regulated activities subject to the permits-by-rule. Similarly, the proposed general permits-by-certification will eliminate the submission of a paper application to the Department, reduce the cost associated with filing a paper application, and greatly reduce the review time thereby making the process much more cost-effective and expedient for small businesses proposing to reconstruct a legally existing functioning bulkhead in-place or upland of the existing bulkhead or proposing to construct piers, docks, pilings, or boatlifts in man-made lagoons.

The proposed new rules and amendments will not impose additional reporting or recordkeeping requirements on small businesses. The proposed amendments to the shellfish habitat rule allowing for the expansion of an existing marina or construction of a new marina

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within shellfish habitat in limited situations will benefit small business marina owners proposing such expansion or new construction as they will be able to expand their business. The proposed amendments to the resort/recreational rule allowing for the construction of a restaurant at certain marina facilities will assist small business marina owners in recovering from the economic impacts resulting from Superstorm Sandy and will provide them with a year-round use making their marinas more economically viable. Further, the proposed repeal of the marina development rule will provide marina owners with more flexibility in the design of their marinas.

The proposed amendments to the dredging and dredged material management rules will affect water-dependent business owners because the proposed changes will make it easier for these property owners to maintain water access to their businesses. It is anticipated that the proposed amendments to the definition of maintenance dredging will allow more dredging projects to be considered maintenance dredging. The proposed new dredged material management area rule and proposed amendments relating to the beneficial use of dredged material will protect these areas and increase their longevity for future use thereby providing small business marina owners with dredged material placement opportunities.

The proposed amendment to the enforcement subchapter will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses. Small businesses will incur penalties only if they are determined to be in violation of CAFRA, the Waterfront Development Law or the Wetlands Act of 1970.

### **Housing Affordability Impact Analysis**

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In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed new rules, amendments, and repeals to determine the impact, if any, on the affordability of housing.

The proposed amendments, repeals, and new rules consolidating the coastal rules into a single subchapter, clarifying text, and simplifying the rules are not anticipated to have any effect on housing affordability.

As indicated in the Economic Impact statement, the proposed streamlining of the rules governing land use permitting in the coastal area will make the rules easier to understand and use, having a positive economic impact by reducing the cost of compliance. Further, the proposed changes to the scope of the existing single-family general permit to allow for the construction of two single-family homes or duplexes under that general permit will result in a reduction in the application fee and the permit application requirements as compared to the process applicable to obtaining an individual permit. However, the Department believes there is an extreme unlikelihood that the economic impacts associated with the streamlining of the rules governing land use permitting in the coastal area and the changes to the scope of the existing single-family general permit to two single-family homes or duplexes would evoke a change in the average costs associated with housing.

### **Smart Growth Development Impact Analysis**

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In accordance with N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed new rules, amendments, and repeals to determine the impacts, if any, on housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan (State Plan). The proposed new rules, amendments, and repeals standardize the rules governing the process for obtaining a permit across all land use rules as well as organize the rules in a uniform order and format. Further, the proposed changes to the scope of the general permit for the construction of one single-family home or duplex to allow construction of two single-family homes or duplexes under this general permit may result in some changes for specific property owners. However, the proposed changes are not anticipated to have an overall impact on housing. Therefore, while these changes will result in some cost savings, such savings will not be large enough to evoke a change in housing production in Planning Areas 1 or 2 or within designated centers.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:7-1.1, 1.5, 1.7, 1.8, 1.9, 1.11, 3, 4, 5, 6, 7.3, 7.3A, 8.8, 8.9, 8.10, 8.11, 8.12, and 8.15; and 7:7E-1.3, 1.6, 1.7, 1.8, 3B, 5A.1, and 7.3A, and 7:7E Appendix 1.

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

## CHAPTER 7

### COASTAL [PERMIT PROGRAM] **ZONE MANAGEMENT** RULES

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## SUBCHAPTER 1. GENERAL PROVISIONS

[7:7E]7:7-1.1 Purpose [and scope]

(a) This chapter [presents] **establishes** the [substantive] rules of the Department [of Environmental Protection] regarding the use and development of coastal resources[, to be used primarily by the Land Use Regulation Program in the Department]. **The rules are used in reviewing [permit] applications for coastal permits under the Coastal Area Facility Review Act [(CAFRA)], N.J.S.A. 13:19-1 et seq. [(as amended to July 19, 1993)] (CAFRA permits), the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq. (coastal wetlands permits), and the Waterfront Development Law, N.J.S.A. 12:5-3[.] (waterfront development permits). The rules are also used in the review of [Water Quality Certification (] water quality certificates subject to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341[)], and Federal [Consistency Determinations (] consistency determinations under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. § 1456[)].** [Requests for Water Quality Certification shall also be reviewed in accordance with other applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B.] The rules also provide a basis for recommendations by the Program to the Tidelands Resource Council on applications for riparian grants, leases, and licenses.

(b) [In 1977, the Commissioner of the Department of Environmental Protection submitted to the Governor and Legislature the Coastal Management Strategy for New Jersey CAFRA Area (September 1977), prepared by the Department as required by CAFRA, N.J.S.A. 13:19-16, and submitted for public scrutiny in late 1977. The Department revised the Coastal Management

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Strategy and published the “New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement” in May 1978. The proposed program covered the CAFRA area only. In August 1978, the Governor submitted the revised “New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement” for Federal approval. The approval was received in September 1978. In May 1980, the Department submitted further revisions, published as the “Proposed New Jersey Coastal Management Program and Draft Environmental Impact Statement.” These revisions incorporated the northern waterfront area, Delaware River area and New Jersey Meadowlands into the Program. In August 1980, the Department submitted the “New Jersey Coastal Management Program and Final Environmental Impact Statement” for Federal approval. The approval was received in September 1980.] The Department interprets the “public health, safety, and welfare” clause in CAFRA (N.J.S.A. 13:19-10.f) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-4.d) as providing for full consideration of the national interest in the wise use of coastal resources as required under the Federal Coastal Zone Management Act (16 U.S.C. [§ 1450] §§ **1451 et seq.**).

(c) Both the **New Jersey** Coastal Management Program and the Coastal Zone Management [rules] **Rules** are founded on the eight broad coastal goals described at (c)1 through 8 below. The coastal goals express results that the **New Jersey** Coastal Management Program strives to attain. Each goal is supplemented by related policies that set forth the means to realize that goal. The Coastal Zone Management [rules] **Rules**, including the coastal goals and policies set forth below, are enforceable policies of **the** New Jersey[’s] Coastal Management Program as approved

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under the Federal Coastal Zone Management Act (16 U.S.C. [§ 1450] §§ **1451 et seq.**). The New Jersey Coastal Management Program goals and supplemental policies are:

1. – 3. (No change.)

4. Sustained and revitalized water-dependent uses.

i. – iii. (No change.)

iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredged material management practices and preserve historic dredged material placement sites;

5. – 8. (No change.)

(d) (No change.)

(e) The location rules (N.J.A.C. [7:7E-3 through 6] **7:7-9 through 14**), use rules (N.J.A.C. [7:7E-7] **7:7-15**), and resource rules (N.J.A.C. [7:7E-8] **7:7-16**) stem from the coastal goals at (c) above. The Department does not expect each proposed use of coastal resources to involve all location rules, use rules, and resource rules. Decision-making on proposed actions involves examining, weighing, and evaluating complex interests using the framework provided by this chapter. The Coastal Zone Management [rules] **Rules** provide a mechanism for integrating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process. In this process, interpretations of terms, such as “prudent,” “feasible,”

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“minimal,” “practicable,” and “maximum extent,” as used in a rule or a combination of rules, may vary depending upon the context of the proposed use, location, and design.

[7:7-1.2 Reserved]

[7:7E]7:7-1.2 [Jurisdiction] **Scope**

(a) [General:] This chapter shall apply to [six categories, as defined in N.J.A.C. 7:7E-1.2(c) through (h), of] actions [or] **and** decisions by the Department, **as described at (d) through (h) below**, on uses **and development** of coastal resources within or affecting the coastal zone, **which is described at (b) below**[:].

1. Coastal Permits;
2. Program Management Actions;
3. Consistency Determinations;
4. Financial assistance;
5. Department management actions affecting the coastal zone; and
6. Department planning actions affecting the coastal zone.]

(b) [Geographic scope of the New Jersey coastal zone:] This chapter shall apply geographically to the New Jersey coastal zone, which [is defined as] **comprises**:

1. The [coastal area defined in the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.] **CAFRA area**;
2. Coastal waters, which are any tidal waters of the State and all lands lying thereunder.

Coastal waters of the State of New Jersey extend from the mean high water line out to the three-

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geographical-mile limit of the New Jersey territorial sea, and elsewhere to the interstate boundaries of the States of New York, and Delaware and the Commonwealth of Pennsylvania, **except as provided at (c) below;**

3. All lands outside of the [coastal] **CAFRA** area [as defined by CAFRA] extending from the mean high water line of a tidal water body 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 from the mean high water line;

4. – 5. (No change.)

**(c) In accordance with the decree of the United States Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008), the State of New Jersey may grant and thereafter exercise exclusive governing authority over ordinary and usual riparian rights for the construction, maintenance, and use of wharves and other riparian improvements appurtenant to the eastern shore of the Delaware River within the 12-mile circle and extending outshore of the mean low water line. The 12-mile circle is the circle the radius of which is 12 miles, and the center of which is the building used prior to 1881 as the courthouse at New Castle, Delaware, the arcs of which are as set forth in the decree of the United States Supreme Court in *New Jersey v. Delaware*, 295 U.S. 694 (1935).**

[(c) Coastal permits:] **(d)** This chapter shall apply to all **coastal permits**.[:

1. Waterfront Development permits (N.J.S.A. 12:5-3);

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2. Tidal wetlands permits (N.J.S.A. 13:9A-1 et seq.); and

3. CAFRA permits (N.J.S.A. 13:19-1 et seq.)]

[(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the coastal zone to the extent statutorily permissible:

1. Permits for use of a floodway (N.J.S.A. 58:16A-50 et seq.);

2. Promulgation of regulations concerning land use in flood hazard areas (N.J.S.A. 58:16A-50 et seq.);

3. Certification pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. 1251 et seq. (Water Quality Certification); and

4. Permits for activities regulated pursuant to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.)]

(e) [Consistency determinations:] This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies within or affecting the coastal zone, including, but not limited to[, determinations of Federal consistency under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq.,] **Federal consistency determinations**, determinations of consistency or compatibility under the **Federal Coastal Zone Management Act**, comments on Draft and Final Environmental Impact Statements prepared under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq., and comments on other public and private plans, programs, projects, and policies. **This chapter shall also apply to decisions on proposed activities that require a water quality certificate. Requests**

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**for water quality certificates shall also be reviewed in accordance with all applicable statutes and regulations administered by the Department including the Surface Water Quality Standards, N.J.A.C. 7:9B.**

- 1. An activity requiring a Federal consistency determination may also require a coastal permit. In this instance, the coastal permit is the Federal consistency determination.**
- 2. An activity requiring a water quality certificate may also require a coastal permit. In this instance, the coastal permit will include the water quality certificate.**
- 3. A water quality certificate not issued in conjunction with a coastal permit shall be valid for five years from the date of issuance or for the duration of the underlying Federal permit (without renewals), whichever period is shorter.**
- 4. A Federal consistency determination or a water quality certificate issued in conjunction with an authorization under a coastal general permit-by-certification or a general permit shall be valid for the duration of that authorization.**
- 5. A Federal consistency determination issued in conjunction with an individual coastal permit shall be valid for the duration of that individual permit.**

(f) [Financial assistance decisions:] This chapter shall apply to State aid financial assistance decisions by the Department under the Shore Protection Program and Green Acres Program within the coastal zone, to the extent permissible under existing statutes and regulations.

(g) [Department management activities: In addition to the management activities noted at

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N.J.A.C. 7:7E-1.1, this] **This** chapter shall apply, to the extent statutorily permissible, to [the following] Department management actions, including permit decisions, approvals, certifications, [and] conveyances, **and compliance activities**, in or affecting the coastal zone.[:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.);

2. Division of Water Quality:

i. Point source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.);

ii. Wastewater treatment works, sewage collection systems, and outfall sewers (N.J.S.A. 5:10A-6);

iii. Wastewater Treatment Construction Grants (N.J.S.A. 26:2E-1 et seq., P.L. 1985, c.329, and N.J.S.A. 58:11B-1 et seq.);

iv. Sewerage connection ban exemptions (N.J.S.A. 58:10A-4);

v. Designation of Critical Sewerage Areas (N.J.S.A. 58:11-44);

vi. Fifty or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23); and

vii. Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).

3. Land Use Regulation Program:

i. Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.); and

ii. Activities under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.);

4. Water Supply Administration:

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i. Diversion of surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.);

ii. Diversions for water supply (N.J.S.A. 58:1A et seq.);

iii. Drilling of wells (N.J.S.A. 58:4A-14);

iv. Construction of new or modified public water supply sources, treatment plants, and distribution systems (N.J.S.A. 58:12A-1 et seq.); and

v. Installation of or maintenance of a physical connection between an approved public potable water supply and an unapproved supply (N.J.S.A. 58:11-9.1 to 9.11 and 58:12A-1 et seq.);

5. Bureau of Non-Point Pollution Control: Discharge of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.);

6. Air Quality Regulation:

i. Construction, installation or alteration of control apparatus or equipment (N.J.S.A. 26:2C-9.2);

ii. Operation of control apparatus or equipment (N.J.S.A. 26:2C-9.2); and

iii. Variances to exceed air quality standards (N.J.S.A. 26:2C-9.2);

7. Division of Solid and Hazardous Waste: Management of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.);

8. Green Acres and Division of Parks and Forestry:

i. Regulations concerning use of State-owned lands (N.J.S.A. 13:1L-19);

ii. Designation of State-owned lands for inclusion in the Natural Area system (N.J.S.A.

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13:1B-15.12a et seq.);

iii. Allocations of Green Acres Grants (N.J.S.A. 13:8A-19 et seq.); and

iv. Inclusion of river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).

9. Division of Fish and Wildlife: Regulations concerning use of land and water areas under the control of the Division (N.J.S.A. 13:1B-30 et seq., 23:1-1 et seq., 23:4-28);

10. Natural and Historic Resources, Engineering and Construction: Management of dams (N.J.S.A. 58:4-1); and

11. All Divisions: Management of State-owned lands by the Department.]

(h) [Department planning actions:] This chapter shall provide the basic policy direction for [the following] planning actions undertaken by the Department in the coastal zone as the lead state agency for Coastal Management under Section 306 of the Federal Coastal Zone Management Act.

[1. Land Use Regulation Program;

i. Coastal zone management;

2. Natural and Historic Resources Programs:

i. Navigational dredging; and

ii. Shore protection.

3. Division of Watershed Management:

i. Areawide water quality management (“208”); and

ii. Allocation of planning grants for the development of local stormwater management ordinances (P.L. 1981, c.32, and N.J.S.A. 40:55D-1 et seq.

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4. Air Quality Regulation: Air quality planning.

5. Division of Solid and Hazardous Waste: Solid and hazardous waste management;

6. Green Acres and Division of Parks and Forestry: Planning for public acquisition of coastal lands.

7. Division of Water Quality: Issuance of environmental decision documents for environmental infrastructure facilities that receive State financial assistance ( P.L. 1985, c.329, N.J.A.C. 7:22-10).

8. Office of Policy, Planning and Science: Implementation and coordination of the Federal Coastal Zone Management Program.]

(**Agency Note:** The definitions section currently codified at N.J.A.C. 7:7-1.3 is proposed to be recodified with amendments at N.J.A.C. 7:7-1.5.)

[7:7E-1.4] **7:7-1.3** Review, revision, and expiration

[The Department shall periodically review this chapter, consider the various national, State, and local interests in coastal resources and developments seeking coastal locations, and propose and adopt appropriate revisions to this chapter. Under the requirements of] **As provided by** the Federal Coastal Zone Management Act, the Department [expects to conduct an annual] **shall periodically** review [of] the rules and [expects to] revise, amend, or readopt the rules [before the five year deadline under Executive Order No. 66 of 1978 for periodic review of administrative rules] **in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.**

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#### 7:7-1.4 Standards for evaluating permit applications

(a) All applications for coastal permits [(as defined in N.J.A.C. 7:7-1.3), water quality certificates, and Federal consistency determinations] shall be approved, conditionally approved, or denied pursuant to [the Department's Coastal Zone Management rules, N.J.A.C. 7:7E] **this chapter**. [In addition, applications for water quality certificates will be reviewed on the basis of other applicable State laws, including the State water quality standards.]

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

[7:7E-1.5 Coastal decision-making process]

[(a)](b) The Department shall issue a permit pursuant to [the Coastal Area Facility Review Act (JCAFRA)] only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. – 7. (No change.)

#### 7:7-[1.3]1.5 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. **Additional definitions specifically applicable to N.J.A.C. 7:7-13, Requirements for Non-Porous Cover and Vegetative Cover for General Land Areas and Certain Special Areas, are set forth at N.J.A.C. 7:7-13.2. Additional definitions specifically applicable to N.J.A.C. 7:7-17, Mitigation, are set forth at N.J.A.C. 7:7-17.1.**

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**“Acceptable” means that a proposed use of coastal resources is likely to be approved.**

**“Administratively complete” means that every item required on the application checklist for the coastal permit being sought is included in the application.**

“Amusement pier” means an elevated, pile-supported structure located on a beach and/or tidal water, seaward of a bulkhead or boardwalk, and perpendicular to the mean high water line, on which amusements are located. For purposes of this definition, “amusements” includes rides, games of skill or chance for prizes other than cash payoffs, **and** vendors of toys and/or other merchandise. “Amusements” also means bar and restaurant establishments and entertainment venues such as stage and band shells and associated seating areas. “Amusements” do not include games for cash payoffs.

**“Area” means “site,” as defined elsewhere in this section.**

“Beach” means [a gently sloping area of sand or other unconsolidated material found on tidal shorelines, including ocean, inlet, bay and river shorelines, that extends landward from the mean high water line to either: the vegetation line; a man-made feature generally parallel to the ocean, inlet, bay or river waters such as a retaining structure, seawall, bulkhead, road or boardwalk, except that sandy areas that extend fully under and landward of an elevated boardwalk are

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considered to be beach areas; or the seaward or bayward foot of dunes, whichever is closest to the ocean, inlet, bay or river water] **the special area described at N.J.A.C. 7:7-9.22(a).**

...

“CAFRA” means the Coastal Area Facility Review Act, [(N.J.S.A. 13:19-1 et seq.).]

“CAFRA area” means the “coastal area” defined in CAFRA at N.J.S.A. 13:19-4.

“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]. **(Note: As of (effective date of this amendment), the definition of charitable conservancy at N.J.S.A. 13:8B-2 is a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code.)**

...

“Coastal bluff” means [a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is

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demonstrably associated with shoreline processes. The waterward limit of a coastal bluff is a point 25 feet waterward of the toe of the bluff face, or the mean high water line, whichever is nearest the toe of the bluff. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland. Steep slopes are isolated areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs] **the special area described at N.J.A.C. 7:7-9.29(a).**

“Coastal [Permit] **permit**” or “permit” means a permit or an authorization[, including a Federal Consistency determination and Water Quality Certificate,] issued [by the Department] under this chapter pursuant to [any of the following statutes: the Coastal Area Facility Review Act (JCAFRA), N.J.S.A. 13:19-1 et seq.], the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., **or** the Waterfront Development Law, N.J.S.A. 12:5-3[; Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. §§ 1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq].

**“Coastal zone” means the areas described at N.J.A.C. 7:7-1.2(b).**

[“Commissioner” means the Commissioner of the Department of Environmental Protection, or designated representative.

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“Commercial development” means a development designed, constructed or intended to accommodate commercial or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage or other merchandise, or any establishment used for providing professional, financial, or other commercial services.]

**“Commercial development” means a development designed, constructed, or intended to accommodate commercial, retail, or office uses. “Commercial development” shall include, but need not be limited to, any establishment used for the wholesale or retail sale of food, beverage, or other merchandise, or any establishment used for providing professional, financial, or other commercial services.**

**“Commissioner” means the Commissioner of the Department, or designated representative.**

**“Complete for public comment” means that an application for a CAFRA individual permit is both administratively and technically complete and is ready for the public comment process set forth at N.J.A.C. 7:7-26.4.**

**“Complete for public hearing” means that an application for a CAFRA individual permit is both administratively and technically complete and is ready for the public hearing and comment process set forth at N.J.A.C. 7:7-26.5.**

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**“Complete for review” means that an application for a coastal permit is both administratively and technically complete and is ready to be evaluated by the Department for compliance with the applicable requirements of this chapter. However, an application for a CAFRA individual permit is complete for review only when it is both administratively and technically complete and either the public comment process set forth at N.J.A.C. 7:7-26.4 or the public hearing and comment process set forth at N.J.A.C. 7:7-26.5 has been completed.**

**“Conditionally acceptable” means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the rules are satisfied.**

...

[“Development” means any activity for which a Wetlands Act of 1970 or Waterfront Development Permit is required, including site preparation and clearing. Development, for an application under CAFRA, means the construction, relocation, or enlargement of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows or roofs, unless such repairs or maintenance are associated with

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enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.1(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(d). Development under CAFRA does not include debris removed or cleanup provided such activities involve excavation, grading, or filling on beaches and dunes.]

**“Development” means any activity for which a coastal wetlands permit, waterfront development permit, or Federal consistency determination is required, including site preparation and clearing. Development for an application under CAFRA means the construction, relocation, or enlargement of the footprint of development of any building or structure and all site preparation therefor, the grading, excavation, or filling on beaches and dunes, and shall include residential development, commercial development, industrial development, and public development. Development under CAFRA and the Waterfront Development Law does not include repairs or maintenance such as replacing siding, windows, or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt under CAFRA pursuant to N.J.A.C. 7:7-2.2(c)4 or the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.4(d). Development under CAFRA does not include debris removal or cleanup provided such activities do not involve excavation, grading, or filling on beaches and dunes.**

**“Discouraged” means that a proposed use of coastal resources is likely to be rejected or denied as the Department has determined that such uses of coastal resources should be deterred. In cases where the Department considers the proposed use to be in the public**

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**interest despite its discouraged status, the Department may permit the use provided that mitigating or compensating measures can be taken so that there is a net gain in quality and quantity of the coastal resource of concern.**

**“Division” means the Division of Land Use Regulation in the Department.**

**“Dredged material” means the sediment removed from below the spring high water line. In accordance with the Solid Waste rules at N.J.A.C. 7:26-1.6, dredged material is not considered a solid waste.**

**“Dredging” means the removal of sediment located waterward of the spring high water line. Dredging does not include excavation.**

**“Dune” means [a wind-or wave-deposited or man-made formation of sand that lies generally parallel to and landward of the beach, and between the upland limit of the beach and foot of the most inland slope of the dune. Dune includes the foredune, secondary and tertiary dune ridges, and all landward dune ridges and mounds, as well as man-made dunes where they exist. A small mound of loose, windblown sand found in a street or on part of a structure as a result of storm activity is not considered to be a dune] the special area described at N.J.A.C. 7:7-9.16(a).**

**“Duplex” means a residential structure of two attached units in which the interior living space of one unit directly abuts the interior living space of the other unit, either in a**

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**side-by-side arrangement sharing a common wall or in a lower unit-upper unit**

**arrangement.**

“Dwelling unit” means a house, townhouse, apartment, cooperative, condominium, cabana, hotel or motel room, a patient/client room in a hospital, nursing home or other residential institution, mobile home, campsite for a tent or recreational vehicle, floating home, or any other habitable structure of similar size and potential environmental impact, except that dwelling unit shall not mean a vessel as defined [in Section 2 of P.L. 1962, c.73 (N.J.S.A. 12:7-34.37)] at **N.J.S.A. 12:7-71.**

[“Educational facility” means an elementary or secondary school.]

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

**“Encouraged” means that a proposed use of coastal resources is acceptable and is a use, by its purpose, location, design, and effect, that the Department has determined should be fostered and supported in the coastal zone.**

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**“Engineered beach” means a beach built in accordance with either:**

**1. A Federally authorized beach berm design template for shore protection and/or storm damage reduction purposes for which the Department has issued a Federal consistency determination under this chapter; or**

**2. A beach berm design template for shore protection and/or storm damage reduction purposes that has been funded through the New Jersey Shore Protection Program and for which the Department has issued a permit under this chapter.**

**For purposes of this definition, the beach berm design template is the height, width, slope, and length of the engineered beach.**

**“Engineered dune” means a dune built in accordance with either:**

**1. A Federally authorized dune design template for shore protection and/or storm damage reduction purposes for which the Department has issued a Federal consistency determination under this chapter; or**

**2. A dune design template for shore protection and/or storm damage reduction purposes that has been funded through the New Jersey Shore Protection Program and for which the Department has issued a permit under this chapter.**

**For purposes of this definition, the dune design template is the height, width, slope, and length of the engineered dune.**

**“Excavation” means the [extraction of sand, gravel, earth] removal of soil or any other material located landward of the spring high water line.**

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**“Federal consistency determination” means a determination by the Department of the consistency with this chapter of a proposed Federal action that has reasonably foreseeable effects on any land or water use or natural resource of the coastal zone pursuant to Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. § 1456. There are four types of Federal actions:**

**1. Federal agency activities, which are activities and development projects performed by a Federal agency, or a contractor for the benefit of the Federal agency;**

**2. Federal license or permit activities, which are activities performed by a non-Federal entity requiring a Federal permit, license, or other form of Federal authorization;**

**3. Outer Continental Shelf (OCS) Plans, which are the Department of the Interior, Bureau of Ocean Energy Management approvals of OCS plans, pursuant to the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq.; and**

**4. Federal assistance to state and local governments, which are the applications for Federal financial assistance by state or local governments.**

**“FEMA” means the Federal Emergency Management Agency.**

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

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...

“Floating home” means any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use as a recreational vessel, which will remain stationary for more than 10 **consecutive** days.

...

[“Habitable structure” means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or is demonstrated to have been legally occupied as a dwelling unit for the most recent five year period.]

**“Habitable” with reference to structures or development means a structure or development that has been or could have been legally occupied in the most recent five-year period.**

**“Homeland security facility” means any facility deemed by the Department in consultation with the New Jersey Office of Homeland Security and Preparedness or the United States Department of Homeland Security to be either critical in nature or a key resource. These facilities may include, but are not limited to, airports and military facilities, certain transportation infrastructure, and certain chemical or energy facilities and utilities, marine terminal or transfer facilities, and freight or passenger rail lines.**

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[“Impervious cover” means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar structures, surfaces, or improvements are considered impervious cover. Grass, lawns, or any other vegetation are not considered impervious cover.]

...

**“Invasive plant species” means a plant species that is non-native (or alien) to the ecosystem under consideration and whose introduction causes or is likely to cause economic or environmental harm or harm to human health.**

...

**“Location” means “site,” as defined elsewhere in this section.**

[“LURP (Land Use Regulation Program) application form” means an application form used when applying for a permit or exemption pursuant to the Coastal Area Facility Review Act, Waterfront Development Law, Wetlands Act of 1970, Flood Hazard Area Control Act, or Freshwater Wetlands Protection Act, or when applying for Water Quality Certification and Federal Consistency Determinations. This form includes blocks for information regarding the

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permit application type, project description, project site location, property owner certification and names and addresses of the applicant and the applicant's agent.]

**“Major commercial development” means a commercial development with a cumulative building area of greater than 100,000 square feet.**

...

[“Mean high water” (MHW) is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey shore, the two high waters of each tidal day are included in the mean. This datum is available from the Department’s Bureau of Tidelands.]

**“Mean high water” is a tidal datum that is the arithmetic mean of the high water heights observed over a specific 19-year Metonic cycle (the National Tidal Datum Epoch). For the New Jersey coast, the two high waters of each tidal day are included in the mean. This datum is available from the Department, Bureau of Tidelands Management.**

[“Mean high water line” (MHWL) is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the ocean front and the tidal bays and streams in the coastal zone.

(Note: For the above two definitions, for practical purposes, the mean high water line is often

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referred to as the “ordinary” high water line, which is typically identified in the field as the limit of wet sand or the debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to the Coastal Area Facility Review Act (CAFRA) and the Waterfront Development Act, the surveyed mean high water elevation will be utilized.)]

**“Mean high water line” is the intersection of the land with the water surface at the elevation of mean high water. The elevation of mean high water varies along the oceanfront and the tidal bays and streams in the coastal zone.**

**1. For practical purposes, the mean high water line is often referred to as the “ordinary” high water line, which is typically identified as the limit of wet sand or debris line on a beach, or by a stain line on a bulkhead or piling. However, for the purpose of establishing regulatory jurisdiction pursuant to CAFRA and the Waterfront Development Law, the surveyed mean high water elevation will be used.**

**“Minor commercial development” means a commercial development with a cumulative building area of 100,000 square feet or less.**

**“Mitigation area” means the portion of a site or piece of property upon which mitigation is proposed or performed. If a mitigation area includes a wetland, a wetland buffer is included as part of the mitigation area in accordance with N.J.A.C. 7:7-17.14(b).**

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**“Mitigation bank” means an operation in which wetlands, uplands, and/or other aquatic resources are restored, created, enhanced, or preserved by a mitigation bank operator, for the purpose of providing compensatory mitigation.**

**“Mooring” means the structure and/or water area adjacent to the structure where boats and/or jet skis are secured by cables, anchors, or lines. Examples of moorings that are structures include docks, jet ski drive-on docks, bulkheads, boat lifts, pilings, and buoys.**

**“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes or kayaks, at high tide. Navigability will also apply to areas upstream of obstructions (for example, culverts), provided that the water course is still tidally influenced in the upstream area.**

**“NOAA” means the National Oceanic and Atmospheric Administration.**

...

**“Non-porous cover” means any structure, surface, or improvement that reduces and/or prevents absorption of stormwater into land. Porous paving, paver blocks, gravel, crushed stone, crushed shell, elevated structures (including boardwalks), and other similar**

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**structures, surfaces, or improvements are considered non-porous cover. Grass lawns or any other vegetation are not considered non-porous cover.**

**“Non-waterward side of development” means the area of the site located landward of the line(s) drawn through point(s) of the footprint of the building closest to the water and parallel to the water body, which line extends to the property boundaries.**

**“Parcel” means the totality of all contiguous lots under common ownership on April 4, 2011.**

“Person” means any corporation, **corporate official**, company, association, society, firm, partnership, individual, government agency, or joint stock company.

...

[“Program” means the Land Use Regulation Program in the Department of Environmental Protection.]

**“Prohibited” means that a proposed use of coastal resources is unacceptable and that the Department will use its legal authority to reject or deny the proposal.**

...

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“Public highway” means a “public highway” as defined [in section 3 of P.L. 1984, c.73 (] at N.J.S.A. 27:1B-3[)], namely public roads, streets, expressways, freeways, parkways, motorways, and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, and any facilities, equipment, property, rights-of-way, easements, and interests therein needed for the construction, improvement, and maintenance of highways.

...

“Qualifying municipality” means a municipality that qualifies under N.J.S.A. 52:27D-178 et seq. to receive State aid for the purpose of enabling such municipalities to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities for each State fiscal year. DCA’s list of qualifying municipalities may be obtained on request from the [Department’s Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625, (609)292-0060] **Department at the address set forth at N.J.A.C. 7:7-1.6.**

**“Reconstruction” means the repair or replacement of a building, structure, or other parts of a development, provided that such repair or replacement does not increase or**

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**change the location of the footprint of the preexisting development, does not increase the area covered by buildings and/or asphalt or concrete pavement, and does not result in a change in the use of the development. Reconstruction of docks and piers means repair or replacement in the same location and size of the preexisting structure. Reconstruction does not include repairs or maintenance, such as replacing siding, windows, or roofs, unless such repairs or maintenance are associated with enlargements which are not exempt pursuant to N.J.A.C. 7:7-2.2(c)4.**

**“Redevelopment” means the development of a previously developed site that has been inactive, underutilized, or abandoned for five years or less.**

“Regulated activity” or “activity” means any activity for which a permit is required under CAFRA, the Wetlands Act of 1970, or the Waterfront Development Law, and shall also include the terms “project” and “development.”[.]

...

**“Sewer service area” means the land area identified in an areawide Water Quality Management plan from which wastewater generated is designated to flow to a domestic treatment works or industrial treatment works. A distinct sewer service area is established for each domestic treatment works and industrial treatment works. Adopted updates to**

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sewer service area maps and proposed changes to sewer service areas can be viewed at

<http://www.nj.gov/dep/wqmp/>.

...

“Site plan” or “plan” means, for the purposes of this chapter, a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering, or other similar illustration, which is submitted to the Department to describe an existing or proposed activity or condition.

...

“Solar panel” means an elevated panel or plate, or a canopy or array thereof, that captures and converts solar radiation to produce power, and includes flat plate, focusing solar collectors, or photovoltaic solar cells and excludes the base or foundation of the panel, plate, canopy, or array.

“Spring high water line” means the intersection of the land with the water surface at the elevation of spring high tide.

“Spring tide” means a tide that occurs at or near the time of new and full moon and which rises highest (spring high tide) and falls lowest (spring low tide) from the mean level.

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**“State Aid Agreement” means a binding agreement between the Department and a municipality or county for the construction of a shore protection project funded through the State Shore Protection Fund. The State Aid Agreement for Federally-funded projects contains the project agreement between the Department and the USACE which defines the project design template.**

**“Stormwater management facility” means a facility which receives, stores, conveys, or discharges stormwater runoff and is designed in accordance with all applicable local, county, and State regulations. A stormwater management facility may be a retention or detention basin; infiltration structure; grassed swale; filter fabric; rip-rap channel; and/or stormwater outfall.**

**“Structure” means any assembly of materials above, on, or below the surface of the land or water, including, but not limited to, buildings, fences, dams, pilings, footings, breakwaters, culverts, pipes, pipelines, piers, roads, railroads, and bridges, and includes floating structures.**

**“Technically complete” means that each item included in an application for a coastal permit other than a CAFRA individual permit provides sufficient information for the Department to declare the application complete for review. For an application for a CAFRA individual permit, technically complete means that each item included in the**

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**application provides sufficient information for the Department to determine the application is complete for public comment or complete for public hearing.**

...

**“Tidelands Map” means the Tidelands Base Photo Map, adopted by the Department's Tidelands Resource Council under N.J.S.A. 13:1B-13.1 et seq., and which is dated 1977/1978.**

**“Upland waterfront development area” means the area described at N.J.A.C. 7:7-2.4(a)3ii.**

**“USACE” means the United States Army Corps of Engineers.**

**“USEPA” means the United States Environmental Protection Agency.**

**“USFWS” means the United State Fish and Wildlife Service.**

**“USGS quad map” means a topographic quadrangle map issued by the United States Geological Survey (USGS), 7.5 minute series, drawn at a scale of 1:24,000.**

**“Water dependent” means development that cannot physically function without direct**

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access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water dependent regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation, and marinas are examples of water dependent uses, but only the portion of the development requiring direct access to the water is water dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water dependent, but an associated warehouse would not be water dependent.

1. Examples of water dependent uses include: docks, piers, marina activities requiring access to the water, such as commissioning and decommissioning new and used boats, boat repairs and short term parking for boaters, storage for boats which are too large to be feasibly transported by car trailer (generally greater than 24 feet), rack systems for boat storage, industries such as fish processing plants and other commercial fishing operations, port activities requiring the loading and unloading of vessels, and water-oriented recreation.

2. Water dependent uses exclude, for example: housing, hotels, motels, restaurants, warehouses, manufacturing facilities (except for those which receive and quickly process raw materials by ship), dry boat storage for boats that can be transported by car trailer,

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**long-term parking, parking for persons not participating in a water-dependent activity, boat sales, automobile junk yards, and non-water oriented recreation such as roller rinks and racquetball courts.**

**“Water oriented” means development that serves the general public and derives economic benefit from direct access to the water body along which it is proposed. (Industrial uses need not serve the general public.) A hotel or restaurant, since it serves the public, could be water-oriented if it takes full advantage of a waterfront location. An assembly plant could be water oriented if overland transportation is possible but water-borne receipt of raw materials and shipment of finished products is economically advantageous. Housing is not water-oriented despite the economic premium placed on waterfront housing, because it only benefits those who can afford to buy or rent the housing units.**

**“Water quality certificate” means a determination by the Department of the consistency with this chapter of an activity that proposes a discharge to waters of the United States that requires a Federal license or permit pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1341. Federal licenses and permits for which water quality certificates are issued include, but are not limited to:**

**1. NPDES permits by USEPA under Section 402 of the Federal Clean Water Act, 33 U.S.C. § 1342;**

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**2. Permits for the discharge of dredged or fill material issued by the USACE under Section 404 of the Federal Clean Water Act, 33 U.S.C. §1 344;**

**3. Permits for activities that have a potential to discharge in navigable waters issued by the USACE under Sections 9 and 10 of the Rivers and Harbors Act, 33 U.S.C. §§ 403 and 404; and**

**4. Hydropower licenses issued by the Federal Energy Regulatory Commission under Sections 3(11), 4(e) and 15 of the Federal Power Act, 16 U.S.C. §§ 796(11), 797(e), and 808.**

**“Waters of the State” means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or groundwater, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.**

**“Waters of the United States” means:**

**1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;**

**2. All interstate waters including interstate wetlands;**

**3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sand flats, sloughs, wet meadows, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:**

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**i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;**

**ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;**

**iii. Which are used or could be used for industrial purposes by industries in interstate commerce;**

**iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;**

**v. Which are or would be used as habitat by other migratory birds which cross state lines;**

**vi. Which are or would be used as habitat for endangered and threatened species; or**

**vii. Which are used to irrigate crops sold in interstate commerce;**

**4. All impoundments of waters otherwise defined as waters of the United States under this definition;**

**5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;**

**6. The territorial seas; and**

**7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition, other than those that are themselves wetlands.**

“Waterward side of development” means the area of the site located between a tidal water body and a line(s) drawn through point(s) of the footprint of the building closest to the water, and

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parallel to the water body, which line extends to the property boundaries[.] (see Appendix A, herein incorporated by reference).

**“Working day” means a day on which the offices of the Department are open for business.**

**(Agency Note:** The standards for issuing provisional permits, currently codified at N.J.A.C. 7:7-1.6, are proposed to be recodified, with no changes in text, at N.J.A.C. 7:7-20.1)

**7:7-1.6 Forms, checklists, information; Department address and website**

**(a) Forms, checklists, and other information related to this chapter can be obtained from the Division of Land Use Regulation at the address in (b) below, by telephone at (609) 984-0162, or through the Division’s website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse). Further information about the Department can be accessed at [www.state.nj.us/dep](http://www.state.nj.us/dep).**

**(b) Applications, fees, and other correspondence shall be submitted to the following addresses:**

**1. For U.S. Postal Service delivery:**

**New Jersey Department of Environmental Protection**

**Division of Land Use Regulation**

**Mail code 501-02A, P.O. Box 420**

**Trenton, NJ 08625;**

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**2. For hand delivery and courier service:**

**New Jersey Department of Environmental Protection**

**Division of Land Use Regulation**

**501 East State Street**

**5 Station Plaza, Second Floor**

**Trenton, NJ 08609; and**

**3. For submittal of an application for authorization under a general permit-by-certification, the Department's website at [www.state.nj.us/dep/online](http://www.state.nj.us/dep/online).**

**(c) Questions regarding the requirements of this chapter or about the status of a particular application can be directed to the Division of Land Use Regulation Technical Support Center at (609) 777-0454, via e-mail at [LURTechSupport@dep.state.nj.us](mailto:LURTechSupport@dep.state.nj.us), or by using an online contact form at [www.nj.gov/dep/landuse/contact.html](http://www.nj.gov/dep/landuse/contact.html).**

**(d) Applications or other materials sent or delivered to the Department at an address other than those listed in (b) above shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.**

**7:7-1.7 Liberal construction**

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**This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.**

#### **7:7-1.8 Severability**

**If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.**

**(Agency Note:** The provision regarding the liberal construction of the chapter currently codified at N.J.A.C. 7:7-1.10(a) is N.J.A.C. 7:7-1.7, with no changes in text. The provisions that set forth the requirements for the Department to relax procedures or to reconsider the application of the CZM rules where necessary and in the public interest, currently codified at N.J.A.C. 7:7-1.10(b) through (n), respectively, are recodified, with amendments, at N.J.A.C. 7:7-19.)

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

### **7:7-2.1 When a permit is required**

**(a) No person shall engage in a regulated activity subject to this chapter without a coastal permit. Initiation of a regulated activity without a coastal permit is considered a**

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**violation of this chapter and shall subject the person or persons responsible for the regulated activity to enforcement action in accordance with N.J.A.C. 7:7-29.**

**(b) A person undertaking any regulated activity under this chapter shall do so only in accordance with:**

- 1. A permit-by-rule, pursuant to N.J.A.C. 7:7-3 and 4;**
- 2. An authorization under a general permit-by-certification, pursuant to N.J.A.C. 7:7-3 and 5;**
- 3. An authorization under a general permit, pursuant to N.J.A.C. 7:7-3 and 6;**
- 4. An individual permit, pursuant to N.J.A.C. 7:7-8; or**
- 5. An emergency authorization, pursuant to N.J.A.C. 7:7-21.**

**(c) Certain activities under CAFRA and the Waterfront Development Law are exempt from the requirement to obtain a coastal permit under this chapter. The exemptions and process for obtaining an exemption under CAFRA are set forth at N.J.A.C. 7:7-2.2(c) through (f) and under the Waterfront Development Law at N.J.A.C. 7:7-2.4(d), (f), and (h).**

7:7-[2.1]2.2 CAFRA

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

1. – 2. (No change.)

3. A development located in the CAFRA area between a point greater than 150 feet landward of the mean high water line or any tidal waters or the landward limit of a beach or dune, whichever is most landward, and a point 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, which is located within the boundaries of a [municipality which meets the criteria of a “[qualifying municipality]” pursuant to section 1 of P.L. 1978, c. 14 (N.J.S.A. 52:27D-178),] or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. – iii. (No change.)

4. A development located in the CAFRA area beyond 500 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, and which is located within the boundaries of a [municipality which meets the criteria of a “[qualifying municipality]” pursuant to section 1 of P.L. 1978, c.14 (N.J.S.A. 52:27D-178),] or which is located within the boundaries of a city of the fourth class with a population of over 30,000 persons according to the latest decennial census, that would result, either solely or in conjunction with a previous development, in:

i. – iii. (No change.)

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

i. – iii. (No change.)

iv. Existing developments that are not considered intervening development include shore protection structures, seawalls, bulkheads, retaining walls, gabions, revetments, fences, boardwalks, promenades, patios, decks, carports, prefabricated sheds without foundations, docks, piers, lifeguard stands, gazebos, swimming pools, utility lines, culverts, railroads, roadways, sewage pump stations, or seasonal or temporary structures associated with the tourism industry

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[as defined at N.J.A.C. 7:7-1.3] or constructed under the [coastal] general permit for the construction of certain types of temporary and seasonal developments at hotels and motels, commercial developments, and multi-family residential developments of 75 units, N.J.A.C. 7:7-[7.26]**6.22**.

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

i. – vi. (No change.)

vii. The construction or expansion of educational facilities [as defined at N.J.A.C. 7:7-1.3];

viii. The construction of seasonal or temporary structures related to the tourism industry [as defined at N.J.A.C. 7:7-1.3]; or

ix. (No change.)

3. – 4. (No change.)

5. A development that is used solely for the storage of food or other merchandise, excluding storage of agri-chemical and petroleum products, and that is not associated with any on-site manufacturing or industrial process and is not specifically included in the definition of industrial development at N.J.A.C. 7:7-[1.3]**1.5** is considered a “commercial development.”

6. Municipal or other government administrative, public works, or emergency services buildings that are not specifically included in the definition of public development at N.J.A.C. 7:7-[1.3]**1.5** or parks which are publicly owned or controlled are considered commercial developments.

7. - 11. (No change.)

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12. The classification or removal from classification of the municipality in which a development is located as a “qualifying municipality[,]” [as defined at N.J.A.C. 7:7-1.3,] affects the requirement for a CAFRA permit for such development as follows:

i. - vii. (No change.)

13. (No change.)

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

1. A development which received preliminary site plan approval pursuant to the [“]Municipal Land Use Law,[” P.L. 1975, c.291 (N.J.S.A. 40:55-1 et seq.)], or a final municipal building or construction permit on or before July 19, 1994, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. (No change.)

ii. Any development that required a permit pursuant to [P.L. 1973, c. 185 (N.J.S.A. 13:19-1 et seq.)] **CAFRA** prior to July 19, 1994, shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. – iv. (No change.)

v. In the event the final municipal building or construction permit expired and the permit was renewed or a new permit was obtained for the same project, the development will remain exempt provided construction began by July 19, 1997. In cases where the municipal approval expired and was renewed or that a new permit was issued, the Department will require documentation that the new or renewed permit authorized the same construction as the original permit, and that the currently authorized construction would not result in additional adverse impacts to any

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[Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9** that are greater than any adverse impacts associated with the development authorized before July 19, 1994, and the proposed construction is either 15 feet inshore of a bulkhead or no closer to the water than the original approval.

2. A residential development which received preliminary subdivision approval or minor subdivision approval pursuant to the ["Municipal Land Use Law," P.L. 1975, c.291 (N.J.S.A. 40:55D-1 et seq.)], on or before July 19, 1994, where no subsequent site plan approval is required, provided that construction began by July 19, 1997, and continues to completion with no lapses in construction activity of more than one year;

i. (No change.)

ii. Any development that required a permit pursuant to [P.L. 1973, c.185 (N.J.S.A. 13:19-1 et seq.)] **CAFRA** prior to July 19, 1994, shall continue to require a CAFRA permit and shall not be exempted under this section.

iii. – iv. (No change.)

3. (No change.)

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

i. The enlargement of the footprint of the development [as defined at N.J.A.C. 7:7-1.3]; or

ii. (No change.)

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

i. – iii. (No change.)

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iv. For the purposes of this paragraph, the construction of timber dune walkover structures constructed in accordance with Department specifications found at N.J.A.C. [7:7E, Coastal Zone Management rules] **7:7-10.4** shall be considered a “similar structure” at a residential development.

v. (No change.)

6. (No change.)

7. Any development that has an existing, valid CAFRA permit dated prior to July 19, 1994, provided that construction, as defined at N.J.A.C. 7:7-[2.1(c)1iii]**2.2(c)1iii**, begins prior to the expiration date of the permit and continues with no cumulative lapses in construction activity of more than one year.

8. (No change.)

(d) Any exemption based upon on-site construction, as defined at N.J.A.C. 7:7-[2.1(c)1iii]**2.2(c)1iii** on or before September 19, 1973, expired on July 19, 1997.

(e) A development shall no longer be exempt from the requirement of obtaining a CAFRA permit if significant changes are made to the development which would void the approvals listed at (c)1 and 2 above, or which would result in additional impacts to [Special Areas] **special areas**, as defined at N.J.A.C. [7:7E-3] **7:7-9**, which additional impacts are greater than the impacts associated with the originally exempt development.

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(f) Development that is exempt from CAFRA requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this [subchapter] **chapter**.

1. For an exemption pursuant to (c)1 and 2 above, the following shall be submitted:

i. – ii. (No change.)

iii. The fee specified at N.J.A.C. 7:7-[10.4(e)]**25.4(f)**; and

iv. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6.**

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

i. – ii. (No change.)

iii. The fee specified at **N.J.A.C. 7:7-[10.4(e)]25.4(f)**; and

iv. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6.**

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

i. – iv. (No change.)

v. The fee specified at N.J.A.C. 7:7-[10.4(e)]**25.4(f)**; and

vi. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6.**

7:7-[2.2]**2.3** [Wetlands] **Coastal wetlands**

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

1. – 12. (No change.)

(b) (No change.)

(c) [The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these] **These** rules shall be applicable only in those areas shown waterward of the upper wetland boundary on the [following] **coastal** wetlands maps[:] (**base map photography dated 1971, 1972**) listed in chapter **Appendix D** and **incorporated herein by reference.**

**(OFFICE OF ADMINISTRATIVE LAW NOTE:** The list of coastal wetlands maps at N.J.A.C. 7:7-2.2(c)1 through 11 is proposed to be deleted from this section and relocated to proposed new N.J.A.C. 7:7 Appendix D. Pursuant to N.J.S.A. 52:14B-7(c) and N.J.A.C. 1:30-5.2(a)2, the text of paragraphs (c)1 through 11 proposed for deletion is not reproduced herein.)

#### 7:7-[2.3]**2.4** Waterfront [Development] **development**

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

1. Within any part of the Hackensack Meadowlands [Development] District delineated at N.J.S.A. 13:17-[4.1]**4**, the area regulated by this section shall include any tidal waterway of this

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State and all lands lying thereunder, up to and including the mean high water line.

2. Within the [“coastal area” defined by section 4 of CAFRA (N.J.S.A. 13:9-4)] **CAFRA area**, the regulated waterfront area shall include any tidal waterway of this State and all lands lying thereunder, up to and including the mean high water line.

3. In those areas of the State outside both the [“coastal area” defined by] **CAFRA area** and outside of the [New Jersey] **Hackensack** Meadowlands District, the regulated waterfront area shall include:

i. (No change.)

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

(1) - (2) (No change.)

**4. In the 12-mile circle as described at N.J.A.C. 7:7-1.2(c), the regulated waterfront area shall include the area at or waterward of the mean low water line of the Delaware River consistent with the decree of the United States Supreme Court in *State of New Jersey v. State of Delaware*, 552 U.S. 597, 623-24 (2008).**

(b) This [subchapter] **chapter** shall apply to all man-made waterways and lagoons subject to tidal influence.

(c) The [following] development activities **at (c)1 through 4 below** will require a permit in

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that portion of the waterfront area at or [below (outshore of)] **waterward of** the mean high water line[:] **except that, in accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, these development activities require a permit only if the development activity is an improvement appurtenant to the eastern shore of the Delaware River and extending outshore of the mean low water line or will maintain access from the navigable water to such improvement.**

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

2. (No change.)

3. The mooring of a floating home for more than 10 consecutive days. Floating homes in use within the waters of this [state] **State** prior to June 1, 1984, shall not require a permit. [(See N.J.A.C. 7:7-2.1(b) for definition of floating home.)]

4. (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. - 2. (No change.)

3. In the waterfront area defined in (a)3 above, minor additions to or changes in existing structures or manufacturing operations that do not result in adverse environmental impacts to [Special Areas] **special areas** defined at N.J.A.C. [7:7E-3] **7:7-9**, provided the addition[s] is located in an existing cleared area of the site, and is set back a minimum of 15 feet landward of

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the mean high water line, where such changes or additions do not result in a change in the present land use of the site;

4. (No change.)

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

i. – ii. (No change.)

iii. On legally existing [impervious] **non-porous** cover provided the solar panels are not located within a floodway; or

iv. (No change.)

**6. In accordance with N.J.A.C. 7:7-1.2(c), within the 12-mile circle, any development activity that is not an improvement appurtenant to the eastern shore of the Delaware River and extending offshore of the mean low water line or will maintain access from the navigable water to such improvement;**

[6.] **7.** The repair, replacement, renovation, or reconstruction, in the same location and size, as determined in accordance with (d)[6i]7i and ii below of the preexisting structure, of any dock, wharf, pier, bulkhead, or building, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map [adopted by the Tidelands Resource Council (base map photography dated 1977/1978)] or that appears on the applicable [New Jersey Coastal Wetlands] **coastal wetlands** map[s promulgated by the Department pursuant to the Wetlands Act of 1970 (base map photography dated 1971, 1972)] **identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D** or that received a [Waterfront Development] **waterfront development** permit subsequent to the date of the [photograph] **Tidelands Map or coastal wetlands map, as**

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**applicable**, provided that the repair, replacement, renovation, or reconstruction[,] is in the same location as the preexisting structure, and does not increase the size of the structure and the structure is used solely for residential purposes or for the docking of or servicing of pleasure vessels.

i. (No change.)

ii. The size of any dock, wharf, pier, or bulkhead, or building not identified at (d)[6i] **7i** above shall be measured in two dimensions, that is, length and width;

[7.] **8.** The repair, replacement, renovation, or reconstruction, in the same location and size, as measured in two dimensions, that is, length and width, of the preexisting structure, of any floating dock, mooring raft, or similar temporary or seasonal improvement or structure, legally existing prior to January 1, 1981, that appears on the applicable Tidelands Map [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)] **coastal wetlands map identified pursuant to N.J.A.C. 7:7-2.3(c) and chapter Appendix D**, or that received a [Waterfront Development] **waterfront development** permit subsequent to the date of the [photograph] **Tidelands Map or coastal wetlands map, as applicable**, provided that the repair, replacement, renovation, or reconstruction is in the same location and size as the preexisting structure, and does not exceed in length the waterfront frontage of the parcel of real property to which it is attached and is used solely for the docking of servicing of pleasure vessels; and

[8.] **9.** (No change in text.)

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(e) Those portions of a dock or pier proposed to be constructed landward of the mean high water line and in the coastal zone may be subject to the permits-by-rule at N.J.A.C. 7:7-[7.2(a)5 and 6]**4.4 and 4.5.**

(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 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.] **Development that is exempt from the Waterfront Development Law requires no certification or approval from the Department, except as may be required by other programs administered by the Department. Any person who wishes may request from the Department a written determination of a development's exemption from the requirements of this chapter.**

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

i. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

ii. (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] **USGS quad map;**

iv. The fee specified at N.J.A.C. 7:7-[10.2]**25.2;** and

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v. (No change.)

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

i. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

ii. (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] **USGS quad map;**

iv. The fee specified at N.J.A.C. 7:7-[10.2]25.2; and

v. A site plan depicting the following:

(1) – (2) (No change.)

(3) The limits of all [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9.**

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

**i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

**ii. A written description of the proposed development;**

**iii. The fee specified at N.J.A.C. 7:7-25.2;**

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

**v. A site plan depicting the following:**

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

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

**(3) Details of the wind turbine monopole.**

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

**i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

**ii. A written description of the proposed development;**

**iii. The fee specified at N.J.A.C. 7:7-25.2;**

**iv. A site plan depicting the following:**

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

**(2) The floodway, if appropriate; and**

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

**5. For a written determination of exemption pursuant to (d)6 above, the following shall be submitted:**

**i. A completed application form described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

**ii. A written description of the proposed development;**

**iii. The fee specified at N.J.A.C. 7:7-25.2; and**

**iv. A site plan depicting the following:**

**(1) The location of the proposed activity; and**

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**(2) The mean high water line.**

[3.] **6.** For a written determination of exemption pursuant to (d)[4 and 5]**7 and 8** above, the following shall be submitted:

i. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

ii. (No change.)

iii. The fee specified at N.J.A.C. 7:7-[10.2]**25.2;**

iv. - v. (No change.)

vi. A copy of the applicable portion of the Tidelands Map [adopted by the Tidelands Resource Council (base map photography dated 1977/1978)] or [(New Jersey Coastal Wetlands Map (base map photography dated 1971, 1972))] **coastal wetlands map** showing the location and dimensions of the structures to be replaced, renovated, or reconstructed;

vii. (No change.)

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] **USGS quad map**; and

ix. [Plans] **A site plan** showing the location and dimensions of the structures to be replaced, renovated or reconstructed.

[4.] **7.** For a written determination of exemption pursuant to (d)[6]**9** above, the following shall be submitted:

i. A completed [LURP] application form **described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**

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ii. (No change.)

iii. The fee specified at N.J.A.C. 7:7-[10.2]25.2; and

iv. A site plan depicting the location of the existing and proposed bridge surface[d] to be redecked.

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

1. (No change.)

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

1. – 2. (No change.)

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#### **7:7-2.5 Obtaining an applicability determination**

(a) A person may request a written applicability determination from the Department to determine the applicability of CAFRA, the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.), and/or the Waterfront Development Law (N.J.S.A. 12:5-3 et seq.) to a proposed project. An applicability determination is optional, but the Department encourages persons to request one if there is uncertainty about whether a particular activity is regulated, since conducting unauthorized activities may result in enforcement action.

(b) A person requesting an applicability determination shall submit to the Department, at the address set forth at N.J.A.C. 7:7-1.6, the following:

1. A completed applicability determination/pre-application request form available from the Department at the address set forth at N.J.A.C. 7:7-1.6, including a written description of the site and the proposed development including the dimensions, number, and uses of any proposed structures; the length of any proposed linear development; and the number of any parking spaces proposed;
2. A copy of the site plan or survey for the proposed project; and
3. A copy of a USGS quad map or local street map with the project site clearly indicated.

### **SUBCHAPTER 3. GENERAL PROVISIONS FOR PERMITS-BY-RULE, GENERAL PERMITS-BY-CERTIFICATION, AND GENERAL PERMITS**

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### **7:7-3.1 Purpose and scope**

**This subchapter sets forth the standards for the Department to issue, by rulemaking, permits-by-rule, general permits-by-certification, and general permits; the use of these permits to conduct authorized activities; the standards governing the use of more than one of these permits on a single site; the duration of authorizations under these permits; and the conditions that apply to these permits.**

7:7-[7.1]3.2 [General standards] **Standards** for [issuing coastal general permits and] **issuance, by rulemaking, of permits-by-rule, general permits-by-certification, and general permits**

[(a) This section contains the procedures and substantive standards governing the issuance of new coastal general permits, in accordance with CAFRA, N.J.S.A. 13:19-1, the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and contains the procedures and substantive standards for the issuance of permits-by-rule. N.J.A.C. 7:7-7.2 and 7.3 contains the procedures and substantive standards for authorizing various developments under the issued coastal general permits. N.J.A.C. 7:7-7.4 describes the activities authorized by permit-by-rule.]

[(b) Before reissuing a coastal] **(a) The Department will, in accordance with the rulemaking provisions of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., promulgate each permit-by-rule, general permit-by-certification, or general permit** [or permit-by-rule, or adopting a new coastal general permit or permit-by-rule, the Department

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will propose a draft coastal general permit or permit-by-rule for] **after publication of a notice of rule proposal in the New Jersey Register and consideration of** public comment [in the form of a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq].

[(c)] (b) The Department [may issue] **will promulgate** a [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule] only if all of the following conditions are met:

1. - 2. (No change.)

3. The Department has provided public notice and an opportunity for [a] public [hearing] **comment** with respect to the proposed [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule]. After a [coastal] **general permit-by-certification or** general permit has been [issued by the Department] **promulgated pursuant to this subchapter**, the Department will not hold **public** hearings on individual applications for **authorization under** a [coastal] **general permit-by-certification or** general permit.

[(d)] (c) Each [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule] shall contain a specific description of the type(s) of development which are authorized, including limitations for any single operation, to ensure that the [requirements] **conditions** of [(a),] (b) **1 and 2** [and (c)] above are satisfied. At a minimum, these limitations shall include:

1. (No change.)

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2. A precise description of the geographic area to which the [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule] applies.

[(e)] (d) The Department will include in each [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule issued] **promulgated** pursuant to this subchapter appropriate conditions applicable to particular types of sites or development which must be met in order for a proposed development or activity to qualify for authorization under the [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule].

[1. The Department may add special conditions which must be met in order for a specific proposed development to qualify for a coastal general permit.]

[(f)] (e) The Department may, by [proposing and adopting regulations] **undertaking rulemaking in accordance with (a) above,** [rescind a category of coastal] **repeal a permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule], and thereafter require individual permits for development previously covered by the [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule], if it finds that the [coastal] **permit-by-rule, general permit-by-certification, or** general permit [or permit-by-rule] no longer meets the purposes of applicable statutes and of this chapter.

[(g)] The Department shall review each coastal general permit and permit-by-rule a minimum of once every five years in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-

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1 et seq. This review shall include public notice and an opportunity for public hearing. Upon completion of this review, the Department shall either modify, reissue or revoke each coastal general permit and permit-by-rule previously adopted.

(h) If a coastal general permit or permit-by-rule is not modified or reissued within five years of initial adoption by publication in the New Jersey Register, it shall automatically expire.

(i) N.J.A.C. 7:7-7.2 sets forth the procedure for obtaining an authorization under a permit-by-rule and the substantive standards for the various permits-by-rule. N.J.A.C. 7:7-7.3 sets forth the procedure for obtaining an authorization under a coastal general permit, and N.J.A.C. 7:7-5 through 7.25 set forth the substantive standards for the various coastal general permits.]

**7:7-3.3 Use of a permit-by-rule, or an authorization pursuant to a general permit-by-certification or a general permit to conduct regulated activities**

**(a) An activity that meets the requirements of a permit-by-rule may be conducted without prior Department approval, except that activities under the permits-by-rule at N.J.A.C. 7:7-4.4, 4.5, and 4.9 may be conducted only after the Department has issued the waterfront development permit that is a necessary condition of those permits-by-rule.**

**(b) An activity that meets the requirements of a general permit-by-certification may be conducted when the person proposing to conduct the activity receives the automatic**

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**authorization resulting from completion of the application submission through the Department's electronic permitting system in accordance with N.J.A.C. 7:7-5.**

**(c) An activity that meets the requirements of a general permit may be conducted when the person proposing to conduct the activity receives authorization from the Department in accordance with N.J.A.C. 7:7-26.**

**(d) A permit-by-rule or an authorization under a general permit-by-certification or general permit does not relieve the person conducting the authorized regulated activities from the obligation to obtain any other applicable permits or approvals required by law.**

#### **7:7-3.4 Use of more than one permit on a single site**

**(a) A person may undertake a regulated activity more than once on a single site. The activity may be authorized each time under a single permit-by-rule, general permit-by-certification, or general permit, provided the individual limits and conditions of the permit are not exceeded.**

**(b) A person may undertake more than one regulated activity on a single site. The activities may be authorized under one or more permit-by-rule, general permit-by-certification and/or general permit, provided the individual limits and conditions of each permit are not exceeded.**

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**(c) Once the limits and conditions of a permit-by-rule, general permit-by-certification, and/or general permit have been reached on a single site:**

**1. No further activities under that permit can be authorized on that site, regardless of how much time passes, or whether the site is subsequently subdivided or transferred to a new owner; and**

**2. A person seeking to undertake the regulated activity on that site must obtain an individual permit under this chapter authorizing the regulated activity.**

**(d) On a single site, the following may be used in combination with an individual permit:**

**1. Any permit-by-rule;**

**2. An authorization under any general permit-by-certification; or**

**3. An authorization under one or more of the following general permits:**

**i. General permit 4 for the development of one or two single-family homes or duplexes, at N.J.A.C. 7:7-6.4;**

**ii. General permit 5 for the expansion or reconstruction (with or without expansion) of a single-family home or duplex, at N.J.A.C. 7:7-6.5; or**

**iii. General permit 12 for the landfall of utilities, at N.J.A.C. 7:7-6.12.**

#### **7:7-3.5 Duration of an authorization under a general permit-by-certification**

**(a) An authorization under a general permit-by-certification is valid for five years from the date of issuance of the authorization.**

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**(b) The five-year term of an authorization under a general permit-by-certification shall not be extended.**

**(c) All regulated activities being conducted pursuant to an authorization under a general permit-by-certification shall immediately cease if the authorization expires.**

**(d) If an authorization under a general permit-by-certification expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.**

**7:7-3.6 Duration of an authorization under a general permit for which an application was declared complete for review prior to (the effective date of these amendments)**

**(a) This section sets forth the duration of an authorization under a general permit for which the application was declared complete for review prior to (the effective date of these amendments). The duration of an authorization under a general permit for which an application is declared complete for review on or after (the effective date of these amendments) is set forth in N.J.A.C. 7:7-3.7.**

**(b) An authorization governed by this section is valid for five years from the date of issuance of the authorization.**

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**(c) The five-year term of an authorization governed by this section shall not be extended.**

**(d) Except where construction has commenced under (e) below, all regulated activities being conducted pursuant to an authorization governed by this section shall immediately cease if the authorization expires.**

**(e) If construction pursuant to an authorization governed by this section was commenced prior to the expiration of the authorization, construction can continue to completion provided there are no cumulative lapses in construction activity of greater than one year.**

**1. For the purposes of this subsection, "construction" means having completed the foundations for buildings or structures, the subsurface improvements for roadways, or the necessary excavation and installation of bedding materials for utility lines. To determine if construction of a development or part of a development has begun, the Department shall evaluate such proofs as may be provided by the applicant including, but not limited to, the following: documentation that the local construction official has completed the inspection at N.J.A.C. 5:23-2.18(b)1i(2) or (b)1i(3) for foundations of structures; reports from the municipal engineer documenting inspections of road bed construction; or billing receipts documenting the completion of the above construction activities. "Construction" does not include clearing vegetation, bringing construction materials to the site, or site grading or other earth work associated with preparing a site for construction.**

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**(f) If construction pursuant to an authorization governed by this section is not commenced prior to the expiration of the authorization, construction can commence and subsequently continue only if a new authorization or permit under this chapter is obtained authorizing the regulated activity.**

**7:7-3.7 Duration of an authorization under a general permit for which an application is deemed complete for review on or after (the effective date of these amendments)**

**(a) This section sets forth the duration of an authorization under a general permit for which the application is declared complete for review on or after (the effective date of these amendments). The duration of an authorization under a general permit for which an application was declared complete for review prior to (the effective date of these amendments) is set forth in N.J.A.C. 7:7-3.6.**

**(b) Except as provided in (c) below, an authorization governed by this section is valid for five years from the date of issuance of the authorization.**

**(c) The five-year term of an authorization governed by this section may be extended one time for five years pursuant to N.J.A.C. 7:7-27.3.**

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**(d) All regulated activities being conducted pursuant to an authorization governed by this section shall immediately cease if the authorization expires, including any extension thereof under N.J.A.C. 7:7-27.3.**

**(e) If an authorization governed by this section expires and the person intends to commence or continue the regulated activities, the person shall obtain a new authorization or permit under this chapter authorizing the regulated activities.**

**1. If no regulated activities have occurred prior to the expiration of the original authorization, the Department shall issue a new authorization under the general permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new authorization is submitted;**

**2. If any regulated activities have occurred prior to the expiration of the original authorization, the Department shall issue a new authorization under the general permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new authorization is submitted. In determining the feasibility of compliance with the requirements in effect at the time the application is submitted, the Department shall consider the amount of construction that has been completed prior to the expiration of the original authorization, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable under the original authorization, and whether continuing construction as approved under the original authorization would have an adverse impact on the environment.**

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**7:7-3.8 Conditions applicable to a permit-by-rule, or to an authorization pursuant to a general permit-by-certification or a general permit**

(a) A person conducting regulated activities pursuant to a permit-by-rule, or pursuant to an authorization under a general permit-by-certification or general permit, shall comply with:

1. The conditions set forth in the permit-by-rule, general permit-by-certification, or general permit itself; and
2. The conditions that apply to all permits at N.J.A.C. 7:7-27.2.

(b) In addition to the conditions that apply to every authorization pursuant to a general permit under (a) above, the Department shall establish additional conditions in a specific authorization pursuant to a general permit, on a case-by-case basis, as required to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.

**SUBCHAPTER 4. PERMITS-BY-RULE**

**7:7-[7.2]4.1 [Permits-by-rule] Permit-by-rule 1 - expansion of a single-family home or duplex**

[(a) This section details the activities authorized by a permit-by-rule.

1. Single family Home or Duplex Expansion: The] (a) **This permit-by-rule authorizes the expansion of a legally constructed, habitable single-family home or duplex on the non-waterward sides of the single-family home or duplex, provided [that] the expansion:**

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[i.] **1.** [The expansion is] **Is** not proposed on a beach, dune, or wetland;

[ii.] **2.** [The expansion meets] **Meets** the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25**; and

[iii.] **3.** [The expansion does] **Does** not exceed a cumulative surface area of 400 square feet on the property constructed after July 19, 1994. For example, a 200 square foot expansion of a single family home or duplex could be authorized under this permit-by-rule and an additional 200 square foot expansion could later be authorized under this permit-by-rule, since the cumulative footprint of the development for both expansions would not exceed 400 square feet on the property. However, a property on which a 300-square-foot expansion was already constructed pursuant to a permit-by-rule would not be eligible for another permit-by-rule subsequently for an additional 200-square-foot expansion since the cumulative total footprint of development for both expansions would exceed 400 square feet.

[2. (Reserved.)]

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

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

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[i.] **1.** Development under this permit-by-rule shall not result in development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8]**2.2(b)8**;

Recodify existing ii. – vii. as **2. - 7.** (No change in text.)

[viii.] **8.** The development shall meet the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25**;

Recodify existing ix. and x. as **9. and 10.** (No change in text.)

**7:7-4.3 Permit-by-rule 3 - placement of public safety or beach/dune ordinance signs on beaches or dunes and placement of signs on beaches or dunes at public parks**

[4. Placement] (a) **This permit-by-rule authorizes the placement** of [public]:

**1. Public** safety or beach/dune ordinance signs on beaches and dunes, provided no footings are required[,]; and [placement of signs]

**2. Signs on beaches or dunes** at public parks **by governmental entities.**

**7:7-4.4 Permit-by-rule 4 - construction of nonresidential docks, piers, boat ramps, and decks located landward of mean high water line**

[5. The] (a) **This permit-by-rule authorizes the** construction of nonresidential docks, piers, and boat ramps located landward of the mean high water line, provided that **a waterfront development permit has been obtained for** the construction waterward of the mean high water line [has received a Waterfront Development permit].

(b) The [width of the] structure **shall meet the following requirements:**

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1. **The width of the structure** landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line[.]; **and**

2. **For docks and piers**, [The] **the** width of the structure over wetlands shall not exceed six feet and the height **of the structure** shall be a minimum of four feet [over the wetlands].

(c) This permit-by-rule also [includes] **authorizes** the construction of **a nonresidential deck[s] located landward of the mean high water line**, provided:

1. [they are] **The deck is** not located on a beach, dune, or wetland[, provided the];
2. **The** construction does not require clearing of forest vegetation; and [provided]
3. [the size] **The deck** does not exceed a footprint area of 400 square feet.

(d) **This permit-by-rule does not authorize a boat ramp located within wetlands.**

(e) The [Waterfront Development] **waterfront development** permit **for the construction waterward of the mean high water line** may include additional conditions (including, but not limited to, public access to the waterfront) on the upland construction to [insure] **ensure** compliance with [the Coastal Zone Management rules, N.J.A.C. 7:7E] **this chapter**.

#### **7:7-4.5 Permit-by-rule 5 - construction of portion of a recreational dock or pier located landward of mean high water line**

[6. The] (a) **This permit-by-rule authorizes the** construction of the portion of a recreational dock or pier **located** landward of the mean high water line at a residential development, provided

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that **a waterfront development permit has been obtained for the** construction waterward of the mean high water line [is authorized through the issuance of a Waterfront Development permit].

(b) The [width of the] structure **shall meet the following requirements:**

**1. The width of the structure** landward of the mean high water line shall not exceed the width of the structure waterward of the mean high water line[.]; **and**

**2.** [The width of the structure over] **Over** wetlands, **the width of the structure** shall not exceed six feet and the height **of the structure** shall be a minimum of four feet [over the wetlands].

(c) The [Waterfront Development] **waterfront development permit for the construction waterward of the mean high water line** may include additional conditions on the upland construction to [insure] **ensure** compliance with [the Coastal Zone Management rules (N.J.A.C. 7:7E)] **this chapter**. For example, the [Waterfront Development] **waterfront development permit** may [be conditioned to require] **have a condition requiring** the dock to cross the wetlands at the narrowest point on the property or to allow continued access along the shoreline.

#### **7:7-4.6 Permit-by-rule 6 - reconstruction of a residential or commercial development within the same footprint**

[7.] (a) Other than reconstruction within the CAFRA area that meets the exemption from a CAFRA permit at N.J.A.C. 7:7-[2.1(c)3]**2.2(c)3, this permit-by-rule authorizes the**

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reconstruction, within the same footprint, of a legally constructed[,] residential or commercial development that has been or could have been legally occupied in the most recent five-year period, provided that such reconstruction:

1. [is] **Is** in compliance with existing requirements or codes of municipal, State, and Federal law [and provided:];

[i. The reconstruction does] 2. **Does** not result in the enlargement or relocation of the footprint of the development;

[ii.] 3. In the case of a residential development, [the reconstruction] does not result in an increase in the number of dwelling units;

[iii.] 4. In the case of a commercial development, [the reconstruction] does not result in an increase in the number of parking spaces or equivalent paved area associated with the development;

[iv.] 5. [The construction meets] **Meets** the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25**; **and**

[v.] 6. [The reconstruction does] **Does** not increase the area covered by buildings and/or asphalt or concrete pavement[;and].

[vi.] (b) (No change in text.)

**7:7-4.7 Permit-by-rule 7 – Expansion or relocation (with or without expansion) landward or parallel to the mean high water line of the footprint of a residential or commercial development**

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[8. The] **(a) This permit-by-rule authorizes the** expansion or relocation (with or without expansion) landward or parallel to the mean high water line of the footprint of a legally constructed residential development, including accessory development such as sheds, garages, pools, and driveways, or commercial development that has been or could have been legally occupied in the most recent five-year period, provided:

[i.] **1.** (No change in text.)

[ii.] **2.** Except as provided in (a)8[viii] below, the expansion or relocation is not proposed on a beach, dune, or wetland;

Recodify existing iii. and iv. as **3. and 4.** (No change in text.)

[v.] **5.** Except as provided in (a)8[viii] below, the expansion or relocation does not result in additional impacts to special areas as defined at N.J.A.C. [7:7E-3] **7:7-9**;

[vi.] **6.** The expansion or relocation meets the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25** and [3.26] **9.26**; and

[vii.] **7.** The expansion does not increase the surface area of the footprint of the development by a cumulative total of more than 400 square feet on the property constructed after July 19, 1994. For an example of how the cumulative total limitation would apply, see (a)[1iii]**3** above.

[viii.] **8.** (No change in text.)

#### **7:7-4.8 Permit-by-rule 8 - construction of a utility line attached to a bridge or culvert**

[9. The] **(a) This permit-by-rule authorizes the** construction of a utility line, including cable ([that is] **for example**, electric, television, or fiber optic), telecommunication, wastewater, petroleum, natural gas, or water, attached to a bridge or culvert. This permit-by-rule applies only

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to that portion of the utility line that will be constructed across the tidal waterway up to the mean high water line, provided a tidelands instrument has been obtained for the utility line. The construction of the utility line shall comply with the following:

[i.] **1.** (No change in text.)

[ii.] **2.** The utility line shall be firmly attached to the existing bridge or culvert structure so that no part of the utility line, its encasement, or any attachment device extends above or below the existing bridge or culvert structure;

Recodify existing (1) – (4) as **i. – iv.** (No change in text.)

[iii.] **3.** The installation of the utility line shall have no adverse impacts to special areas as [defined in the Coastal Zone Management rules] **described** at N.J.A.C. [7:7E-3] **7:7-9; and**

[iv.] **4.** Construction equipment shall be operated from land, the top of the bridge or culvert, or from barges, and shall under no circumstances be allowed to enter the water body[; and].

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

#### **7:7-4.9 Permit-by-rule 9 - previous filling of tidelands associated with an existing single family home or duplex**

[10.] **(a)** Where a single family home or duplex is proposed or exists on a lot which was previously filled and is not part of a larger development, the prior filling of any lands on the lot formerly flowed by the tide shall be considered by the Department to be authorized **under this permit-by-rule**, provided the filling appears on the applicable Tidelands Map [adopted by the Tidelands Resource Council (base map photography dated 1977/78)].

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(b) [The] **This permit-by-rule** [is only effective] **applies only** if a tidelands instrument has been obtained for all filled tidelands areas.

**7:7-4.10 Permit-by-rule 10 - construction of portion of boat ramp located landward of the mean high water line at a residential development**

[11. The] (a) **This permit-by-rule authorizes the** construction of the portion of a boat ramp landward of the mean high water line at a residential development, provided that **a waterfront development permit has been obtained for the** construction waterward of the mean high water line [is authorized through the issuance of a Waterfront Development permit].

(b) [A] **This permit-by-rule does not authorize a** boat ramp located within wetlands [is not authorized by this permit-by-rule].

(c) The width of the boat ramp landward of the mean high water line shall not exceed the width of the boat ramp waterward of the mean high water line.

(d) The [Waterfront Development] **waterfront development permit for the construction waterward of the mean high water line** may include additional conditions on the upland construction to [insure] **ensure** compliance with [the Coastal Zone Management rules (N.J.A.C. 7:7E)] **this chapter**.

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**7:7-4.11 Permit-by-rule 11 - construction and/or installation of a boat wash wastewater system at a marina, boatyard, or boat sales facility**

[12. The] (a) **This permit-by-rule authorizes the** construction and/or installation, at a marina, a boatyard, or a boat sales facility, of a boat wash wastewater system that prevents the discharge of boat wash wastewater to the waters of the State, including a boat wash wastewater system necessary to comply with the Equipment and Vehicle Washing provisions of the New Jersey Pollutant Discharge Elimination System (NJPDES) Basic Industrial Stormwater General Permit NJ0088315 (5G2) established under the NJPDES rules, N.J.A.C. 7:14A. This permit-by-rule authorizes the construction of a boat wash wastewater system, including an impervious wash pad or pads connected to a collection system, reclaim/recycling system, or infrastructure to connect to an existing sanitary sewer. This permit-by-rule additionally authorizes a sump or other mechanism to collect the boat wash [waste water] **wastewater**, shed(s) to house the treatment system, and/or a tank(s) to store the wash water for reuse or collection, as applicable for the system utilized. This permit-by-rule authorizes at any one marina, boatyard, or boat sales facility one to three wash pads and a maximum of three boat wash wastewater systems.

(b) [Authorization under this] **This** permit-by-rule does not relieve a marina, [or] boatyard, **or boat sales facility** of the obligation to obtain any other permits from the Department, including a Treatment Works Approval for a sanitary sewer connection or a Basic Industrial Stormwater General Permit NJ0088315 (5G2).

(c) Each boat wash wastewater system **authorized under this permit-by-rule** shall:

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Recodify existing i. – v. as **1. – 5.** (No change in text.)

**7:7-4.12 Permit-by-rule 12 - construction of one to three wind turbines less than 200 feet in height having a cumulative rotor swept area no greater than 2,000 square feet**

[13. The] **(a) This permit-by rule authorizes the** construction of one to three wind turbines less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position, and having a cumulative rotor swept area no greater than 2,000 square feet, provided:

Recodify existing i. – iii. as **1. - 3.** (No change in text.)

[iv.] **4.** No portion of the wind turbine, including blades, tower, and site disturbance, shall be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps) except as provided at (a)[13iv(1) and (2)]**4i and ii** below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

[(1)] **i.** (No change in text.)

[(2)] **ii.** The wind turbine(s) is located on legally existing [impervious] **non-porous** cover;

[v.] **5.** If the wind turbine(s) is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position, the tower shall be a freestanding monopole(s); **and**

[vi.] **6.** No lighting shall be placed on or directed at the wind turbine except for lighting required by the Federal Aviation Administration. Shielded ground level security lighting may be used. Lighting is shielded when it is covered in a way that light rays are not emitted above the horizontal plane of the light[; and].

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[vii.] (b) (No change in text.)

**7:7-4.13 Permit-by-rule 13 - installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot**

[14. The] (a) **This permit-by-rule authorizes the** installation of solar panels on a maintained lawn or landscaped area at a single-family home or duplex lot, provided:

Recodify existing i. - iii. as **1. – 3.** (No change in text.)

[iv.] **4.** The solar panel development shall not be located within an area mapped as threatened or endangered species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (Landscape Maps), except as provided at (a)[14iv(1) and (2)]**4i and ii** below. The Landscape Maps are available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>;

[(1)] **i.** (No change in text.)

[(2)] **ii.** The solar panel(s) is located on legally existing [impervious] **non-porous** cover.

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

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

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(b) Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq.

(c) The proposed reconfiguration shall:

Recodify existing i. - vi. as **1. – 6.** (No change in text.)

#### **7:7-4.15 Permit-by-rule 15 - placement of sand fencing to create or sustain a dune**

[16. The] (a) **This permit-by-rule authorizes the** placement of sand fencing to create or sustain a dune, provided the sand fencing complies with (a)[16i through iii] **1 through 3** below. This permit-by-rule does not authorize the excavation or grading of a dune. The sand fencing shall:

Recodify existing i. - iii. as **1. – 3.** (No change in text.)

#### **7:7-4.16 Permit-by-rule 16 - placement of land-based upwellers and raceways for aquaculture activities**

[17. The] (a) **This permit-by-rule authorizes the** placement of land-based upwellers and raceways, including intakes and discharges, for shellfish aquaculture activities. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The aquaculture activities shall comply with the following:

Recodify existing i. - iii. as **1. – 3.** (No change in text.)

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**7:7-4.17 Permit-by-rule 17 - placement of predator screens and oyster spat attraction devices within a shellfish lease area**

[18. The] **(a) This permit-by-rule authorizes the** placement of predator screens and oyster spat attraction devices in an area subject to a valid shellfish lease pursuant to N.J.S.A. 50:1-23. Upon expiration or termination of the shellfish lease, or the cessation of the use of predator screens and oyster spat attraction devices, whichever occurs first, within five days the permittee shall remove all predator screens and oyster spat attraction devices placed within the lease area. This permit-by-rule does not authorize the placement of shell within a shellfish lease area. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The placement of predator screens and oyster spat attraction devices shall comply with the following:

Recodify existing i. - ii. as **1. - 2.** (No change in text.)

**7:7-4.18 Permit-by-rule 18 - placement of shellfish cages within a shellfish lease area**

[19. The] **(a) This permit-by-rule authorizes the** placement of shellfish cages in an area subject to a valid shellfish lease pursuant to N.J.S.A. 50:1-23. Upon expiration or termination of the shellfish lease, or the cessation of the use of shellfish cages, whichever occurs first, within five days the permittee shall remove all shellfish cages placed within the lease area. Activities that qualify for this permit-by-rule also qualify for a water quality certificate pursuant to Section

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401 of the Federal Clean Water Act, 33 U.S.C. §§ 1251 et seq. The placement of shellfish cages shall comply with the following:

Recodify existing i. - iv. as **1. – 4.** (No change in text.)

**7:7-4.19 Permit-by-rule 19 - construction and/or installation of a pumpout facility and/or pumpout support facilities**

[20. The] **(a) This permit-by-rule authorizes the** construction and/or installation of a pumpout facility and/or pumpout support facilities in the circumstances set forth at (a)[20i and ii]**1 and 2** below. The construction and/or installation of a pumpout facility or pumpout support facility shall have no adverse impacts to any special areas described at N.J.A.C. [7:7E-3] **7:7-9.**

Recodify existing i. - ii. as **1. - 2.** (No change in text.)

**7:7-4.20 Permit-by-rule 20 – implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site**

[21. The] **(a) This permit-by-rule authorizes the** implementation of a sediment sampling plan for sampling in a water area as part of a dredging or dredged material management activity or as part of a remedial investigation of a contaminated site. [The Department has prepared a dredging technical manual, titled “The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey’s Tidal Waters,” October 1997, which provides guidance on dredged material sampling.] Activities that qualify for this permit-by-rule also

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qualify for a water quality certificate pursuant to Section 401 of the Federal Clean Water Act, 33 §§ 1251 et seq. This permit-by-rule authorizes the implementation of a sediment sampling plan for sampling to be conducted within a water area described at N.J.A.C. [7:7E-4.1] **7:7-12.1**, as part of a dredging or dredged material management activity or as part of a remedial investigation, provided:

i. If the sampling is part of a dredging or dredged material management activity, the sediment sampling plan shall be **prepared in accordance with chapter Appendix G, incorporated herein by reference, and** approved in writing by the Department's Office of Dredging and Sediment Technology; or

[ii.] **2.** (No change in text.)

[(b) For activities subject to (a)5, 6 and 10 above, the Department shall review the activities subject to the permit-by-rule in conjunction with the Waterfront Development permit application.

(c) Notification to the Department prior to commencement of a development which meets the conditions of (a)1, 3, 4, 7, 8 and 9 above is not required.]

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

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

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- 1. The area to which the pesticides are applied shall not exceed a total area of one-quarter acre or less on a site;**
- 2. The activities do not adversely affect the habitat of any threatened or endangered wildlife or plant species, as described at N.J.A.C. 7:7-9.36; and**
- 3. When conducted within waters of the State or waters of the United States, the activities are conducted pursuant to an aquatic pesticide permit issued by the Department's Pesticide Control Program.**

**7:7-4.22 Permit-by-rule 22 - construction of a swimming pool, spa, or hot tub and associated decking on a bulkheaded lot without wetlands**

**(a) This permit-by-rule authorizes the construction of a swimming pool, spa, or hot tub and associated decking on a lot with a legally existing, functioning bulkhead along the entire waterfront portion of the site and no wetlands landward of the bulkhead, provided:**

- 1. No excavation, grading, or filling of a beach or dune is conducted;**
- 2. The swimming pool, spa, or hot tub is set back a minimum of 15 feet from the waterward face of the bulkhead;**
- 3. The footprint of the area covered by the current construction in combination with any existing swimming pool, spa, and/or hot tub, including associated decking, constructed under this permit-by-rule after (the effective date of these amendments) does not exceed a cumulative total of 750 square feet on the lot. For example, a 600-square-foot in-ground swimming pool could be constructed on a lot under this permit-by-rule and at a later time an additional 150-square-foot spa or hot tub could be constructed on the lot under this**

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**permit-by-rule, because the cumulative footprint of the development for both structures would not exceed 750 square feet. However, the construction of a 200-square-foot spa or hot tub would not be authorized on a lot under this permit-by-rule where a 600-square-foot in-ground swimming pool had already been constructed pursuant to this permit-by-rule, because the cumulative total footprint of development for both structures would exceed 750 square feet;**

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

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

**6. All subgravel liners are made of filter cloth or other permeable material.**

## **SUBCHAPTER 5. GENERAL PERMITS-BY-CERTIFICATION**

**7:7-5.1 General permit-by-certification 10 – reconstruction of a legally existing functioning bulkhead in-place or upland of a legally existing functioning bulkhead**

**(a) This permit-by-certification authorizes the reconstruction of a legally existing bulkhead in-place or upland of a legally existing functioning bulkhead, provided:**

**1. The replacement bulkhead is located upland of any wetlands;**

**2. The construction of a bulkhead subject to wave run-up forces (that is, in a V zone as described at N.J.A.C. 7:7-9.18) shall be designed and certified by a New Jersey licensed professional engineer to withstand the forces of wave run-up;**

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**3. The structure shall not create net adverse shoreline movement downdrift, including erosion or shoaling;**

**4. The construction shall have no adverse impact to any special areas as described at N.J.A.C. 7:7-9; and**

**5. Clean fill from an upland source shall be used for backfill.**

**7:7-5.2 General permit-by-certification 15 – construction of piers, docks, including jet ski ramps, pilings, and boatlifts in man-made lagoons**

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

**1. The structures shall be located on individual single family or duplex lots and shall be for recreational or non-commercial use;**

**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. The width of the dock or pier shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high water, except for floating docks. For example, an eight foot wide dock must be elevated a minimum of four feet above the water surface at mean high water;**

**4. The maximum width of the structure shall be eight feet, except where crossing wetlands, where the proposed structure shall be constructed perpendicular to the shoreline to access sufficient water depth and shall not exceed six feet in width. In any case, the height of the structure over wetlands shall be a minimum of four feet;**

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**5. Any wetlands disturbed during construction shall be restored to pre-project conditions;**

**6. The proposed structure, including mooring area and mooring piles, does not hinder navigation or access to adjacent docks, piers, moorings, or water areas;**

**7. A minimum of eight feet of open water shall be provided between any docks including jet ski ramps, if the combined width of any existing or proposed docks over the water exceeds eight feet;**

**8. For docks which are perpendicular to the adjacent bulkhead or shoreline, construction and placement of the dock shall be a minimum of four feet from all property lines;**

**9. The space between horizontal planking is maximized and the width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively;**

**10. Jet ski ramps are inclined floating docks which are typically attached to existing docks for the purpose of docking jet skis. Jet ski ramps shall not exceed eight feet in width; and**

**11. For sites which have existing dock structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by increasing the number or size of boat slips, docks, or piers, the existing oversized structures shall be reduced to a maximum of eight feet in width.**

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## **SUBCHAPTER 6. GENERAL PERMITS**

7:7-[7.5]6.1 [Coastal general] **General permit 1** - [for] amusement pier expansion

(a) This [coastal] general permit authorizes the expansion of an existing, functional amusement pier [as defined at N.J.A.C. 7:7-1.3,] provided that the expansion complies with the following:

1. – 9. (No change.)

10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

[(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 amusement pier as it existed on July 19, 1993, as it exists at the time of the application, and as it will appear with the proposed expansion;

ii. Existing and proposed direct public access points from the boardwalk to the beach and all public accessways to the beach on the amusement pier and expansion;

iii. The proposed public seating and viewing area at the terminal end of the expansion; and

iv. Location of the mean high water line of the Atlantic Ocean at or in proximity to the site;

and

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

7:7-[7.6]6.2 [Coastal general] **General permit 2** - [for] beach and dune maintenance activities

(a) This [coastal] general permit authorizes beach and dune maintenance activities provided:

1. The beach and dune maintenance activities are conducted in accordance with Best Management Practices [as defined by the Department in the Coastal Zone Management rules at N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4] **set forth at N.J.A.C. 7:7-10.2, Standards applicable to routine beach maintenance; 7:7-10.3, Standards applicable to emergency post-storm beach restoration; and 7:7-10.4, Standards applicable to dune creation and maintenance**[(routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance, respectively)];

2. (No change.)

3. Public access to the beach shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

[(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:

i. The specific location of all proposed beach and dune maintenance activities;

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ii. All tidal waterways and their shores on and adjacent to the site; and

iii. All existing and proposed public access areas and public accessways to tidal waterways and their shores including streets, paths, trails, easements, streets shown on a recorded plan but never built (paper streets), dune walkovers/walkways, piers and other dedicated public rights-of-way on and adjacent to the site; and

2. The name, title, address and telephone number of the person(s) responsible for supervising the proposed activities to ensure compliance with N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4;

3. The schedule for conducting the specific beach and dune maintenance activities; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the beach and/or dune maintenance activities comply with (a) above, including supplemental documents as appropriate, such as beach fee schedules, maps or surveys.]

[(c)] (b) As of November 5, 2015, the Department shall not approve authorization under this general permit to any municipality that does not have a Department-approved municipal public access plan in accordance with N.J.A.C. [7:7E-8.11(c)] **7:7-16.9(c)** through (m).

7:7-[7.7]**6.3** [Coastal general] **General** permit **3** - [for] voluntary reconstruction of certain residential or commercial development

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

1. – 4. (No change.)

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5. The reconstruction does not result in additional impacts to [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**;

6. (No change.)

7. The reconstruction meets the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25** and [3.26] **9.26**; and

8. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

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

[(c) 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) clearly depicting:
  - i. The locations and dimensions of all existing and proposed structures;
  - ii. Existing site conditions (including all Special Areas as defined at N.J.A.C. 7:7E-3);
  - iii. All existing and proposed public accessways to tidal waterways and their shores on the site; and
  - iv. All proposed filling, grading, excavation and clearing;

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2. In the case of residential reconstruction, documentation that there will not be an increase in the number of dwelling units;

3. In the case of commercial reconstruction, documentation that there will not be an increase in the number of parking spaces or equivalent parking area associated with the proposed reconstruction; and

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

7:7-[7.8]6.4 [Coastal general] **General permit 4** - [for the] development of [a] **one or two** single-family homes or duplexes

(a) This [coastal] general permit authorizes the development of [a] **one or two** single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, filling, and clearing, excluding shore protection structures), provided the **one or two** single-family homes or duplexes and accessory development are located landward of the mean high water line, and provided the single-family homes or duplexes [is] **are** not located on a bulkheaded lagoon lot.

(b) Development under this [coastal] general permit shall not result in the development of more than [one] **two** single-family homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8]2.2(b)8.

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(c) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.22] **7:7-9.22**, Beaches[,]; [7:7E-3.25] **7:7-9.25**, Flood hazard areas[,]; [7:7E-3.26] **7:7-9.26**, Riparian zones[,]; [7:7E- 3.27] **7:7-9.27**, Wetlands[,]; [7:7E-3.28] **7:7-9.28**, Wetland buffers[,]; and [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or vegetation species habitats.

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

[(d)] (e) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.16] **7:7-9.16**, Dunes, except as provided under [(d)]1] (e)1 or 2 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at [(d)]1ii] (e)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following conditions:

i. - ii. (No change.)

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined using the method described at N.J.A.C. [7:7E- 3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

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iv. (No change.)

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

i. The road, seawall, or bulkhead is of sufficient size to be designated as the [V-zone] **V zone** boundary on the [municipal Flood Insurance Rate Map] **FIRM**;

ii. – iii. (No change.)

iv. The area of proposed construction is designated as an [A-Zone, B-Zone or C-Zone] **A zone, B zone, or C zone** on the [municipal Flood Insurance Rate Map] **FIRM**;

v. – vi. (No change)

[(e)] **(f)** Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.31] **7:7-9.29**, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. [7:7E-3.31(a)] **7:7-9.29(a)**. If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (m)1 below, unless the development meets either [(e)] **(f)**1 or 2 below:

1. (No change.)

2. The development on the coastal bluff is located landward of the developed bluff area as defined at [(e)1] **(f)1** above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located

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landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

[(f)] (g) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.18] **7:7-9.18**, Coastal [High Hazard Areas] **high hazard areas**, and [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, except as excluded under [(f)1] (g)1 below;

1. Development under this [coastal] general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the [Coastal High Hazard Areas] **coastal high hazard areas** rule, N.J.A.C. [7:7E-3.18] **7:7-9.18**, and the [Erosion Hazard Areas] **erosion hazard areas** rule, N.J.A.C. [7:7E-3.19] **7:7-9.19**, if:

i.- iii. (No change.)

[(g)] (h) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

Recodify existing (h) - (j) as (i) - (k) (No change in text.)

[(k)] (Reserved.)

(l) (No change.)

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

1. - 2. (No change.)

3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction [in a form approved by the Department] **that complies with N.J.A.C. 7:7-18** is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (m)1 above.

(n) 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.

[(o) 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;

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- ii. 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. Existing roads and utilities immediately adjacent to the site;
- iv. All existing and proposed development, including all structures, public accessways, 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 (n) above, including supplemental documents as appropriate, such as maps or surveys.]

7:7-[7.9]**6.5** [Coastal general] **General permit 5** - [for the] expansion, or reconstruction (with or without expansion), of a single-family home or duplex

(a) This [coastal] general permit authorizes the expansion, or reconstruction (with or without expansion), of a legally constructed, habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, and clearing, excluding shore protection structures), provided the single-family home or duplex and accessory structures are located landward of the mean high water line, and provided the single-family home or duplex is not located on a bulkheaded lagoon lot.

(b) Development under this [coastal] general permit shall not result in development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8]**2.2(b)8**.

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(c) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.22] **7:7-9.22**, Beaches[,]; [7:7E-3.25] **7:7-9.25**, Flood hazard areas[,]; [7:7E-3.26] **7:7-9.26**, Riparian zones[,]; [7:7E-3.27] **7:7-9.27**, Wetlands[,]; [7:7E-3.28] **7:7-9.28**, Wetland buffers[,]; and [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or vegetation species habitats.

(d) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.16] **7:7-9.16**, Dunes, except as provided under (d)1 through 4 below:

1. Development that is located on the landward slope of a secondary or tertiary dune described at (d)1ii below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following conditions:

i. - ii. (No change.)

iii. The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, and the information in the Department's Geographical Information System (GIS) database as found in the Historical Shorelines coverage 1836-1986; and

iv. (No change.)

2. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not

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comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

i. The road, sea wall, or bulkhead is of sufficient size to be designated as the [V-zone] **V zone** boundary on the [municipal Flood Insurance Rate Map] **FIRM**;

ii. – iii. (No change.)

iv. The area of proposed construction is designated as an [A-Zone, B-Zone or C-Zone] **A zone, B zone, or C zone** on the [municipal Flood Insurance Rate Map] **FIRM**;

v. – vi. (No change.)

3. Development that is located on a dune need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the development meets the following criteria:

i. – iv. (No change.)

v. The dune area waterward of the single-family home or duplex is enhanced as follows:

(1) (No change.)

(2) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's [Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6**; and

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vi. A conservation restriction for the dune areas waterward of the existing and/or approved single-family home or duplex and/or accessory development **which complies with N.J.A.C. 7:7-18** is recorded [in accordance with N.J.A.C. 7:7-1.5(b) ]; and

4. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the development meets the following criteria:

i. (No change.)

ii. The deck, patio, or porch enclosure is located on the non-waterward side of the single-family home or duplex[, as defined at N.J.A.C. 7:7-1.3];

iii. – vi. (No change.)

vii. The dune area waterward of the single-family home or duplex is enhanced as follows:

(1) (No change.)

(2) Native dune vegetation shall be planted in accordance with the specifications contained in Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's [Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609)292- 0060] **Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6**; and

viii. A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development **which complies with N.J.A.C. 7:7-18** is recorded [in accordance with N.J.A.C. 7:7-1.5(b)].

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(e) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.31] **7:7-9.29**, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. [7:7E-3.31(a)] **7:7-9.29(a)**. If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at [(m)1] **(l)1** below, unless the development meets either (e)1 or 2 below:

1. - 2. (No change.)

(f) Development under this [coastal] general permit shall comply with N.J.A.C. [7:7E-3.18] **7:7-9.18**, Coastal [High Hazard Areas] **high hazard areas**, and [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, except as excluded under (f)1 below;

1. Development under this [coastal] general permit that is located on a site partially or completely within an erosion hazard area or coastal high hazard area need not comply with the [Coastal High Hazard Areas] **coastal high hazard areas** rule, N.J.A.C. [7:7E-3.18] **7:7-9.18**, and the [Erosion Hazard Areas] **erosion hazard areas** rule, N.J.A.C. [7:7E-3.19] **7:7-9.19**, if:

i. - iii. (No change.)

(g) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(h) - (j) (No change.)

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[(k) (Reserved)]

[(l)] **(k)** (No change in text.)

[(m)] **(l)** Development under this [coastal] general permit shall comply with the following setbacks:

1. - 2. (No change.)

3. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If the single-family home or duplex and/or accessory structures cannot be located at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction [in a form approved by the Department] **that complies with N.J.A.C. 7:7-18** is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with [(m)1] **(l)1** above.

[(n)] **(m)** 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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[(o) In addition to the application and additional 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. 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. Existing roads and utilities immediately adjacent to the site;
- iv. All existing and proposed development, including all structures, public accessways, 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 the criteria listed (a) through (n) above, including supplemental documents as appropriate such as maps or surveys.]

7:7-[7.10]6.6 [Coastal general] **General permit 6** - [for] construction of a bulkhead and placement of associated fill on a man-made lagoon

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

1. The site is located on a substantially developed manmade lagoon [as defined at N.J.A.C. 7:7-1.3];

2. – 5. (No change.)

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6. Clean fill from an upland source **or the dredged material removed as part of the bulkhead installation, provided such dredged material meets the criteria for structural or non-structural fill material and is managed in accordance with Appendix G**, shall be used for backfill.

7. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

[(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 the site;
  - ii. Existing features at the site, including structures and the upper and lower limits of wetlands and beach areas;
  - iii. Bulkheads or other retaining structures on adjacent properties;
  - iv. All proposed structures including deadmen, tie backs, and returns; and
  - v. All existing and proposed public accessways to tidal waterways and their shores on the site; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed bulkhead complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.]

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7:7-[7.11] **6.7** [Coastal general] **General** permit **7** - [for the] construction of a revetment at a single-family home or duplex lot

(a) This [coastal] general permit authorizes the construction of a revetment[, as defined at N.J.A.C. 7:7-1.3,] at a single-family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. ([The coastal general] **General** permit **8** – [for the] construction of gabions at a single-family home is found at N.J.A.C. 7:7-[7.12] **6.8**.)

(b) (No change.)

(c) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

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

1. Three copies of a site(s) plan showing the following:
  - i. The mean high, mean low and spring high water lines of the tidal waters at the site;
  - ii. Existing features at the site including topography and structures;
  - iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;
  - iv. Bulkheads or other retaining structures on adjacent properties;

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v. The proposed location of the revetment and limit of disturbance; and

vi. Cross sections of the proposed revetment in relationship to mean high, mean low water, and spring high water lines; and

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

7:7-[7.12]**6.8** [Coastal general] **General** permit **8** -[for the] construction of gabions at a single family/duplex lot

(a) This [coastal] general permit authorizes the construction of gabions[, as defined at N.J.A.C. 7:7-1.3,] at a single-family home or duplex lot that is not part of a larger development owned or controlled by the same property owner and which has an eroding shoreline along any shore other than the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. ([The coastal general] **General** permit **7** – [for the] construction of revetments at a single-family home is found at N.J.A.C. 7:7-[7.11]**6.7**.)

(b) (No change.)

(c) Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

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[(d) In addition to the application and additional 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, mean low, and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including topography and structures;

iii. The upper and lower limits of wetlands, beach, dune, and coastal bluff areas at the site and on adjacent waterfront properties;

iv. Bulkheads or other retaining structures on adjacent properties;

v. The proposed location of the gabions and limit of disturbance;

vi. Cross sections of the proposed gabions in relationship to mean high and mean low water;

and

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

7:7-[7.13]6.9 [Coastal general] **General permit 9** – [for the] construction of support facilities at legally existing and operating marinas] **7:7-6.9 General permit 9 - construction of support facilities at legally existing and operating marinas**

(a) This [coastal] general permit authorizes the construction of support facilities at legally existing and operating commercial marinas including marinas operated by public agencies, commissions, and authorities.

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(b) The construction of the following support facilities listed at (b)1 through 6 below is acceptable provided they comply with the specific conditions for each facility and also with (c) below:

1. Construction of boat rack systems/marina support buildings including, but not limited to, showroom, maintenance/repair, marine supplies, bait/tackle, boat sales, dock masters office buildings, sheds, and storage, excluding residential development provided:

i. – iv. (No change.)

v. The marina must provide or maintain restrooms and at least one portable toilet emptying receptacle in accordance with N.J.A.C. [7:7E-7.3(d)] **7:7-15.3(d)**; and

vi. (No change.)

2. Construction of restroom facilities provided:

i. (No change.)

[ii. Restrooms shall provide both hot and cold water and shall be maintained in a sanitary, warm, dry, brightly-lit and well ventilated condition;]

Recodify existing iii. and iv. as **ii. and iii.** (No change in text.)

3. Construction of fences, water lines, and new sewer lines to connect restrooms, pumpout facilities, and/or pumpout support facilities to existing sewer lines provided:

i. The construction has no prudent or feasible alternative alignment which would have less impact to [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**;

ii. The construction shall not result in permanent or long term loss of [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**;

iii. - iv. (No change.)

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4. – 6. (No change.)

(c) The construction of support facilities listed at (b)1 through 6 above shall also comply with the following:

1. The marina complies with N.J.A.C. [7:7E-7.3(d)] **7:7-15.3(d)**, the standards relevant to the construction of marinas;

2. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**;

[3. Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided;]

[4.] **3.** (No change in text.)

[5.] **4.** The development shall meet the requirements of N.J.A.C. [7:7E-3.25] **7:7-9.25**.

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

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

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. Existing features at the site including, topography, structures, utilities, beach areas and dune areas;

iii. The upper and lower limits of wetlands within 150 feet of the proposed limit of disturbance;

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iv. The proposed development including all limits of disturbance, structures and building heights, grading, and existing and proposed clearing areas;

v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and

vi. Where sewers are to be used, the location of the existing sewer line abutting the site;

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed marina support facility complies with (a) through (c) above, including supplemental documents as appropriate, such as maps or surveys; and

3. A copy of any previous coastal permit for the site.]

**(d) Nothing in this section shall be construed to relieve a marina from compliance with applicable requirements of other State or local agencies.**

7:7-[7.14]6.10 [Coastal general] **General permit 10** – [for] reconstruction of a legally existing functioning bulkhead

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

1. – 2. (No change.)

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] **2.4(d)7**.

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(b) The reconstruction of a legally existing bulkhead as described in (a) above is acceptable provided that:

1. (No change.)

2. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

3. The construction of bulkheads subject to wave run up forces ([V-zones] **V zones**) shall be designed and certified by a professional engineer to withstand the forces of wave runoff[, and shall include splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, an appropriate sub-base and filter cloth must be incorporated into the design];

4. – 5. (No change.)

6. The construction shall have no adverse impact to any [Special Areas] **special areas** defined at N.J.A.C. [7:7E-3] **7:7-9**; and

7. Clean fill from an upland source **or the dredged material removed as part of the bulkhead installation, provided such dredged material meets the criteria for structural or non-structural fill material and is managed in accordance with Appendix G**, shall be used for backfill.

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

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1. Three copies of a site plan(s) showing the following:
  - i. The mean and spring high water lines of the tidal waters at the site;
  - ii. Existing features at the site including, all waterfront structures, existing bulkhead, and the upper and lower limits of wetlands, beach areas and dune areas;
  - iii. Bulkheads or other retaining structures on adjacent properties;
  - iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-zone; and
  - v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed reconstructed bulkhead complies with (a) and (b) above, including supplemental documents as appropriate such as maps or surveys.]

7:7-[7.15]6.11 [Coastal general] **General permit 11** – [for] investigation, cleanup, removal, or remediation of hazardous substances

(a) This [coastal] general permit authorizes all regulated activities [above] **landward of** the mean high water line that are undertaken, authorized, or otherwise expressly approved in writing by the Department **or by a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C**, for the investigation, cleanup, removal, or remediation of hazardous substances as defined by or pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or pollutants,

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as defined by the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provided the following conditions are met:

1. If the proposed cleanup activity is to take place in [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**, the [coastal] general permit authorization shall be issued only if the Department **or a licensed site remediation professional** finds that there are no practicable alternatives to the investigation, cleanup, removal, and remediation of the hazardous substances or pollutants that would involve less or no disturbance or destruction of [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**;

2. Mitigation may be required in accordance with [the Coastal Zone Management rules, N.J.A.C. 7:7E,] **N.J.A.C. 7:7-17** for disturbance to [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**; and

3. For coastal wetlands, mitigation shall be performed [according to the procedures for mitigation at N.J.A.C. 7:7E-3.27 and 7:7E-3B] **in accordance with N.J.A.C. 7:7-17**. The mitigation plan may be incorporated as part of the document by which the Department **or a licensed site remediation professional** approves the clean-up or it may be submitted as part of the [coastal] **application for authorization under a** general permit [application]. The [coastal] general permit will not be issued until the mitigation plan is submitted and approved by the [Program] **Division** according to the standards at N.J.A.C. [7:7E-3.27 and 7:7E-3B] **7:7-17**.

[(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:

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- i. The mean and spring high water lines of the tidal waters at the site;
  - ii. The limits of all Special Areas as defined at N.J.A.C. 7:7E-3 within 150 feet of the proposed limits of disturbance on site and at the material disposal site;
  - iii. The proposed limits of disturbance and method of investigation, clean up, removal or remediation; and
  - iv. The restoration plan;
2. A Compliance Statement prepared in accordance with to N.J.A.C. 7:7-6, demonstrating how the proposed hazardous waste cleanup complies with (a) above, including supplemental documents as appropriate, such as maps or surveys;
  3. Photographs of the site prior to the remediation; and
  4. The Department's case control number.]

7:7-[7.16]6.12 [Coastal general] **General permit 12** – [for the] landfall of utilities

(a) This [coastal] general permit authorizes the landfall of utilities including cable (that is electric, television, and fiber optics), telecommunication, petroleum, natural gas, water, and sanitary sewer lines constructed in tidal water bodies authorized pursuant to the Waterfront Development Law or Flood Hazard Area Control Act.

(b) Construction authorized under this [coastal] general permit is acceptable provided:

1. – 3. (No change.)
4. The utility landfall shall have no adverse impacts to [Special Areas] **special areas** as defined [in the Coastal Zone Management rules N.J.A.C. 7:7E-3] **at N.J.A.C. 7:7-9;**

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5. – 9. (No change.)

[(c) 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 the site;

ii. The upper and lower limits of wetlands, beach areas, coastal bluffs, endangered or threatened wildlife or vegetation habitats and dune areas within 150 feet of the proposed limit of disturbance;

iii. The proposed limit(s) of disturbance;

iv. The restoration plan;

v. The location of the existing and proposed utility; and

vi. The location and type of soil erosion and sediment control measures to be used during construction; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed landfall of the utility complies with (a) and (b) above, including supplemental documents as appropriate, such as maps and surveys.]

7:7-[7.17] **6.13** [Coastal general] **General permit 13** – [for the] construction of recreational facilities at public parks

(a) This [coastal] general permit authorizes the construction of the following recreational facilities at parks which are publicly owned or controlled for the purposes of public access.

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Construction of the facilities listed below is acceptable provided that the construction has no adverse impact on any [Special Areas] **special areas** defined at N.J.A.C. [7:7E-3] **7:7-9** and provided that the facility complies with the specific conditions listed below for each facility.

1. (No change.)

2. Construction of restroom facilities not located on a beach, dune, or in a wetland, provided that:

i. (No change.)

ii. The connection at (a)2i above shall be consistent with the [208] Water Quality Management Plan **adopted pursuant to N.J.A.C. 7:15;**

iii. – iv. (No change.)

3. (No change.)

(b) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(c) 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 the site;

ii. The proposed development including all limits of disturbance, structures, grading and clearing;

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iii. Within 150 feet of the proposed limit(s) of disturbance, the upper and lower limits of wetlands, beach areas, endangered and threatened wildlife or vegetation habitats and dune areas; and

iv. All existing and proposed public access areas and public accessways to tidal waterways and their shores on-site; and

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

7:7-[7.18] **6.14** [Coastal general] **General permit 14** – [for] bulkhead construction and placement of associated fill **at a single-family home or duplex lot**

(a) This [coastal] general permit authorizes the construction of a bulkhead and associated fill at a single-family[/duplex] **home or duplex** lot on a natural water body provided that the proposed bulkhead complies with the following:

1. – 4. (No change.)

5. Clean fill from an upland source **or the dredged material removed as part of the bulkhead installation, provided such dredged material meets the criteria for structural or non-structural fill material and is managed in accordance with Appendix G**, shall be used for backfill;

6. – 7. (No change.)

8. The construction of bulkheads subject to wave run-up forces ([V-zones] **V zones**) shall be designed and certified by a professional engineer to withstand the forces of wave run-up[, and

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shall include a splash pad on the landward side. The splash pad shall have a minimum width of 10 feet, and shall be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is utilized, an appropriate sub-base and filter cloth must be incorporated into the design];

9. - 10. (No change.)

11. Public access shall be provided in accordance with the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(b) This [coastal] general permit is not available for activities subject to the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.

[(c) 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, beach and dunes areas;
  - iii. Existing features both at the site and on adjacent waterfront sites including all waterfront structures and existing bulkhead and other retaining structures;
  - iv. The proposed new bulkhead including returns and tie backs and splash pad if located within the V-Zone; and
  - v. All existing and proposed public access areas and public accessways to tidal waterways and their shores on-site; and

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

7:7-[7.19]6.15 [Coastal general] **General** permit **15** – [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. The structures shall be located on individual single-family or duplex lots and shall be for recreational[/noncommercial] **or noncommercial** use;

2. – 8. (No change.)

9. Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively. **An alternative dock design which allows for sunlight penetration equal to or greater than that allowed by the spacing of planking described in this paragraph is also acceptable;**

10. – 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. The mean high and mean low water lines of the tidal waters at the site;

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ii. The upper and lower limits of wetlands at the site;

iii. Existing structures including all waterfront structures (docks, pilings and bulkheads) on the project site and adjacent waterfront properties;

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

v. The proposed structures and boat mooring area; and

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dock, pier, jet ski ramp, pilings or boat lift complies with (a) above, including supplemental documents as appropriate such as maps or surveys.]

7:7-[7.20]6.16 [Coastal general] **General permit 16** - [for] minor maintenance dredging in man-made lagoons

(a) This [coastal] general permit authorizes minor maintenance dredging in man-made lagoons provided that:

1. - 5. (No change.)

[(b) In addition to the application 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 mean low water lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;

iii. The existing and proposed water depths in the area to be dredged;

iv. Proposed cross sections of area to be dredged;

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v. The location of the dredged material disposal site;

vi. The method of dredging; and

vii. The method of stabilization of dredging material; and

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

7:7-[7.21]6.17 [Coastal general] **General** permit **17** – [for the] stabilization of eroded shorelines

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

1. (No change.)

2. The stabilization of the eroded shoreline shall have no adverse impact on [Special Areas]

**special areas** defined at N.J.A.C. [7:7E-3] **7:7-9**;

3. – 10. (No change.)

[(b) In addition to the applications 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(s) plan showing the following:

i. Mean high, mean low and spring high water lines of the tidal waters at the site;

ii. Existing waterfront structures at the site and on adjacent waterfront sites;

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iii. The upper and lower limits of wetlands, beach areas, and dune areas at the site and on adjacent waterfront properties;

iv. The location and cross section of the proposed stabilization materials in relationship to mean high and mean low water; and

v. On public lands, the location of the existing and proposed public access to the waterfront; and

2. A compliance statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed stabilization of the eroded shoreline complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.]

7:7-[7.22] **6.18** [Coastal general] **General** permit **18** – [for] avian nesting structures

(a) This [coastal] general permit authorizes the construction of pile supported avian nesting structures provided:

1. – 2. (No change.)

3. The construction of the pile supported nesting structure shall not adversely impact [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**.

[(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. The location of the proposed nesting structure;

ii. Mean high water line of the tidal waters at the site;

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iii. Existing features at the site including structures, and all Special Areas as defined at N.J.A.C. 7:7E-3, including the upper and lower limits of wetlands, beach areas, and dune areas; and

iv. Details of the proposed nesting structure.]

7:7-[7.23]6.19 [Coastal general] **General permit 19** – [for] modification of existing electrical substations

(a) This [coastal] general permit authorizes the modification of existing electrical substations within the existing fence line to maintain substation and electrical load and system reliability provided that:

1. (No change.)
2. The activities shall not have an adverse impact on [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9**.

[(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:
  - i. Existing fence, existing limits of clearing, existing and proposed structures; and
  - ii. The upper and lower limits of any wetlands within 150 feet of the fenced area; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed modification to the existing electrical substation complies with (a) above, including supplemental documents as appropriate, such as maps and surveys.]

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7:7-[7.24]6.20 [Coastal general] **General permit 20** – [for the] legalization of the filling of tidelands

(a) This [coastal] general permit authorizes the legalization of the filling of any lands formerly flowed by the tide provided:

1. (No change.)
2. The fill appears on the applicable Tidelands Map [adopted by the Tidelands Resource Council (base map photography dated 1977/78)]; and
3. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**;

(b) The legalization of the filling of any lands formerly flowed by the tide associated with a single-family home that is not part of a larger development, is eligible for a permit-by-rule. See N.J.A.C. 7:7-[7.2(a)9]4.9.

[(c) 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 location of the tidelands claim line as shown on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/78) and current mean high water line at or adjacent to the site; and

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ii. The location of all existing and proposed public access areas and public accessways to tidal waterways and their shores on-site;

2. Proof that a tidelands instrument has been obtained for all filled tidelands areas or evidence that an application for a tidelands instrument has been submitted to the Bureau of Tidelands Management. This coastal general permit authorization shall not be valid until the permittee has received a tidelands instrument; and

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

7:7-[7.25]**6.21** [Coastal general] **General** permit **21** – [for the] construction of telecommunication towers

(a) This [coastal] general permit authorizes the construction of telecommunication towers such as cellular telephone and radio towers, including access roads and associated support buildings located upland of the mean high water line, provided:

1. - 2. (No change.)

3. The development shall be located a minimum of 50 feet landward of the mean high water line except on sites defined as filled water's edge sites at N.J.A.C. [7:7E-3.23] **7:7-9.23** where the development shall instead be located a minimum of 100 feet landward of the mean high water line;

4. (No change.)

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5. The development shall comply with the endangered or threatened wildlife or vegetation species habitats rule, N.J.A.C. [7:7E-3.38] **7:7-9.36**, and the critical wildlife habitat rule, N.J.A.C. [7:7E-3.39] **7:7-9.37**.

[(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 proposed development including all limits of disturbance, structures, grading and clearing;

ii. All existing features at the site including the mean high and spring high water lines, and the upper limits beaches and dunes; and

iii. The upper limits of wetlands and coastal bluffs on and adjacent to the site; and

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

7:7-[7.26]**6.22** [Coastal general] **General** permit **22** – [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

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industry, at hotels and motels, commercial developments, and multi-family residential developments over 75 units provided that:

1. – 4. (No change.)

5. The structure shall have no adverse impact on [Special Areas] **special areas** defined at N.J.A.C. [7:7E-3] **7:7-9**;

6. - 9. (No change.)

10. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**; and

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 be submitted:

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

i. The mean high water line of the tidal waters at the site;

ii. The location and type of all proposed structures;

iii. The upper limits of wetlands and beach and dune areas, and endangered and threatened wildlife or vegetation habitats; and

iv. All existing and proposed public access areas and public accessways to tidal waterways and their shores on the site; and

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

[(c)](b) Seasonal and temporary structures related to the tourism industry at public developments are not regulated as public development under CAFRA pursuant to N.J.A.C. 7:7-1.3 and 2.1(b)2viii] **1.5 and 2.2(b)2viii.**

7:7-[7.27] **6.23** [Coastal general] **General permit 23** – [for] geotechnical survey borings

(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] **shellfish** habitat (N.J.A.C. [7:7E-3.2] **7:7-9.2**), [Submerged] **submerged** vegetation habitat (N.J.A.C. [7:7E-3.6] **7:7-9.6**) or [Endangered] **endangered** or threatened wildlife or plant species habitats (N.J.A.C. [7:7E-3.38] **7:7-9.36**).

2. Borings and related site disturbance shall comply with [Wild] **wild** and scenic river corridors, (N.J.A.C. [7:7E-3.46] **7:7-9.44**), [Wetlands] **wetlands** (N.J.A.C. [7:7E-3.27] **7:7-9.27**), and [Wetlands] **wetlands** buffers (N.J.A.C. [7:7E-3.28] **7:7-9.28**).

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

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

ii. (No change.)

iii. [Potential] **Any potential or actual** impact to existing monitoring wells shall be reported to the Department's [Office of] Site Remediation [to] **Program and the licensed site remediation professional (LSRP) of record assigned to the case, if applicable. The LSRP (or the Site Remediation Program if there is no LSRP involved in the case) will** coordinate appropriate measures required to protect, [or seal/replace] **decommission, or install** the monitoring wells. **The LSRP is responsible for ensuring that all damaged or destroyed wells are decommissioned in accordance with N.J.A.C. 7:9D. Any replacement wells shall be installed in accordance with N.J.A.C. 7:9D. [Sealing] Decommissioning of monitoring wells and drilling of regulated soil borings** shall be [done] **performed** by a [licensed] New Jersey **licensed** well driller [who is also certified to seal wells] **of the proper class in accordance with N.J.A.C. 7:9D.**

4. – 7. (No change.)

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

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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 be 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 (Reserved)]

7:7-[7.29]6.24 [Coastal general] **General** permit **24** - [for] habitat creation, restoration, enhancement, and living shoreline activities

(a) This [coastal] general permit authorizes habitat creation, restoration, enhancement, and living shoreline activities necessary to implement a plan for the restoration, creation,

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enhancement, or protection of the habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas, which is sponsored by a Federal or State agency or other entity described in (b) below. For the purposes of this general permit, a “sponsor” shall endorse the activities in writing.

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

1. (No change.)
2. A project plan approved under the Partners for Fish and Wildlife program, Coastal Program, or a similar program administered by the [U.S. Fish and Wildlife Service] **USFWS**;
3. – 4. (No change.)
5. A mitigation project required or approved by a government agency, such as the [U.S. Army Corps of Engineers] **USACE**;
6. (No change.)
7. A habitat creation, restoration, 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 (b)2 through 5 above;
8. A living shoreline plan designed and/or sponsored by the Department, the [U.S. Fish and Wildlife Service] **USFWS**, the Natural Resource Conservation Services, the [U.S. Army Corps of Engineers] **USACE**, the [U.S. Environmental Protection Agency] **USEPA**, or [the National Oceanic Atmospheric Administration’s] **NOAA’s** Restoration Center; or
9. (No change.)

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

1. - 6. (No change.)

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

1. (No change.)
2. 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] **this chapter**;

3. - 4. (No change.)

(e) Activities under this [coastal] general permit, except for living shoreline activities, which are subject to the requirements of (f) below, shall comply with the following:

1. If the proposed habitat creation, restoration, or enhancement activity is to take place in [Special Areas] **special areas**, as defined at N.J.A.C. [7:7E-3] **7:7-9**, 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] **special areas**;

2. The activities shall disturb the minimum amount of [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3] **7:7-9** necessary to successfully implement the project plan;

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3. The activities shall not decrease the total combined area of [Special Areas] **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] **special area** to another [Special Area] **special area** if the Department determines that such conversion is environmentally beneficial; and

4. (No change.)

(f) Living shoreline activities shall comply with the following:

1. (No change.)

2. The project shall disturb the minimum amount of special areas as defined at N.J.A.C. [7:7E-3] **7:7-9**, necessary to successfully implement the project plan. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if the Department determines that the activities causing the reduction are sufficiently environmentally beneficial to outweigh the negative environmental effects of the reduction; and

3. Where the living shoreline is intended to restore an existing shoreline to a previous location, the living shoreline, including all associated fill, shall not exceed the footprint of the shoreline as it appeared on the applicable Tidelands Map [adopted by the Tidelands Resource Council (base map photography dated 1977/1978)], except for a structural component of the project intended to reduce wave energy.

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(g) Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(h) This [coastal] general permit does not authorize an activity unless the sole purpose of the activity is habitat creation, restoration, enhancement, or a living shoreline. For example, this [coastal] general permit does not 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.

(i) 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;

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2. If a living shoreline activity includes the placement of fill, the applicant shall identify the footprint of the shoreline as it appeared on the applicable Tidelands Map adopted by the Tidelands Resource Council (base map photography dated 1977/1978); and

3. 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 surveys.]

7:7-[7.30]6.25 [Coastal general] **General permit 25** – [for the] construction of one to three wind turbines less than 200 feet in height and having a cumulative rotor swept area no greater than 4,000 square feet

(a) This [coastal] general permit authorizes the construction of one to three wind turbines less than 200 feet in height, measured from the ground surface to the tip of the blade at its highest position, and having a cumulative rotor swept area no greater than 4,000 square feet provided:

1. – 3. (No change.)

4. The wind turbine(s) shall comply with N.J.A.C. [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or plant species habitats, and [7:7E-3.39] **7:7-9.37**, Critical wildlife habitats;

5. - 8. (No change.)

(b) In accordance with N.J.A.C. 7:7-[7.1(e)]1**3.8(b)** the Department may add a special condition to an authorization under this general permit, that would curtail the operation of the wind turbines, as directed by the Department pursuant to (b)1 below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or

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bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine.

Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

1. (No change.)

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

1. Five copies of a site plan showing the following:
  - i. The mean high water lines of the tidal waters within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
  - ii. Existing features at the site including topography, structures, utilities, beach areas, dune areas, coastal bluffs, and floodways;
  - iii. The upper limits of wetlands, beaches, dunes and coastal bluffs within 150 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;

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iv. The proposed location of each proposed wind turbine, all limits of disturbance, grading, and existing and proposed clearing areas; and

v. The proposed lighting for each proposed wind turbine;

2. Five copies of an elevation plan of each proposed wind turbine;

3. The total height and rotor swept area for each proposed wind turbine;

4. Five copies of the post-construction monitoring methodology, if applicable; and

5. Five copies of a Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed wind turbine(s) comply with (a) above, including supplemental documents as appropriate, such as maps or surveys.]

7:7-[7.31]**6.26** [Coastal general] **General** permit **26** – [for the] construction of wind turbines less than 250 feet in height and having a cumulative rotor swept area no greater than 20,000 square feet

(a) This [coastal] general permit authorizes the construction of wind turbines less than 250 feet in height, measured from the ground surface to the tip of the blade at its highest position, and having a cumulative rotor swept area no greater than 20,000 square feet provided:

1. – 3. (No change.)

4. No portion of the wind turbine(s), including blades, tower, and site disturbance shall be located within:

i. (No change.)

ii. An area identified on the Department's Large Scale Wind Turbine Siting Map, dated August 8, 2009, incorporated by reference into [N.J.A.C. 7:7E] **this chapter**. The Department's

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Large Scale Wind Turbine Siting Map is available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>; or

iii. (No change.)

5. The wind turbine(s) shall comply with N.J.A.C. [7:7E-3.39] **7:7-9.37**, Critical wildlife habitats;

6. Development under this general permit shall not result in construction of turbines with a cumulative rotor swept area[, as defined at N.J.A.C. 7:7-1.3,] greater than 20,000 square feet on a site, either solely or in conjunction with a previous wind turbine development;

7. – 9. (No change.)

(b) In accordance with N.J.A.C. 7:7-[7.1(e)1]**3.8(b)**, the Department may add a special condition to an authorization under this general permit, that would curtail the operation of the wind turbines as directed by the Department pursuant to (b)1 below, during peak spring (April through June) and fall (August through November) migration periods when migrating birds or bats would likely be flying at the height of the rotor swept area or be present at seasonally high densities throughout the entire air column. Such curtailment shall not exceed 360 hours in a calendar year per turbine that occurs within the normal range of operation of the turbine.

Curtailment measures include establishing a minimum wind speed that must be achieved prior to starting operations and shutting down operations during certain weather conditions or migratory events. Weather conditions that may necessitate curtailment include low wind speeds, low altitude cloud cover, strong storms, or approaching weather fronts favorable to bird or bat migration (such as southerly winds in the spring or northwest winds in the fall). Migratory

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events that may necessitate curtailment include high concentrations of migrating birds and bats using the coastal area (for example, high concentrations of shorebirds making daily flights between coastal feeding areas, such as mudflats, and roosting areas during spring migration).

1. (No change.)

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

1. Five copies of a site(s) plan showing the following:
  - i. The mean high water lines of the tidal waters within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
  - ii. Existing features at the site including topography, structures, utilities, beach areas, dune areas, coastal bluffs, floodways, and limits of the areas identified on the Department's Large Scale Wind Turbine Siting Map and areas within one-quarter mile of mapped areas;
  - iii. The landward limits of wetlands, beaches, dunes and coastal bluffs within 50 feet of any portion of the wind turbine(s), including blades, tower and site disturbance;
  - iv. The proposed location of each proposed wind turbine, including all limits of disturbance, grading, and existing and proposed clearing areas; and
  - v. The proposed lighting for each proposed wind turbine;
2. Five copies of an elevation plan of each proposed wind turbine;
3. The total height and rotor swept area for each proposed wind turbine;
4. Five copies of the post-construction monitoring methodology; and

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5. Five copies of a Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed wind turbine(s) comply with (a) above, including supplemental documents as appropriate, such as maps or surveys.]

7:7-[7.32]6.27 [Coastal general] **General** permit **27** – [for the] dredging of sand from a man-made lagoon deposited as a result of a storm event for which the Governor declared a State of Emergency

(a) This [coastal] general permit authorizes the dredging of sand from a man-made lagoon that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 through [6] **5** below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. – 5. (No change.)

(b) An application that meets the requirements of N.J.A.C. 7:7-[7.3]23 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

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(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. [7:7E-4.6] **7:7-12.6** at the same site.

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

1. One copy of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands on site and on adjacent lagoonfront properties;
  - iii. If available, pre- and post-storm bathymetry of the area to be dredged;
  - iv. The method of dredging;
  - v. The location of the dredged material disposal site; and
  - vi. The method of stabilization of dredged material;
2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal waters;" October 1997 provides guidance on performing a grain size analysis; and
3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.]

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7:7-[7.33]6.28 [Coastal general] **General permit 28** – [for the] dredging of material from a waterway at a residential or commercial development deposited as a result of the failure of a bulkhead as a consequence of a storm event for which the Governor declared a State of Emergency

(a) This [coastal] general permit authorizes the dredging of material from a waterway at a residential or commercial lot that was deposited as a result of the failure of a legally existing bulkhead that was damaged as a result of a storm event for which the Governor declared a State of Emergency, provided:

1. - 5. (No change.)

(b) An application that meets the requirements of N.J.A.C. 7:7-[7.3]23 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(c) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. [7:7E-4.6] 7:7-12.6 at the same site.

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

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1. One copy of a site plan(s) showing the following:
  - i. The mean high and mean low water lines of the tidal waters at the site;
  - ii. The upper and lower limits of wetlands on site and on adjacent properties;
  - iii. The alignment of the bulkhead that failed;
  - iv. If available, the pre- and post-storm bathymetry of the area to be dredged;
  - v. The method of dredging;
  - vi. The location of the dredged material disposal site; and
  - vii. The method of stabilization of the dredged material;

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

7:7-[7.34]6.29 [Coastal general] **General permit 29** – [for] dredging and management of material from a marina deposited as a result of a storm event for which the Governor declared a State of Emergency

(a) This [coastal] general permit authorizes the dredging and management of material from a marina that was deposited as a result of a storm event for which the Governor declared a State of Emergency, provided (a)1 and 2 below are met. Sand means, for the purposes of this section, a material consisting of 90 percent or greater of particles by weight retained on a 0.0625 mm sieve.

1. - 2. (No change.)

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(b) (No change.)

(c) An application that meets the requirements of N.J.A.C. 7:7-[7.3]23 for authorization under this general permit shall be received by the Department no later than 24 months after the date the Governor declared a State of Emergency.

(d) (No change.)

(e) Material determined not to be sand shall be disposed of in an existing upland confined disposal facility located on the marina property, until beneficially used at an on- or off-site location. The dredged material shall remain within the confined disposal facility until [a determination of] an acceptable use determination for the final placement site, **in accordance with Appendix G**, is issued by the Department. Additional testing of the material may be required as part of the Department's assessment of a final placement site. The upland confined disposal facility shall:

1. - 3. (No change.)

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(f) An authorization of dredging issued under this general permit shall not be considered in determining whether a future dredging activity constitutes maintenance dredging as defined at N.J.A.C. [7:7E-4.6] **7:7-12.6** at the same site.

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

1. One copy of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site;

ii. The upper and lower limits of wetlands on site and on adjacent properties;

iii. If available, the pre- and post-storm bathymetry of the area to be dredged;

iv. The method of dredging;

v. The location and areal dimensions of the existing on-site disposal area, including inflow and weir discharge points; and

vi. Cross sections showing the heights of the berms of the existing on-site disposal area;

2. A grain size analysis of the material to be dredged. The Department's technical manual, titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal waters;" October 1997 provides guidance on performing a grain size analysis;

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3. Calculations demonstrating the available capacity of the upland confined disposal facility located on the marina site; and

4. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed dredging and dredged material management activities comply with (a) through (e) above, including supplemental documents as appropriate, such as maps or surveys.]

7:7-[7.35]6.30 [Coastal general] **General permit 30** – [for] commercial shellfish aquaculture activities

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

1. (No change.)

2. The structures are not located within submerged infrastructure routes, N.J.A.C. [7:7E-3.12] **7:7-9.12**, shipwreck and artificial reef habitat, N.J.A.C. [7:7E-3.13] **7:7-9.13**, or wetlands, N.J.A.C. [7:7E-3.27] **7:7-9.27**;

3. - 7. (No change.)

(b) – (d) (No change.)

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

1. Once copy of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site, any wetlands and navigation channels;

ii. The area covered by the shellfish lease;

iii. Existing waters depths in the area where the structures will be located; and

iv. The location of the proposed structures;

2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed commercial shellfish aquaculture equipment complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.]

7:7-[7.36]**6.31** [Coastal general] **General** permit **31** – [for the] placement of shell within shellfish lease areas

(a) This [coastal] general permit authorizes the placement of shell in an area with a valid shellfish lease authorized under N.J.S.A. 50:1-23, provided:

1. - 4. (No change.).

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(b) This [coastal] general permit does not authorize the stockpiling of shell or dredging activities.

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

1. Once copy of a site(s) plan showing the following:

i. The mean high, mean low and spring high water lines of the tidal waters at the site, any wetlands and navigation channels;

ii. The area covered by the shellfish lease; and

iii. Existing waters depths in the area where the shell will be located;

2. The type and quantity of shell to be used, and the source of the shell; and

3. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed shell planting complies with (a) through (b) above, including supplemental documents as appropriate, such as maps or surveys.]

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

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

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**1. Do not adversely affect the habitat of any threatened or endangered wildlife or plant species habitat, as defined at N.J.A.C. 7:7-9.36;**

**2. Do not require the application of any pesticide on areas containing significant stands of high vigor Saltmarsh cordgrass (*Spartina alterniflora*), Wildrice (*Zizania aquatica*), Cattail (*Typha sp.*), and Common threesquare (*Scirpus americanus*) as shown generally on wetlands maps, see chapter Appendix D; and**

**3. When conducted within waters of the State or waters of the United States, are conducted pursuant to an aquatic use permit issued by the Department's Pesticide Control Program.**

[SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE]

(**Agency Note:** The general standards for issuing coastal general permits and permits-by-rule currently codified as N.J.A.C. 7:7-7.1, are recodified, with amendments, as N.J.A.C. 7:7-3.2)

(**Agency Note:** The permits-by-rule currently codified as N.J.A.C. 7:7-7.2, are recodified, with amendments as N.J.A.C. 7:7-4.1 through 4.20.)

(**Agency Note:** N.J.A.C. 7:7-7.3 is proposed for repeal, with the subject matter of this rule now addressed in N.J.A.C. 7:7-3, 23, 24, and 26.)

**SUBCHAPTER 7. LONG BRANCH REDEVELOPMENT ZONE PERMIT**

7:7-[7.4]7.1 [Long Branch Redevelopment Zone Permit] **Applicability; permit conditions**

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(a) [The] **This Long Branch Redevelopment Zone Permit authorizes the** construction of any development regulated under N.J.A.C. 7:7-[2.1]2.2 within the Redevelopment Zone of the City of Long Branch, as defined in the Redevelopment Plan Ordinance of the City of Long Branch and as described at (a)1 below, [is authorized,] provided the conditions at (b) through [(i)](g) below **and the notification requirements at N.J.A.C. 7:7-7.2 or 7.3, as applicable,** are met:

1. (No change.)

(b) – (c) (No change.)

(d) The Long Branch Redevelopment Zone Permit established under this [section] **subchapter** does not apply to applications for development before the Board of Adjustment of City of Long Branch or any other agency not specified in (c) above.

(e) If the Planning Board, the City Council, or the Redevelopment Agency of the City of Long Branch approves a development with a variance or waiver from a provision(s) of the Redevelopment Plan Ordinance or the Design Guidelines Ordinance of the City of Long Branch, and if the Department concurs in writing with such variance or waiver, the development is authorized under this [section] **Long Branch Redevelopment Zone Permit**. The Department shall concur if the waiver or variance complies with [the Coastal Zone Management rules, N.J.A.C. 7:7E] **this chapter**, and if, notwithstanding the waiver or variance, the developments

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within the Redevelopment Zone continue to comply individually and collectively with [the Coastal Zone Management rules] **this chapter**.

(f) Construction, including site preparation, of a development proposed under this [section] **Long Branch Redevelopment Zone Permit** shall not be started until either 45 **calendar** days after receipt by the Department of the final Planning Board approval under [(h)] **N.J.A.C. 7:7-7.2** [below] or 90 **calendar** days after receipt by the Department of notice under [(i)1 below] **N.J.A.C. 7:7-7.3(a)1**, whichever is applicable.

(g) For any development within the Redevelopment Zone of the City of Long Branch that does not meet the conditions for approval under this [section] **Long Branch Redevelopment Zone Permit**, the applicant shall, pursuant to the applicable requirements of this chapter, either obtain from the Department a CAFRA individual permit or meet the requirements for authorization under a CAFRA general permit or permit-by-rule.

#### **7:7-7.2 Notification to the Department regarding developments requiring planning board approval**

[(h)] (a) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch requiring Planning Board approval are as follows:

1. The Planning Board of the City of Long Branch shall provide notice to the [Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439] **Manager of the**

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**Bureau of Urban Growth and Redevelopment, Division of Land Use Regulation, at the**

**address set forth at N.J.A.C. 7:7-1.6**, that an application for a development within the Redevelopment Zone has been filed with the Planning Board as soon as the Planning Board determines under the Municipal Land Use Law, N.J.S.A. 40:55D-10.3, that the application is complete for review. This notice shall include a copy of the application and of the development plan(s).

2. If the Department intends to comment on the development application prior to the Planning Board's taking action on the application, it shall provide the Planning Board with written comments within 30 **calendar** days after receipt by the Department of notice under [(h)1](a)1 above. The Department's comments may include suggestions regarding how the development should be modified in order to meet the requirements of the Long Branch Redevelopment Zone Permit.

3. The applicant shall provide notice, via certified mail, to the [Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439] **Manager of the Bureau of Urban Growth and Redevelopment, Division of Land Use Regulation, at the address set forth at N.J.A.C. 7:7-1.6**, of the date of the Planning Board hearing on the development application at least 10 **calendar** days prior to the hearing.

4. The applicant shall provide notice of the preliminary and final Planning Board approvals to the [Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439] **Manager of the Bureau of Urban Growth and Redevelopment, Division of Land Use**

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**Regulation, at the address set forth at N.J.A.C. 7:7-1.6**, within seven **calendar** days of the Planning Board's adoption of each memorializing resolution. This notice shall include a copy of the approved development plan(s) and of the resolution.

5. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall, within 45 **calendar** days of its receipt under [(h)4](a)4 above of notice of preliminary and final Planning Board approval, so notify the applicant and the Planning Board.

**7:7-7.3 Notification to the Department regarding developments not requiring planning board approval**

[(i)] (a) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch not requiring Planning Board approval are as follows:

1. The City Council or the Redevelopment Agency of the City of Long Branch shall provide notice to the [Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439]

**Manager of the Bureau of Urban Growth and Redevelopment, Division of Land Use**

**Regulation, at the address set forth at N.J.A.C. 7:7-1.6**, that a development within the Redevelopment Zone is under consideration by the City Council or Redevelopment Agency 90 **calendar** days prior to the solicitation of bids for construction of the development. This notice shall include a copy of the development plan(s).

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2. If the Department intends to comment for the purpose of suggesting modifications to the development plan(s), it shall provide the City Council or the Redevelopment Agency with written comments within 30 **calendar** days after receipt by the Department of notice under [(i)1](a)1 above.

3. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall, within 90 **calendar** days of its receipt under [(i)1](a)1 above of notice that a development is under consideration by the City Council or the Redevelopment Agency, so notify the City Council or the Redevelopment Agency.

#### **7:7-7.4 Publication of notice of Department's decision that Long Branch Redevelopment Zone Permit is or is not applicable to development**

[(j)] The Department shall publish notice in the DEP Bulletin of its decision under [(h)5 or (i)3 above] **N.J.A.C. 7:7-7.2 or 7.3** that the Long Branch Redevelopment Zone Permit is applicable or inapplicable.

#### **7:7-7.5 Requests for adjudicatory hearings**

[(k)] (a) [Subject to the limitation on third-party hearing rights specified in (k)5 below, any interested person who considers himself or herself aggrieved by] **To contest** a decision of the [Land Use Regulation Program] **Department** under [(h)5 or (i)3 above may] **N.J.A.C. 7:7-7.2 or 7.3, a person shall submit an adjudicatory hearing request** within 10 **calendar** days of the publication of **notice of** such decision in the DEP Bulletin[, appeal to the DEP Commissioner by

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submitting a written request for a hearing addressed to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as chapter Appendix A] **pursuant to N.J.A.C. 7:7-7.4, in accordance with (a)1 below and the provisions of N.J.A.C. 7:7-28.1(c) through (g).**

[1. The request for hearing shall include the appropriate Department file number and, where the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant.

2. The request for hearing shall include a statement describing, in detail, how the person submitting the request is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.]

[3.] **1.** The person submitting the request for hearing shall mail a copy of the request to the Monmouth County Clerk and the City of Long Branch Clerk, and shall include proof of such mailing with the hearing request submitted to the Department.

[4. A hearing request may include a request that the permit be stayed.

5. Nothing in this subsection shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14-3.1 through 3.3 (P.L. 1993, c. 359).

6. The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the appeal request, action on appeal request, and review of the revised application to settle appeal.]

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**(Agency Note:** The enforcement subchapter, currently codified as N.J.A.C. 7:7-8, is recodified, with amendments to incorporate and implement the Environmental Enforcement Enhancement Act, P.L. 2007, c.246, at N.J.A.C. 7:7-29.)

## **SUBCHAPTER 8. INDIVIDUAL PERMITS**

### **7:7-8.1 Requirement to obtain an individual permit**

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

### **7:7-8.2 Duration of an individual permit**

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

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

**(c) If construction under an individual permit for an activity landward of the mean high water line commences within five years from the date of issuance and construction**

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**must continue beyond five years from the original date of issuance, then the permit shall be valid until the project is completed, provided:**

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

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

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

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

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

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

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

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

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

**(f) All regulated activities authorized by an individual permit shall immediately cease if the permit expires. If a person intends to commence or continue regulated activities that had been authorized under an individual permit that has expired, the person shall obtain a new individual permit under this chapter authorizing the regulated activities.**

**1. If no regulated activities have occurred prior to the expiration of the original individual permit, the Department shall issue a new individual permit only if the project is revised where necessary to comply with the requirements of this chapter in effect when the application for the new individual permit is submitted.**

**2. If any regulated activities have occurred prior to the expiration of the original individual permit, the Department shall issue a new individual permit only if the project is revised where feasible to comply with the requirements of this chapter in effect when the application for the new individual permit is submitted. In determining the feasibility of compliance with the requirements in effect at the time the application is submitted, the Department shall consider the amount of construction that has been completed prior to the expiration of the original individual permit, the amount of reasonable financial investment that has been made in the original design consistent with the requirements applicable**

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**under the original individual permit, and whether continuing construction as approved under the original individual permit would have an adverse impact on the environment.**

### **7:7-8.3 Conditions applicable to an individual permit**

**(a) A person conducting regulated activities pursuant to an individual permit shall comply with:**

- 1. The conditions set forth in the individual permit itself; and**
- 2. The conditions that apply to all permits at N.J.A.C. 7:7-27.2.**

**(b) In addition to the conditions that apply to all individual permits at N.J.A.C. 7:7-27.2, the Department shall establish conditions in an individual permit, as required on a case-by-case basis, to ensure the authorized regulated activity meets all applicable requirements of this chapter and its enabling statutes.**

[SUBCHAPTER 9. (Reserved)]

### **SUBCHAPTER [3.] 9. SPECIAL AREAS**

#### **[7:7E-3.1] 7:7-9.1 Purpose and scope**

**(a) Special [Areas] areas are areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. This subchapter divides [Special Areas] special areas into four categories:**

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1. Special [Water Areas] **water areas**, N.J.A.C. [7:7E-3.2 through 3.15] **7:7-9.2 through 9.15**, extend landward to the spring high water line or the level of normal flow in non-tidal waters;

2. Special [Water's Edge Areas] **water's edge areas**, N.J.A.C. [7:7E-3.16 through 3.32] **7:7-9.16 through 9.30**, are divided into three subcategories depending on their location. Special [Water's Edge Areas] **water's edge areas** in (a)2i and ii below are found only next to tidal waters, while [Coastwide Special Water's Edge Areas] **coastwide special water's edge areas** are found adjacent to tidal as well as non-tidal waters;

i. Oceanfront, and Raritan and Delaware Bayfronts, N.J.A.C. [7:7E-3.16 through 3.19] **7:7-9.16 through 9.19**;

ii. Barrier and [Bay Islands] **bay islands**, N.J.A.C. [7:7E-3.20 and 7:7E-3.21] **7:7-9.20 and 9.21**; and

iii. Coastwide [Special Water's Edge Areas] **special water's edge areas**, N.J.A.C. [7:7E-3.22 through 3.32] **7:7-9.22 through 9.30**;

3. Special [Land Areas] **land areas**, N.J.A.C. [7:7E-3.33 through 3.35] **7:7-9.31 through 9.33**, generally are landward of the [Special Water's Edge Areas] **special water's edge areas**; and

4. Coastwide [Special Areas] **special areas**, N.J.A.C. [7:7E-3.36 through 3.49] **7:7-9.34 through 9.47**, may include [Special Water Areas, Special Water's Edge Areas] **special water areas, special water's edge areas**, or [Special Land Areas] **special land areas**.

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(b) All land or water areas, except certain [Special Water's Edge Areas] **special water's edge areas**, are subject to either the [General Land Area] **general land area** rules at N.J.A.C. [7:7E-5] **7:7-13** [and either N.J.A.C. 7:7E-5A or 5B] or the [General Water Area] **general water area** rules at N.J.A.C. [7:7E-4] **7:7-12**. In addition, certain land or water areas are subject to one or more [Special Area] **special area** rules. All [Special Water's Edge Areas] **special water's edge areas** are subject to one or more [Special Area] **special area** rules. In some cases, a portion of a site is subject to both [General Area] **general area** rules and [Special Area] **special area** rules. Where the applicable [General Area] **general area** rules and [Special Area] **special area** rules conflict, the [Special Area] **special area** rules shall govern.

[7:7E-3.2] **7:7-9.2** Shellfish habitat

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

1. - 4. (No change.)

(b) Any area determined by the Department to be contaminated by toxins is excluded from this definition. The [Final Short List] **List of Water Quality Limited Segments (known as the**

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**303(d) list**, prepared by the Department pursuant to the Federal Clean Water Act, 33 U.S.C.[A.] § 1313[(c)(1)](**d**), identifies these known contaminated areas. Also excluded from this definition are those sites for which the Department is presented with clear and convincing evidence that the sites lack the physical features necessary for the support of a shellfish population, excluding those waterways listed at N.J.A.C. [7:7E-7.3(d)10] **7:7-15.3** and [(j)](**l**) below.

(c) The water located under any boat mooring facility (including docks and associated structures) is automatically condemned and reduced to “prohibited” status pursuant to N.J.A.C. 7:12-2.1(a)1ii. Development which would result in the destruction, condemnation (downgrading of the shellfish growing water classification) or contamination of shellfish habitat is prohibited, unless the proposed development is a dock, pier, or boat mooring, **expansion of an existing marina or construction of a new marina in limited infill situations**, dredging, living shoreline, or a development required for national security constructed in accordance with (d)1, [and] **3, 4, and 5**, (e), (f), (g), (h), and (k) below. In addition, the construction of a dock or pier or the one-time replacement or reconstruction of a legally existing functioning bulkhead outshore of the existing bulkhead when located in waters that have been classified as prohibited for the purpose of harvesting shellfish is acceptable in accordance with (d)2 and (i) below.

1. (No change.)

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

1. - 2. (No change.)

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3. A single noncommercial dock, pier, or boat mooring associated with a single family dwelling provided the proposed dock, pier, or boat mooring meets the requirements at (d)3i through v below. If a lot has frontage on both a natural waterway and a man-made lagoon, [as defined at N.J.A.C. 7:7-1.3,] the dock, pier, or boat mooring shall be located within the lagoon, unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with the recreational docks and piers rule at N.J.A.C. [7:7E-4.5] **7:7-12.5** or any other provisions of this chapter.

i. (No change.)

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

(1) - (2) (No change.)

iii. - v. (No change.)

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

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(1) A conservation restriction shall be placed on the subject property governing the construction or reconstruction of a shoreline protection structure, as follows:

(A) If the dock, pier or boat mooring is associated with an unbulkheaded shoreline, the conservation restriction shall prohibit the construction of a shoreline protection structure other than stone rip-rap or other similar sloped revetment; or

(B) If the dock, pier or boat mooring is associated with a previously bulkheaded shoreline, the conservation restriction shall prohibit replacement, reconstruction or rehabilitation of the bulkhead with anything other than non-polluting or other inert material; and

(2) A monetary contribution shall be provided to the Department's dedicated account for Shellfish Habitat Mitigation. The amount of each monetary contribution provided under this section shall be based upon the areas of shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish resource.]

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

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

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

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**(2) Reconfiguring slips within the existing marina; and**

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

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

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

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

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

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

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

**i. The marina is located between two legally existing, operating commercial marinas where the distance between the two nearest adjacent existing legal docks or piers of each marina is no more than 500 feet as measured from the outside corner of the outermost end of decking of the two nearest adjacent legal docks or piers (for an illustration, see chapter Appendix F);**

**ii. The marina does not interfere with access to the existing marinas;**

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**iii. The marina is designed and constructed in a manner that minimizes the total area covered by structures within shellfish habitat;**

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

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

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

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

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

(e) New dredging (defined at N.J.A.C. [7:7E-4.7] **7:7-12.7**) within shellfish habitat is prohibited, except when it is necessary to maintain the use of public launching facilities (ramps) with 25 or more trailer parking spaces or marina facilities with 25 or more dockage units, consisting of either dry dock storage or wet slips. New dredging for existing marinas or for the expansion of such facilities is conditionally acceptable provided that:

1. - 3. (No change.)

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(f) Maintenance dredging (defined at N.J.A.C. [7:7E-4.6] **7:7-12.6**) within shellfish habitat is conditionally acceptable, provided the disturbance to shellfish habitat is minimized to the greatest extent possible.

(g) New dredging adjacent to shellfish habitat is discouraged in general, but may be conditionally acceptable if it can be demonstrated that the proposed dredging activities will not adversely affect shellfish habitat, population, or harvest. If the Department determines dredging to be acceptable, dredging shall be managed pursuant to N.J.A.C. [7:7E-4.7] **7:7-12.7** so as not to cause significant mortality of the shellfish due to increased turbidity and sedimentation, resuspension of toxic chemicals, or any other occurrence which will interfere with the natural functioning of the shellfish habitat.

(h) The establishment of a living shoreline in shellfish habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. [7:7E-4.23] **7:7-12.23**.

(i) - (k) (No change.)

(l) N.J.A.C. [7:7E-7.3(d)10] **7:7-15.3** shall also apply to development of boat mooring facilities of five or more slips on the Navesink, Shrewsbury, and Manasquan Rivers and St. George's Thorofare.

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

There is an inherent conflict between shellfish habitat and water quality protection and boating related activities, such as mooring and dredging, though both are important water-dependent activities in New Jersey. Boating related activities may affect shellfish habitat and the harvestability of shellfish. Mooring facilities can be a source of pollution with a high potential for improper disposal of human waste. Shellfish that occur in or near marinas and docks are unsafe for human consumption due to the potential health threats associated with the pollution generated as a result of leaching of toxic chemicals and heavy metals from waterfront construction materials and boat-related pollutants, and human waste disposed in close proximity to these marinas and docks. Bivalve shellfish readily bioaccumulate and concentrate toxic substances and pathogenic microorganisms within their tissue, which poses a human health risk when contaminated shellfish is consumed. Due to the potential health threats associated with shellfish grown in polluted waters, shellfish are prohibited from being harvested for human consumption near mooring facilities. Dredging activities typically disturb and degrade the

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habitat environment.

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

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

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

This rule intends to strike a balance between protection of shellfish habitat and recreational boating-related uses, by allowing maintenance dredging in shellfish habitats where an area has already been previously dredged, and new dredging at existing public boat launching facilities and major mooring/docking facilities. The dredging of larger marinas and boat launching

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facilities will allow the greatest number of boaters access to the water areas with the least amount of habitat disturbances and degradation. This is partly because the larger marinas are more likely than smaller ones to generate sufficient demand for a full service marina, and are required to provide restrooms, and a pumpout facility, as a condition for the dredging approval if they did not already have them. Dredging is allowed at larger marinas and boat launching facilities because their highly concentrated use pattern minimizes the overall physical space required for dockage/mooring area and channel maintenance. Additionally, direct disposal of human waste into the water is expected to be reduced when these better equipped marina facilities are equipped with pumpout facilities. Therefore, maintenance of these facilities is considered acceptable.

**Marinas have infrastructure necessary to support recreational boating including pumpout facilities. The State has seen a decrease in the number of marina facilities through their conversion to other non-water dependent uses. The Marine Trades Association of New Jersey has provided a report based on information provided from marine businesses which indicates that over 500 boat slips and 17 marinas have been lost as of 2011. Not only does this result in a loss of slips available to the public, it results in the loss of jobs, revenue and marina services. To preserve existing marinas and the necessary services they provide, encourage new marinas and ensure there is a sufficient amount of boat slips available to the public, expansion of existing commercial marinas and construction of new “infill” marinas in limited situations is acceptable where mitigation through the minimization of the area covered by structures, the use of non-polluting**

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**materials, the prohibition of dredging and the provision of a monetary contribution to the Department's dedicated account for shellfish habitat mitigation is provided.**

Living shorelines are a shoreline management practice that addresses the loss of vegetated shorelines by providing protection, restoration, or enhancement of these habitats. The establishment of living shorelines is conditionally acceptable provided the living shoreline activities disturb the minimum amount of special areas necessary to successfully implement the restoration, creation, enhancement, or protection of habitat, water quality functions, and values of wetlands, wetland buffers, and open water areas. This may include a decrease in the existing special area or the conversion of one special area to another where it is determined that such changes are environmentally beneficial.

The one-time replacement, reconstruction, or renovation of a legally-existing bulkhead outshore of the existing bulkhead within waters classified as prohibited for harvesting shellfish is conditionally acceptable where the bulkhead is constructed of non-polluting materials and is located within 18 inches of the existing bulkhead, except where the replacement bulkhead is constructed of a corrugated material in which case it shall be located no more than 24 inches from the existing bulkhead. Non-polluting materials are required to minimize impacts to water quality. These requirements minimize impacts to water quality and the amount of substrate impacted by the bulkhead. The replacement or reconstruction of a bulkhead outshore of the existing bulkhead is allowed within shellfish habitat in order to encourage the elimination of any polluting material in shellfish habitat and the correction or prevention of erosion, and because, in some cases, replacement in kind (requiring the removal of the existing bulkhead which in most, if not all, instances will be constructed of a treated material that is not considered to be non-

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polluting) will have a detrimental impact to water quality through the sloughing of soil that has been in contact with the bulkhead sheathing that is being replaced. The replacement or reconstruction is limited to one time only in order to limit the encroachment into shellfish habitat.

The Navesink River, Shrewsbury River, and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare contain highly productive shellfish habitat. The Navesink and Shrewsbury Rivers are unique in that only three estuaries within the State have commercial soft clam densities. St. George's Thorofare is a commercially and recreationally valuable area that contains a high hard clam density according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife. In 1985, this 107-acre area was estimated to contain 6.2 million hard clams. The high abundance of hard clams, together with the fact that this waterbody is poorly flushed makes St. George's Thorofare a critical area that is sensitive to any potential pollution activities. These circumstances led to a moratorium being placed on this waterway against the construction of any new docks. Since then the moratorium has been lifted; however, the circumstances continue to render recommendations of denial for the construction of new docks.

Federal, State, and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs have been formed to protect these rivers. For example, the Navesink River Shellfish Protection Program represents a multi-agency pollution control program. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Departments of Environmental Protection and Agriculture, the United States Department of Agriculture and [United States

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Environmental Protection Agency] **the USEPA**. The memorandum serves to "...formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls (1987-93) has shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river to seasonally approved. The Shrewsbury River is a unique shellfish habitat in that it is only one of the three estuaries in New Jersey to have commercial densities of soft clams. Studies indicate that the Shrewsbury River is hydrologically connected to the Navesink River. As such, the Shrewsbury River has been included as part of the "Navesink River Shellfish Protection Program[.]" In addition, the Monmouth/Ocean Alliance to Enhance the Manasquan River was formed by Monmouth and Ocean Counties and the New Jersey Department of Environmental Protection to identify causes of shellfish water degradation and plan solutions for improved water quality and uses in the Manasquan River.

[7:7E-3.3] **7:7-9.3** Surf clam areas

(a) Surf clam areas are coastal waters which can be demonstrated to support significant commercially harvestable quantities of surf clams [(*Spisula solidissima*)] (*Spisula solidissima*), or areas important for recruitment of surf clam stocks. This includes areas where fishing is prohibited for research sanctuary or conservation purposes by N.J.A.C. 7:25-12.1(d)4. Surf clams are a marine fish and therefore are also subject to the marine fish and fisheries rule, N.J.A.C. [7:7E-8.2] **7:7-16.2**.

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(b) (No change.)

(c) Rationale: Surf clams are the [most valuable] **largest** molluscan [species landed] **fishery** in New Jersey, accounting for [67] **47** percent (**by weight**) of the State's total **reported** molluscan **commercial** landings in [1999] **2011**. Surf clam boats operate out of Point Pleasant, Atlantic City, and Cape May, while processing plants are located in Port Norris and Cape May. Historically, New Jersey leads all other states in surf clam landings because New Jersey vessels participate in both [state] **State** and [federally] **Federally** controlled waters **and the majority of the surf clam fleet land their catch in New Jersey ports**. In [1999, New Jersey vessels landed more than 84 percent] **2011, 1.6 million bushels of surf clams were landed in New Jersey accounting for approximately 63 percent** of the total Mid-Atlantic Region and New England Region's surf clam [harvest] **landings** with an ex-vessel value of [over \$29] **\$16.3** million [and worth approximately \$174 million to the State's economy]. The Department's Division of Fish and Wildlife conducts annual surf clam stock assessments to determine the productivity of these resources.

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

[7:7E-3.4] **7:7-9.4** Prime fishing areas

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(a) – (b) (No change.)

(c) Rationale: Natural bathymetric features, such as the Shrewsbury Rocks, important sand ridges, and artificial structures act as congregation areas for many species of finfish, shellfish, and diverse invertebrate species that are essential to marine ecosystem functioning. These areas are heavily used by recreational and commercial fishermen. Commercial fishing occurs primarily along the Delaware Bay and in the Atlantic Ocean off the New Jersey coast. Annually, more than [800,000] **1,120,000** people, of which [639,000] **690,000** reside in New Jersey, participate in marine sport fishing and shellfishing. In a recent survey conducted by the National Marine Fisheries Service, New Jersey ranked first in the harvest of four of the five most important recreational fish species (summer flounder, bluefish, seabass, and tautog) and ranked second in the harvest of striped bass. The recreational fishery industry is worth \$1.5 billion annually to the economy of New Jersey. In [2001] **2011**, New Jersey's commercial fisheries **had a dockside value of more than \$220 million and an overall economic impact** of [contributed] [\$590 million] **\$1.3 billion** to the State's economy.

[7:7E-3.5] **7:7-9.5** (No change in text.)

[7:7E-3.6] **7:7-9.6** Submerged vegetation habitat

(a) A submerged vegetation **habitat** special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass [(*Ruppia maritima*)] (***Ruppia maritima***), sago pondweed [(*Potamogeton pectinatus*)]

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

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

1. (No change.)

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2. New dredging, as defined at N.J.A.C. 7:7-12.7, of navigation channels maintained by the State or Federal government provided that there is no practicable or feasible alternative to avoid the vegetation; and that impacts to the habitat area (for example, dredging width, length, and depth) are minimized to the maximum extent practicable. Mitigation will be required for destruction of one acre or more which possesses submerged aquatic vegetation;

3. Maintenance dredging, as defined at N.J.A.C. [7:7E-4.6] 7:7-12.6, of previously authorized, existing navigation channels maintained by the State or Federal government [and associated disposal areas] provided that there is no practicable or feasible alternative to avoid the vegetation and that impacts to the habitat area are minimized to the maximum extent practicable;

4. New and maintenance dredging, as defined at N.J.A.C. [7:7E-4.6 and 4.7] 7:7-12.6 and 12.7, of previously authorized operating marinas and any necessary access channels to the expanded portion of such marinas (this exception does not include the boat basin of the expanded portion of the marina) and existing launching facilities with 25 or more dockage, storage, or trailer parking units and their associated access channels, provided the proposed areas to be dredged (such as channel length, depths, and widths) are minimized to the maximum extent practicable;

5. Maintenance dredging, as defined at N.J.A.C. [7:7E-4.6] 7:7-12.6, to regain access to existing private docks, piers, boat ramps, and mooring piles not associated with marinas that were previously dredged to an authorized channel and/or mooring depth, width, and length, provided there is no practicable or feasible alternative on site that would avoid dredging in submerged vegetation habitat;

6. – 7. (No change.)

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8. The establishment of a living shoreline in submerged vegetation habitat to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. [7:7E-4.23] **7:7-12.23.**

(c) (No change.)

(d) Compensation for unavoidable, permanent significant impacts to submerged vegetation habitats[, when required, shall consist of the establishment of self-sustaining habitat for the appropriate species in accordance with scientifically-documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years. The following must be documented for any area proposed for seagrass habitat restoration: that the area previously supported seagrass but no longer does; the specific cause(s) of seagrass elimination; and that the specific condition(s) or action(s) responsible for elimination of seagrass has since ceased. Priority will be given to in-kind restoration of seagrass habitat in as close proximity as possible to the impacted site. No compensation credit will be given for attempts to plant seagrass within unvegetated interpatch areas of existing seagrass habitat or for attempts to increase bottom coverage within existing seagrass beds (defined as an area where seagrass rhizomes overlap, or where seagrass shoots intermingle within less than one square meter).] **shall be conducted in accordance with N.J.A.C. 7:7-17.**

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(e) (No change.)

[7:7E-3.7] **7:7-9.7** Navigation channels

(a) (No change.)

(b) Standards relevant to navigation channels are as follows:

1. Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures[.];

2. Development which would result in loss of navigability is prohibited[.];

3. Any construction which would extend into a navigation channel is prohibited[.];

4. The placement of structures within 50 feet of any authorized navigation channel is discouraged, unless it can be demonstrated that the proposed structure will not hinder navigation[.];

**5. Maintenance dredging, as defined in N.J.A.C. 7:7-12.6, of navigation channels to provide for safe navigation is conditionally acceptable, provided the dredging operation and the management of the dredged material meet the requirements of N.J.A.C. 7:7-12.6 and Appendix G; and**

**6. New dredging, as defined in N.J.A.C. 7:7-12.7, to expand the depth, length, and/or width of a previously authorized navigational channel to provide for safe navigation is conditionally acceptable provided the dredging operation and the management of the dredged material meet the requirements of N.J.A.C. 7:7-12.7 and Appendix G.**

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(c) (No change.)

[7:7E-3.8] **7:7-9.8** Canals

(a) Canals are navigation channels for boat traffic through land areas which are created by cutting and dredging or other human construction technique sometimes enlarging existing natural surface water channels. The Cape May, Point Pleasant, and Delaware and Raritan Canals are the principal examples in the New Jersey [Coastal] **coastal** zone.

(b) – (d) (No change.)

[7:7E-3.9] **7:7-9.9** (No change in text.)

[7:7E-3.10] **7:7-9.10** Marina moorings

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

(d) Rationale: Continued operation of marinas is encouraged since they benefit the [state] **State** by attracting tourists and associated revenues and by providing recreational opportunities to the estimated 25 percent of residents that go boating in the bays and coastal waters of the State (1977 Eagleton Institute Poll).

[7:7E-3.11] **7:7-9.11** Ports

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(a) Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside marine terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading, and temporary storage.

1. (No change.)

2. Standards for a docking facility or concentration of docks for a single industrial or manufacturing facility are found at N.J.A.C. [7:7E-4.4] **7:7-12.4**, Docks and piers for cargo and commercial fisheries.

(b) (No change.)

(c) **Shellfish** [Aquaculture] **aquaculture** and dumping of solid waste or semi-solid waste is prohibited.

(d) Boat ramps for recreational boating are conditionally acceptable provided the ramp complies with all [Special Areas Rules] **special area rules** [(N.J.A.C. 7:7E-3)] **at N.J.A.C. 7:7-9** and provided it does not interfere with the port use.

(e) – (f) (No change.)

[7:7E-3.12] **7:7-9.12** (No change in text.)

[7:7E-3.13] **7:7-9.13** Shipwreck and artificial reef habitats

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

1. Known sites include those shown either on National Ocean Survey (N.O.S.) [Charts] **charts** [listed at N.J.A.C. 7:7E-3.7(a), the navigation channel rule,] or listed in the following publications: W. Krotee and R. Krotee, *Shipwrecks Off the New Jersey Coast* (1966)[,]; B.L. Freeman and L.A. Walford, *Angler's Guide to the United States Atlantic Coast Fish, Fishing Grounds, and Fishing Facilities* (1974); [and] B. Preim, J. Carlson, B. Figley, *A Guide to Fishing and Diving New Jersey Reefs*, (2000); **and the NJDEP Fisherman Magazine and the Artificial Reefs Association publication, Shipwrecks of New Jersey's Reefs (2003)**. In addition to known sites, unidentified remains of vessels may exist within tidal waters. Shipwrecks may also be considered historic or archaeological resources pursuant to N.J.A.C. [7:7E-3.36] **7:7-9.34**.

2. Shipwreck and artificial reef habitats may be subject to the marine fish and fisheries rule, N.J.A.C. [7:7E-8.2] **7:7-16.2**.

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

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(d) Rationale: Shipwrecks and other natural or artificial materials can serve as critical habitat for benthic finfish and lobsters, and other invertebrates which prefer shelter in hard substrates otherwise uncommon in New Jersey's marine waters. These areas function as congregation, refuge, feeding, and nursery areas for migratory species and support extensive fisheries. Although artificial reefs have been constructed for angling and diving, their goal is not solely to benefit human-use. A primary goal of an artificial reef is ecosystem and habitat enhancement. Due to the potential of reefs to serve as marine fish congregating areas, commercial and recreational fishing on artificial reefs may be regulated by the Department's Division of Fish and Wildlife, the Atlantic States Marine Fisheries Commission, and/or the Mid Atlantic Fisheries Management Council. As of [1999] **2005**, New Jersey had [14] **15** reef sites encompassing [a total of 25] **approximately 26** square miles of sea floor. The sites are **strategically** located along the State's 120 mile coastline[, with at least two reef sites within boat range from each of New Jersey's ocean] **near navigable** inlets. Shipwrecks are also fragile historic and cultural resources. Scuba divers from New Jersey and other states visit artificial reefs extensively.

[7:7E-3.14] **7:7-9.14** Wet borrow pits

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

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N.J.A.C. [7:7E-3.27] **7:7-9.27**, and/or wetlands buffers rule, N.J.A.C. [7:7E-3.28] **7:7-9.28**, shall apply.

(b) All proposed dredging and filling activities shall comply with any applicable Freshwater Wetlands Protection Act Rules, [(N.J.A.C. 7:7A)]. In addition, such activities must receive a [Water Quality Certificate pursuant to N.J.S.A. 58:10A et seq. and Section 401 of the Federal Clean Water Act if a Federal permit is required for the activities] **water quality certificate**.

(c) (No change.)

(d) Surface mining is conditionally acceptable provided condition (b) above and the mining rule, N.J.A.C. [7:7E-7.8] **7:7-15.8**, are met.

(e) (No change.)

[(f) Disposal of dredged material is discouraged, but may be acceptable in limited cases, provided condition (b) above is met and that:

1. The dredged material is clean and non-toxic, an appropriate particle size for the site, and will not disturb groundwater flow or quality;

2. At least half of the water area in existence at the time of the first coastal permit application for filling of the pit remains as surface water in a pattern designed to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent

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the lake from acting as a channel for salt water intrusion into aquifers.]

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

1. The fill, **including dredged material, is an appropriate particle size for the site,** is clean, and will not degrade groundwater quality **or flow. For the purposes of this subsection, dredged material shall comply with the acceptability conditions specified in Appendix G;**

2. – 3. (No change.)

4. A water quality buffer zone of at least 50 feet is designated in accordance with [(j)] **(i)** below around remaining water areas;

5. – 6. (No change.)

Recodify existing (h) - (j) as **(g) - (i)** (No change in text.)

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

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On the other hand, their separation from streams means that they are most susceptible to water quality impacts caused by runoff. The water is still, and the only water loss is through groundwater seepage and evaporation. Sediment collects quickly, enlarging marsh areas, and the eutrophic conditions that lead to sudden oxygen loss are concentrated by evaporation. Low levels of toxicity are quickly biomagnified to fatal levels. In general, these still water areas are much more sensitive to impacts of all kinds than flowing water.

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

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

The value of wet borrow pits as wildlife habitat may be enhanced by limited fingers of fill to enlarge the land-water interface. Filling can also create sites for waterfront housing. Since residential construction sites near surface water are much in demand, it is desirable to allow some residential and related uses, provided that housing is consistent with [Location and Use

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Rules] **location and use rules**, water quality is maintained, and a water quality buffer is preserved along the water's edge. The buffer would not block visual or physical access to the water, but would preserve water quality and provide wildlife habitat. Medford Lakes provides an example of an attractive residential community built around wet borrow pits, but siltation and eutrophication provide evidence for the need for a water quality buffer area.

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

[7:7E-3.15] **7:7-9.15** Intertidal and subtidal shallows

(a) (No change.)

(b) Development, filling, new dredging, or other disturbance is discouraged but may be permitted in accordance with (c), (d), (e), (f), (g), and (h) below and with N.J.A.C. [7:7E-4.2 through 4.23] **7:7-12.2 through 12.24.**

(c) Maintenance dredging of intertidal and subtidal shallows is acceptable to maintain adequate water depths in accordance with N.J.A.C. [7:7E-4.6] **7:7-12.6.**

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(d) New dredging, **as defined in N.J.A.C. 7:7-12.7**, in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

1. (No change)

2. There is no feasible alternative location for the proposed facility that requires the dredging, which would eliminate or reduce the amount of disturbance to intertidal and subtidal shallows without increasing impacts on other [Special Areas] **special areas**; and

3. (No change.)

(e) (No change.)

(f) The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements of the filling rule at N.J.A.C. [7:7E-4.10] **7:7-12.11(f)** and the coastal engineering rule at N.J.A.C. [7:7E-7.11(d)] **7:7-15.11(f)**.

(g) The establishment of a living shoreline in intertidal and subtidal shallows to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline complies with N.J.A.C. [7:7E-4.23] **7:7-12.23**.

(h) The construction and/or replacement of a bulkhead within intertidal and subtidal shallows is conditionally acceptable provided the bulkhead meets the requirements of the filling rule at N.J.A.C. [7:7E-4.10(f)] **7:7-12.11(f)** and the coastal engineering rule at N.J.A.C. [7:7E-7.11(d)] **7:7-15.11(d)**.

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(i) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with [(j) below] **N.J.A.C. 7:7-17**. [Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B.] Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. [7:7E-4.10(c)] **7:7-12.11(c)** and (f) 1, 2, and 3;
2. Maintenance dredging in accordance with N.J.A.C. [7:7E-4.6] **7:7-12.6**;
3. Beach nourishment in accordance with N.J.A.C. [7:7E-7.11(f)] **7:7-15.11(f)**;
4. New dredging in accordance with N.J.A.C. [7:7E-4.7] **7:7-12.7** to a depth not to exceed four feet below mean low water;
5. Construction of a replacement bulkhead in accordance with N.J.A.C. [7:7E-7.11(d)2i] **7:7-15.11(d)2i** or ii; and
6. (No change.)

[(j) Mitigation shall be required for the destruction of intertidal and subtidal shallows at a creation to lost ratio of 1:1 through the creation of intertidal and subtidal shallows on the site of the destruction. For the purposes of this section, creation means excavating upland to establish the characteristics, habitat and functions of an intertidal and subtidal shallow. Where on-site creation is not feasible, mitigation shall be accomplished as follows:

1. At a single family home or duplex property that is not part of a larger development, mitigation shall be in the form of a monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of

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creation of intertidal subtidal shallows of equal ecological value to those which are being lost; or

2. At a property other than a single family home or duplex property mitigation shall be performed in accordance with the following hierarchy:

i. If on site creation of intertidal and subtidal shallows is not feasible, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within the same 11-digit hydrologic unit code area, as defined at N.J.A.C. 7:7E-1.8, as the destruction;

ii. If on site creation of intertidal and subtidal shallows is not feasible in accordance with (h)2i above, then mitigation shall be required at a creation to loss ratio of 1:1 through the creation of intertidal and subtidal shallows within an adjacent 11-digit hydrologic unit code area within the same watershed management area, as defined at N.J.A.C. 7:7E-1.8, as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code area where the destruction is located;

iii. If the creation of intertidal and subtidal shallows required in (h)2ii is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a wetland system which was previously more ecologically valuable but has become degraded due to factors such as siltation, impaired tidal circulation, or contamination with hazardous substances (degraded wetland system) on the site of the destruction. For the purposes of this section, enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland;

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iv. If the enhancement of degraded wetlands required in (h)2iii above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within the same 11-digit hydrologic unit code area as the destruction;

v. If the enhancement of degraded wetlands required in (h)2iv above is not feasible, then mitigation shall be required at an enhancement to loss ratio of 2:1 through the enhancement of a degraded wetland system within an adjacent 11-digit hydrologic unit code area within the same watershed management area as the destruction. An adjacent 11-digit hydrologic unit code area is one which shares a common boundary at any point on the perimeter of the 11-digit hydrologic unit code where the destruction is located;

vi. If the enhancement of degraded wetlands required in (h)2v above is not feasible, then mitigation shall be required in accordance with either of the following:

(1) Creation of intertidal and subtidal shallows at a creation to loss ratio of 1:1 within the same watershed management area; or

(2) Enhancement of degraded wetlands at an enhancement to loss ratio of 2:1 within the same watershed management area.]

[(k)] (j) (No change in text.)

[7:7E-3.16] **7:7-9.16** Dunes

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

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landward dune ridges and mounds, as well as man-made dunes, where they exist [(see Appendix, Figure 1, incorporated herein by reference)].

1. - 2. (No change.)

(b) Development is prohibited on dunes, except for development that has no practicable or feasible alternative in an area other than a dune, and that will not cause significant adverse long-term impacts on the natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances, or activities. In addition, the removal of vegetation from any dune, and the excavation, bulldozing, or alteration of dunes is prohibited, unless these activities are a component of a Department-approved beach and dune management plan. Examples of acceptable activities are:

1. (No change.)

2. Limited, designated access ways for pedestrian and authorized motor vehicles between public streets and the beach that provide for minimum feasible interference with the beach and dune system and are oriented so as to provide the minimum feasible threat of breaching or overtopping as a result of a storm surge or wave runup (see N.J.A.C. [7:7E-3A] **7:7-10**);

3. Limited stairs, walkways, pathways, and boardwalks to permit access across dunes to beaches, in accordance with N.J.A.C. [7:7E-3A] **7:7-10**, provided they cause minimum feasible interference with the beach and dune system;

4. The planting of native vegetation to stabilize dunes in accordance with N.J.A.C. [7:7E-3A] **7:7-10**;

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5. Sand fencing, either a brush type barricade or picket type, to accumulate sand and aid in dune formation in accordance with N.J.A.C. [7:7E-3A] **7:7-10**;

6. Shore protection structures which meet the coastal engineering rule at N.J.A.C. [7:7E-7.11(e)] **7:7-15.11**; and

7. Linear development which meets the [Rule on Location of Linear Development] **rule on location of linear development** (N.J.A.C. [7:7E-6.1] **7:7-14.1**).

(c) (No change.)

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

1. - 2. (No change.)

3. The activity:

i. (No change.)

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

4. - 5. (No change.)

6. Any sand transferred as part of the maintenance of the dune design template shall be moved only within the shore protection project and shall be placed within the existing dune system, or within the engineered beach berm in accordance with the beach rule, N.J.A.C. [7:7E-3.22(b)] **7:7-9.22(b)**.

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(e) (No change.)

[7:7E-3.17] **7:7-9.17** Overwash areas

(a) An overwash area is an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune, or a structure. An overwash area may, through stabilization and vegetation, become a dune [(see Appendix, Figure 1)].

1. – 3. (No change.)

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

1. Creation of dunes or expansion of existing dunes in accordance with N.J.A.C. [7:7E-3A]

**7:7-10;**

2. – 3. (No change.)

4. Shore protection structures which meet the coastal engineering rule at N.J.A.C. [7:7E-

7.11(e)] **7:7-15.11(g);**

5. Linear development which meets the [Rule on Location of Linear Development] **rule on location of linear development** (N.J.A.C. [7:7E-6.1] **7:7-14.1**);

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6. – 7. (No change.)

(c) A development may be permitted if, by creating a dune with buffer zone or expanding an existing dune landward, the classification of the site is changed so as to significantly diminish the possibility of future overwash. In determining overwash potential, the protective capacity of newly created dunes will be evaluated in terms of the “design dune” goal discussed in N.J.A.C. [7:7E-3.16] **7:7-9.16(c)**.

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

1. – 3. (No change.)

4. The facility meets all the requirements of the [Flood Hazard Area Rule] **flood hazard area rule**, N.J.A.C. [7:7E-3.25] **7:7-9.25**.

(e) Any development determined to be acceptable at (b) through (d) above shall comply with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and 5B] **7:7-13**.

(f) (No change.)

[7:7E-3.18] **7:7-9.18** Coastal high hazard areas

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(a) Coastal high hazard areas are flood prone areas subject to high velocity waters (V zones) as delineated on the [Flood Insurance Rate Maps (FIRM)] prepared by the Federal Emergency Management Agency (FEMA), and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. [(see Appendix, Figure 2 incorporated herein by reference).] The [Coastal High Hazard Area] **coastal high hazard area** extends from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The inland limit of the V zone is defined as the V zone boundary line as designated on the FIRM or the inland limit of the primary frontal dune, whichever is most landward.

(b) Residential development, including hotels and motels, is prohibited in coastal high hazard areas except for single family and duplex infill developments that meet the standards of N.J.A.C. [7:7E-7.2(e)] **7:7-15.2(e)** or (f) or development in Atlantic City in accordance with (g) below.

(c) (No change.)

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

1. – 3. (No change.)

4. The facility complies with all the requirements at N.J.A.C. [7:7E-3.25] **7:7-9.25**, Flood hazard areas.

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(e) Any development determined to be acceptable at (c) and (d) above shall comply with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and either N.J.A.C. 7:7E-5A or 5B] **7:7-13**.

(f) (No change.)

(g) The following development in Atlantic City is acceptable in [Coastal High Hazard Areas] **coastal high hazard areas** provided it meets the standards of N.J.A.C. [7:7E-3.49] **7:7-9.47**:

1. – 3. (No change.)

(h) (No change.)

[7:7E-3.19] **7:7-9.19** Erosion hazard areas

(a) (No change.)

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

1. Linear development which meets the [Rule on Location of Linear Development] **rule on location of linear development**, [(N.J.A.C. [7:7E-6.1])] **7:7-14.1**;

2. Shore protection activities which meet the appropriate [Coastal Engineering Use Rule] **coastal engineering rule**, [(N.J.A.C. [7:7E-7.11])] **7:7-15.11**;

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3. Single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993, is conditionally acceptable provided that it meets the following conditions:

i. – iii. (No change.)

iv. The facility meets all the requirements of the [Flood Hazard Areas] **flood hazard area** rule, (N.J.A.C. [7:7E-3.25]) **7:7-9.25**; and

v. The development complies with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and 5B] **7:7-13**;

4. Single-family and duplex developments that meet the standards of N.J.A.C. [7:7E-7.2(e)] **7:7-15.2(e)** or (f);

5. The construction of dune walkover structures and at-grade walkover pathways, in accordance with Department standards found at N.J.A.C. [7:7E-3A] **7:7-10**;

6. Dune creation and beach maintenance activities in accordance with Department standards found at N.J.A.C. [7:7E-3A] **7:7-10**; and

7. The following development in Atlantic City provided it meets the standards of N.J.A.C. [7:7E-3.49] **7:7-9.47**:

i. – iii. (No change.)

(c) Rationale: As a result of continuing rising sea levels, active storm induced sand movements, and offshore currents (littoral drift), most of the Atlantic coastline of New Jersey is retreating. Coastal erosion also affects the bayshores of New Jersey. The rate of retreat, or erosion, is not uniform, and varies locally depending upon the nature and magnitude of coastal

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processes operating within individual parts of the shoreline. Certain parts of the shoreline have a higher risk for future erosion.

Development other than shore protection measures and linear development is prohibited in these areas in order to protect public safety and prevent loss of life and property. However, in certain oceanfront communities where an existing municipal boardwalk (including all adjacent resort-oriented commercial establishments) has long been featured as the main attraction of that resort community and is already densely aligned with buildings, low intensity[,] infill may be permitted. At these specific locations, the gain in public use and enjoyment of the beach, ocean and boardwalk facilities outweighs the limited, potential additional loss in property damages.

The annual rate of erosion shall be calculated on a case-by-case basis by using the best available data and scientific methodology. Historical erosion rates of areas need to be analyzed to determine the particular past trend that best reflects the current shoreline processes affecting that area. The appropriate long or short term historical erosion rate of an area is then combined with other information, which may help to explain the erosion rate of [at] an area, to determine a projected erosion rate for the next thirty to sixty years. These factors include, but are not limited to: past or on-going shore protection activities, e.g., beachfills, or groin, revetment, or bulkhead constructions, **and** past or on-going navigation channel dredging projects and past storm events.

The [Program] **Department** will use a computer program, entitled[,] “Metric Mapping Analysis of New Jersey's Historical Shoreline Data,” developed in 1988 for the [Program] **Department** by Stephen P. Leatherman, et al, of the University of Maryland Coastal Mapping Group, to produce historical shoreline change maps for specific sites along the oceanfront.

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These maps will be used to establish the appropriate long or short term trend in shoreline changes that will most likely continue in the future for a specific site.

The projected annual erosion rate or historical shoreline change data for a specific site, excluding the Raritan Bay area, may be obtained from the [Program] **Department** by written request accompanied by a site plan which identifies the site by either the "state plane" coordinate system or latitude -longitude coordinates. For sites located along the Raritan Bay, the annual erosion rate can be found in Paul A. Gares, Karl F. Nordstorm and Norbert P. Psuty, Coastal Dunes: Their [function] **Function**, Delineation and Management, Center for Coastal and Environmental Studies, Rutgers University for NJDEP, 1979. Other appropriate sources including verifiable aerial photography, may also be consulted.

[7:7E-3.20] **7:7-9.20** Barrier island corridor

(a) (No change.)

(b) New or expanded development within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and 5B] **7:7-13**.

(c) (No change.)

[7:7E-3.21] **7:7-9.21** Bay islands

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(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches, or dunes, lying between the mainland and barrier island. Such islands may be connected to the mainland or barrier island by elevated or fill supported roads [(see Appendix, Figure 3, incorporated herein by reference)]. Existing lagoon edges (N.J.A.C. [7:7E-3.24] **7:7-9.24**) are not bay islands.

1. In cases where a bay island is also a [Filled Water's Edge] **filled water's edge** (N.J.A.C. [7:7E-3.23] **7:7-9.23**), the more restrictive provisions of the two rules shall apply.

2. For the purposes of this chapter, the areas listed below are not considered bay islands. The [impervious] **non-porous** cover limits for these areas are determined under the [Special Area] **special area** rules at N.J.A.C. [7:7E-3] **7:7-9** where applicable, and/or under N.J.A.C. [7:7E-5B] **7:7-13**.

#### OCEAN COUNTY

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township

Pelican Island, Dover/Berkeley Townships

West Point Island, Lavallette Borough

#### ATLANTIC COUNTY

Bader Field, Atlantic City

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Chelsea Heights, Atlantic City

Venice Heights, Atlantic City

Ventnor Heights, Ventnor City

#### CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

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

West Wildwood, Wildwood City

West 17th Street, Ocean City

(b) On bay islands which abut either a paved public road or a conveyance component of an offsite treatment, conveyance and disposal system with adequate capacity to convey, treat, and dispose of the sewage generated from the proposed development, or which abut neither a paved public road nor such a conveyance, non-water dependent development is prohibited unless it meets the standards of (d) below and water dependent development is discouraged. Water dependent development is conditionally acceptable provided that:

1. [Impervious] **Non-porous** cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

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2. For a bay island portion of a site that is forested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)**, and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

3. For a bay island portion of a site that is unforested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)** and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

(c) On bay islands which abut a paved public road and abut the conveyance component of an offsite treatment, conveyance, and disposal system with adequate capacity to convey, treat, and dispose of the sewage generated from the proposed development, development is conditionally acceptable as follows:

1. Water dependent development is conditionally acceptable, provided that:

i. [Impervious] **Non-porous** cover does not exceed 30 percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)**, and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

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iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)** and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

2. Non-water dependent development is conditionally acceptable provided that:

i. [Impervious] **Non-porous** cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

ii. For a bay island portion of a site that is forested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)**, and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site; and

iii. For a bay island portion of a site that is unforested as determined at N.J.A.C. [7:7E-5.5] **7:7-13.5**, at least five percent of the bay island portion shall be planted with trees in accordance with N.J.A.C. [7:7E-5.4(d)] **7:7-13.4(d)** and (e), and the remainder shall be planted with herb/shrub vegetation that is adapted to the substrate and other environmental conditions of the site.

3. [Impervious] **Non-porous** cover shall not exceed three percent of the bay island portion of the site unless the development is entirely water dependent and meets [(d)1](c)1 above, in which case the [impervious] **non-porous** cover limit shall not exceed 30 percent.

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(d) Redevelopment or modification within an existing development on a bay island is conditionally acceptable provided that[;]:

1. (No change.)
2. Trees shall be planted and/or preserved on at least five percent of the bay island portion of the site in accordance with N.J.A.C. [7:7E-5.4(d)]**7:7-13.4(d)** and (e).

(e) Rationale: New Jersey's bay islands are former wetlands where upland areas have been created by past filling, particularly with dredged [spoils] **material**. Many are suitable for future [spoil disposal] **dredged material placement**. They are adjacent to areas with high environmental sensitivity, particularly wetlands, intertidal flats, tidal waterways, shellfish beds, and endangered and threatened wildlife habitats. Development of the islands would pose a great threat to these natural resources and habitat. The majority of, if not all, bay islands are valuable wildlife habitats or have the potential to become habitat through the implementation of management techniques. Their value, in part, stems from their isolation from human activity as compared to the intense development and beach usage of oceanfront barrier islands. For example, sandy areas are used by beach nesting birds such as least tern, black skimmer, and piping plover, and vegetated areas are used by colonial nesting birds such as heron and non-colonial birds such as marsh hawk. Bay islands are also subject to flooding and by virtue of their location function as bridges between the mainland and barrier islands. If developed, these islands would pose added storm evacuation problems. They are usually distant from public services, and therefore unsuitable for development.

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The above list of [Bay Islands] **bay islands** which are exempted from the requirements of this rule was established based on a review of the physical conditions of these islands, including environmental sensitivity, accessibility, and level of existing development and infrastructure. Future development on the islands listed above does not pose a significant threat to environmental resources, nor would it adversely affect storm evacuation from the oceanfront barrier islands.

[7:7E-3.22] **7:7-9.22** Beaches

(a) Beaches are gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including ocean, bay, and river shorelines [(see Appendix, Figure 1)], that extend landward from the mean high water line to either:

1. – 2. (No change.)

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

1. (No change.)

2. Dune creation and related sand fencing and planting of vegetation for dune stabilization, in accordance with N.J.A.C. [7:7E-3A] **7:7-10**;

3. – 4. (No change.)

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5. Shore protection structures which meet the use conditions of N.J.A.C. [7:7E-7.11(g)] **7:7-15.11(g)**;

6. Linear development which meets the [Rule on Location of Linear Development] **rule on location of linear development**, [(N.J.A.C. [7:7E-6.1)] **7:7-14.1**;

7. Beach maintenance activities which do not adversely affect the natural functioning of the beach and dune system, and which do not preclude the development of a stable dune along the back beach area. These activities, **which** include routine cleaning, debris removal, mechanical sifting, maintenance of access ways, and Department approved dune creation and maintenance activities, **must be carried out in accordance with the standards found at N.J.A.C. 7:7-10**;

8. Post-storm beach restoration activities involving the placement of clean fill material on beaches, and the mechanical redistribution of sand along the beach profile from the lower to the upper beach. These post-storm activities, which are different than routine beach maintenance activities, must be carried out in accordance with the standards found at N.J.A.C. [7:7E-3A] **7:7-10**;

9. The following development in Atlantic City provided it meets the standards of N.J.A.C. [7:7E-3.49] **7:7-9.47**:

i. - iii. (No change.)

10. The maintenance of an engineered beach to the beach berm design template through the transfer of sand from the upper beach berm to the lower beach berm, from the lower beach berm to the upper beach berm, and/or alongshore provided:

i. - ii. (No change.)

iii. The sand transfer:

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(1) (No change.)

(2) Complies with the management plan for the protection of State and Federally listed threatened and endangered species, as approved by the Department's Division of Fish and Wildlife and the [U.S. Fish and Wildlife Service] **USFWS**;

iv. The sand transfer does not impact any existing dunes, unless the transfer complies with the dune rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**; and

v. Any sand transferred as part of the maintenance of the beach berm design template shall be moved only within the shore protection project and shall be placed within the existing engineered dune in accordance with N.J.A.C. [7:7E-3.16(d)] **7:7-9.16(d)**.

(c) Public access shall be provided in accordance with the lands and waters subject to public trust rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(d) (No change.)

[(Agency Note: N.J.A.C. 7:7E-3.16 through 3.32 are Special Water's Edge Areas. Within these sections, N.J.A.C. 7:7E-3.16 through 3.19 belong to the Oceanfront, and Raritan and Delaware Bayfronts subcategory.)]

[7:7E-3.23] **7:7-9.23** Filled water's edge

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

1. **The upland limit of fill**[,]; or [the]

2. **The first paved public road or railroad landward of the adjacent water area**[, whichever is closer to the water].

**(b) Filled water's edge areas shall be determined through analysis of historic data including United States Department of Agriculture soil surveys, Tidelands maps, or aerial photography.** Some existing or former dredged material disposal sites and excavation fill areas are filled water's edge [(see Appendix, Figure 4, incorporated herein by reference)].

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

[(c)] **(d)** On filled water's edge sites with direct water access (that is, those sites without extensive [inter-tidal] **intertidal** shallows or wetlands between the upland and navigable water), development shall comply with the following:

1. [The] **Except as provided below, the** waterfront portion of the site shall be:

i. Developed with a water dependent use[, as defined at N.J.A.C. 7:7E-1.8];

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ii. – iii. (No change.)

2. – 3. (No change.)

[(d)] (e) (No change in text.)

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

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

i. For every two housing units proposed on the filled water's edge the existing number of boat slips in the marina mooring area, **as defined at** [(N.J.A.C. [7:7E-3.10)]**7:7-9.10**, is increased by one, and at least 75 percent of the total number of slips (existing and new) remain open to the general public. Removal of upland to create slips is acceptable;

ii. - iii. (No change.)

2. (No change.)

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

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

[(h)] **(i)** The development shall comply with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and either N.J.A.C. 7:7E-5A or 5B] **7:7-13**.

[(i)] **(j)** (No change in text.)

[(j)] **(k)** On all filled water's edge sites, development must comply with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

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

[(k)] **(m)** Rationale: The water's edge along New Jersey's shore, bays and rivers is a highly valued, yet limited, resource. Waterfront locations offer a rare combination of natural features and opportunities for waterborne commerce and recreational boating. Though an estimated 37

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percent of the [state's] **State's** 753 miles of shoreline along navigable waterways is filled water's edge, two-thirds of these locations are already developed. The particular requirements for an average sized marina or port facility further narrows the filled water's edge potentially suitable for such development to approximately 3 percent, or 19 miles, of the [state's] **State's** entire water's edge (NJDEP, Policy Assessment 1983).

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

The rule seeks to promote both the marine trades as an important sector of the [state's] **State's** economy and uses that enhance public access to, and use of, the water's edge. Uses that require a waterfront location in order to function (that is, water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (that is, water-oriented uses) are favored over non-water related uses such as housing and offices. These non-water related uses can be situated away from the water. The rule permits the construction of decks for a water oriented use such as a restaurant, with appropriate awnings, seating, food and beverage areas because they serve the general public yet are not such substantial structures that would preclude their removal for a water dependent use.

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

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occupied by a water dependent use. Further, preserving slips open to the general public is necessary to protect the public's common law right to use tidal waters for navigation. Although housing at the water's edge can in some situations ensure the long term viability of a marina, it generates additional boating demand, which further aggravates limited marina space.

Accordingly, in defining "Slip open to the general public,"[,] slips leased only to owners of associated housing or only to residents of a certain municipality would be excluded, unless any member of the general public could join by paying a reasonable fee. Marinas warrant special attention for several reasons. They benefit the [state] **State** by attracting tourists and associated revenues and by serving the [estimated] residents who go boating in New Jersey's coastal waters. [Many existing marinas are filled to capacity with waiting lists of one season or more. Based in the 2000 census data which show as an 8.9 percent increase from 1990 in the New Jersey population, it is expected that boating demand will increase leaving even more boaters without facilities, perhaps diverting large numbers to other states.] Where consolidation of a marina's land based facilities is justified, the existing marinas services and boat slips must be maintained or, where possible, expanded. Upland boat storage is an exception. Upland storage for most (75 percent) of a marina's large boats, which cannot be easily trailered off-site, must be accommodated. However, space for only a small portion (25 percent) of boats that can be trailered off-site for winter storage must be retained.

Along the Hudson River, Delaware River, Raritan River, and Passaic River, and in other portions of the developed urban waterfront, potential for future water dependent and maritime support services is also of concern. On these sites, economic revitalization must be balanced against the need to preserve and provide for water dependent and water-oriented uses.

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[7:7E-3.24] **7:7-9.24** Existing lagoon edges

(a) (No change.)

(b) Development of existing lagoon edges is acceptable provided:

1. - 2. (No change.)

3. New or reconstructed retaining structures are consistent with the filling rule at N.J.A.C.

[7:7E-4.10] **7:7-12.11** and structural shore protection rule N.J.A.C. [7:7E-7.11(e)] **7:7-15.11(g)**;

and

4. The development complies with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and either N.J.A.C. 7:7E-5A or 5B] **7:7-13**.

(c) (No change.)

[7:7E-3.25] **7:7-9.25** Flood hazard areas

(a) Flood hazard areas are areas subject to flooding from the flood hazard area design flood, as defined by the Department under the Flood Hazard Area Control Act rules at N.J.A.C. 7:13. Flood hazard areas include those areas mapped as such by the Department, areas defined or delineated as an A or a V zone by [the Federal Emergency Management Agency (FEMA)], and any unmapped areas subject to flooding by the flood hazard area design flood. Flood hazard areas are subject to either tidal or fluvial flooding and the extent of flood hazard areas shall be

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determined or calculated in accordance with the procedures at N.J.A.C. 7:13-3.

(b) – (c) (No change.)

(d) In an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body, development is prohibited unless the development is **one or two single-family homes or duplexes in accordance with N.J.A.C. 7:7-15.2(e) or is for a water dependent use.** “Navigable” and “water dependent” are defined at N.J.A.C. [7:7E- 1.8] **7:7-1.5**. For the purposes of this subsection and [(d)] (e) below, an "undeveloped" area is an area that has no [impervious] **non-porous** cover.

(e) - (f) (No change.)

(g) Development in a flood hazard area shall comply with the requirements for [impervious] **non-porous** cover and vegetative cover under N.J.A.C. [7:7E-5 and either N.J.A.C. 7:7E-5A or 5B, as applicable] **7:7-13**.

(h) If endangered and/or threatened wildlife or species habitat is present in the flood hazard area such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. [7:7E-3.38] **7:7-9.36**, then the requirements of N.J.A.C. [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or plant species habitats, shall apply.

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(i) (No change.)

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

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

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

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

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**The development of one or two single-family homes or duplexes within an undeveloped portion of a flood hazard area that is within 100 feet of a navigable water body is conditionally acceptable provided specific design and construction standards are met to ensure that the building does not exacerbate flooding or put the inhabitants at risk.**

[7:7E-3.26] **7:7-9.26** Riparian zones

(a) – (e) (No change.)

(f) If endangered and/or threatened wildlife or species habitat is present in the riparian zone such that the area is also an endangered or threatened wildlife or plant species habitat special area in accordance with N.J.A.C. [7:7E-3.38] **7:7-9.36**, then the requirements of N.J.A.C. [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or plant species habitats, shall apply.

(g) (No change.)

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

[(h)](i) (No change in text.)

[7:7E-3.27] **7:7-9.27** Wetlands

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(a) Wetlands or wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

1. Wetlands areas are identified and mapped on the following:

i. - ii. (No change.)

iii. Freshwater wetland maps prepared by DEP at a scale of 1:12,000 (generalized locations only).

Note: Maps referenced in (a)1ii above are available from the Division of Land Use Regulation by e-mailing [TidelandsMapServices@dep.state.nj.us](mailto:TidelandsMapServices@dep.state.nj.us) and those referenced in (a)1iii above are available [from the DEP Map and Publications sales office (609) 777-1038] through NJ-GeoWeb (see <http://www.nj.gov/dep/gis/newmapping.htm>).

2. – 3. (No change.)

4. All tidal and inland wetlands, excluding the delineated tidal wetlands defined pursuant to N.J.A.C. 7:7-[2.2]2.3, shall be identified and delineated in accordance with the USEPA three-parameter approach (that is, hydrology, soils and vegetation) specified under N.J.A.C. 7:7A-1.4 of the Freshwater Wetlands Protection Act Rules.

(b) Development in wetlands defined under the Freshwater Wetlands Protection Act is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules, [(N.J.A.C. 7:7A)], except as provided at (b)1 below. Pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-6, coastal activities under the jurisdiction of

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the New Jersey Meadowlands Commission shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except that discharge of dredged or fill materials may require a permit issued under the provisions of Section 404 of the Federal Water Pollution Control Act of 1972 as amended by the Federal Clean Water Act of 1977, or under an individual or general permit program administered by the State under the provisions of the Federal Act and applicable State laws. Accordingly, under this rule the Department does not exert jurisdiction under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., in the Hackensack Meadowlands District. However, the Department shall, in accordance with N.J.S.A. 13:9B-6 and applicable law, review any such coastal activity or development as follows:

1. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands located [below] **waterward** of the mean high water line in the Hackensack Meadowlands District under the Waterfront Development Law, N.J.S.A. 12:5-3, Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in **the Freshwater Wetlands Protection Act Rules** at N.J.A.C. 7:7A-4, 5, and 7. For the purposes of reviewing a coastal activity or development that proposes the placement of dredged or fill materials in wetlands [above] **landward** of the mean high water line that does not require a zoning certificate, resolution, or statement of consistency from the New Jersey Meadowlands Commission pursuant to N.J.A.C. [7:7E-3.45(c)] **7:7-9.43(c)** in the Hackensack Meadowlands

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District under the Federal Consistency provisions of the Federal Coastal Zone Management Act, 16 U.S.C. §§1451 et seq., or water quality certification under Section 401 of the Federal Clean Water Act, 33 U.S.C. §§1251 et seq., the Department shall use the conditions, limits, and requirements governing activities or developments in wetlands set forth in **the Freshwater Wetlands Protection Act Rules** at N.J.A.C. 7:7A-4, 5, and 7.

i. The mitigation requirements at [(h)] **(i)** below shall apply to any coastal activity or development reviewed under this subsection, unless, where the coastal activity or development is reviewed under the conditions, limits, and requirements **of the Freshwater Wetlands Protection Act Rules** at N.J.A.C. 7:7A-4 and 5, those conditions, limits, and requirements do not require mitigation.

(c) [Development] **Except as provided at (d) below, development** of all kinds in all other wetlands not defined in (b) above is prohibited unless the Department can find that the proposed development meets the following four conditions:

1. Requires water access or is water oriented as a central purpose of the basic function of the activity (this rule applies only to development proposed on or adjacent to waterways). This means that the use must be water dependent [as defined in N.J.A.C. 7:7E-1.8];

2. - 4. (No change.)

(d) The establishment of a living shoreline in wetlands to address the loss of vegetated shorelines and habitat in the littoral zone is conditionally acceptable provided the living shoreline

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complies with N.J.A.C. [7:7E-4.23] **7:7-12.23**. Where the Department finds the establishment of a living shoreline acceptable, mitigation shall not be required.

(e) [In particular, dumping] **Dumping** solid or liquid wastes and applying or storing certain pesticides on wetlands are prohibited.

(f) - (g) (No change.)

(h) For projects which require a [Waterfront Development] **waterfront development** permit, the [reuse] **use** of former dredged material [disposal sites] **management areas** for continued **placement of** dredged material [disposal] is conditionally acceptable provided [the following criteria are met]:

[1. The site has been used for dredged material disposal within the past 10 years;]

[2.] **1.** The site has existing dikes or berms in sound condition, and/or has sufficient [area] **volume** of previously [disposed] **placed dredged material with suitable geotechnical and engineering properties** within the [previously disturbed disposal area] **dredged material management area** to allow **for** the construction **or reconstruction** of structurally sound dikes [and] **or berms. Where the construction or reconstruction of structurally sound dikes and berms is required:**

**i. These structures shall be designed:**

**(1) By a New Jersey licensed professional engineer; and**

**(2) In accordance with the requirements of Appendix G; and**

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**ii. Any material placed on the exposed surfaces of the dikes and berms shall comply with the appropriate Soil Remediation Standards (N.J.A.C. 7:26D Appendix 1);**

Recodify existing 3. - 5. as **2. - 4.** (No change in text.)

[6.] **5.** The former dredged material [disposal] **management** area is not subject to daily tidal inundation, and the vegetation community is limited primarily to scrub/shrub or phragmites; and

[7.] **6.** The required [Waterfront Development] **waterfront development** permit and [Water Quality Certification] **water quality certificate** are obtained.

(i) If an application to disturb or destroy wetlands meets the standards for permit approval, the Department will require the applicant to mitigate for the loss or degradation of the wetlands in accordance with **N.J.A.C. 7:7-17.** [the following:

1. Mitigation for the loss of wetlands subject to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., shall meet the standards of N.J.A.C. 7:7A.

2. When a permit allows the disturbance or loss of wetlands by filling or other means, this disturbance or loss shall be compensated for as specified under (h)9 below unless the applicant can prove through the use of productivity models or other similar studies, that by restoring or creating a lesser area, there will be replacement of wetlands of equal ecological value. In order to demonstrate equal ecological value, the applicant shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the proposed mitigation plan will replace the ecological values of the wetland to be lost or disturbed.

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3. Mitigation shall be performed prior to or concurrent with activities that will permanently disturb wetlands and immediately after activities that will temporarily disturb these habitats. A letter of credit or other financial assurance is required prior to approval of the mitigation proposal by the Department, except if the mitigator is a government agency or entity that is exempt from this requirement under Federal law. The financial assurance requirements are found at N.J.A.C. 7:7E-3B.3.

4. Where the Department permits a mitigation surface area of less than 2:1, monitoring by the permittee at a frequency determined by the Department to be appropriate on a case-by-case basis shall be required. In such cases, additional mitigation or further remedial action shall be required at a level and within the forms determined to be appropriate on a case-by-case basis by the Department when the Department determines that a net loss of equal ecological value occurs. Under no circumstances shall the mitigation area be smaller than the disturbed area. Creation of wetlands from existing natural resources protected under the applicable Special Area Rules (N.J.A.C. 7:7E-3) is not an acceptable form of mitigation, nor is transfer of title of existing wetlands or intertidal or subtidal shallows to a government agency or conservation organization.

5. The Department will not consider a mitigation proposal in determining whether a project should be awarded a permit, but will require mitigation as a condition of any permit found to be acceptable under the criteria listed in N.J.A.C. 7:7A-3 and/or N.J.A.C. 7:7E-3.15 and 3.27.

6. As a condition of every creation or enhancement plan authorized under this subsection, an applicant shall sign a Department approved conservation restriction and register this restriction on the deed for the subject parcel. This conservation restriction will provide that no regulated activities will occur in the created or enhanced wetland area. This conservation restriction shall

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be approved by the Department and shall run with the land and be binding upon the applicant and the applicant's successors in interest in the premises or any part thereof. The permit will not become effective until the conservation restriction is recorded with the county clerk or Registrar of Deeds and Mortgages, if applicable. Any regulated activities undertaken on the site before a copy of the recorded conservation restriction is submitted to the Department will be considered in violation of these rules.

i. No future development will be permitted on the mitigation site unless the Department finds that the regulated activity has no practicable alternative which would:

(1) Not involve a wetland site;

(2) Involve a wetland but would have a less adverse impact on the aquatic ecosystem;

(3) Not have other significant adverse environmental consequences, that is, it shall not merely substitute other significant environmental consequences, for those attendant on the original proposal; and

(4) There is a compelling public need for the activity greater than the need to protect the mitigation site.

ii. To satisfy (h)6 above, the applicant shall provide a copy of the recorded document or a receipt showing that the conservation restriction has been recorded at the county clerk's office.

7. Except for publicly funded projects, as described at (h)7i below, any mitigation carried out off-site shall be on private property.

i. Mitigation for publicly funded projects may be carried out on public lands provided that these lands were private lands purchased by a public agency expressly for the purpose of performing mitigation.

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8. Future development of the mitigation site is prohibited and as a condition of any permit which includes creation of the mitigation site, the owner shall be required to record a conservation restriction governing that site.

9. The Department distinguishes between four types of mitigation: restoration, creation, enhancement, and contribution. Depending on the circumstances under which wetlands are lost or disturbed, different types of mitigation may be required by the Department. The types of mitigation are explained below, in decreasing order of their desirability:

i. Restoration refers to actions performed on the site of a regulated activity, within six months of the commencement of the regulated activity, in order to reverse or remedy the effects of the activity on the wetland and to restore the site to pre-activity condition.

(1) Restoration shall be required at a ratio of one acre created to one acre lost or disturbed. If restoration actions are performed more than six months after the commencement of the regulated activity which disturbed the wetland, these actions will no longer be considered restoration, but will be considered creation, and will be governed by the provisions of (h)9ii(3) below.

(2) If restoration actions are performed on degraded wetlands offsite, these actions will be considered enhancement and will be governed by the provisions of (h)9iii below.

ii. Creation refers to actions performed to establish wetland characteristics, habitat and functions on:

(1) A non-wetlands site; or

(2) A former wetlands site which has been filled or otherwise disturbed such that it no longer retains wetland characteristics. If the site retains wetland characteristics such that it meets the definition of a degraded wetland pursuant to N.J.A.C. 7:7A-1.4, it is not eligible for use in

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creation. Rather, it is only eligible for enhancement activities pursuant to (h)9iii below. If the disturbance to a formerly wetlands site is the result of a violation of the Freshwater Wetlands Protection Act and/or the Wetlands Act of 1970, the Department may, at its discretion, condition an approval of a mitigation proposal, or a permit, or both, on the resolution of the violation.

(3) Creation will be required at a ratio of two acres created to one acre lost or disturbed.

Under no circumstances shall the mitigation area be smaller than the disturbed area.

(4) Creation shall not be permitted on a site that retains wetlands characteristics.

iii. Enhancement refers to actions performed to improve the characteristics, habitat and functions of an existing, degraded wetland such that the enhanced wetland will have resource values and functions similar to an undisturbed wetland. The enhancement requirement will be determined on a case-by-case basis.

iv. Contribution refers to the donation of money or land. The Department will permit the donation of land only after determining that all alternatives to the donation are not practicable or feasible, or that the permanent protection of the land will provide ecological benefits equal to or greater than those resulting from the creation of wetlands. This determination will be made in consultation with the United States Environmental Protection Agency (USEPA) for freshwater wetlands. Monies donated shall be used for the purchase of land to provide areas for wetland losses, to provide areas for restoration of degraded wetlands, and to provide areas to preserve wetlands and transition areas determined to be of critical importance, and the transfer of funds for research to enhance the practice of mitigation. If money is donated, the Department will require an amount equivalent to the lesser of the following costs:

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(1) Purchasing and enhancing existing degraded wetlands, resulting in preservation of wetlands of equal ecological value to those which are being lost; or

(2) Purchase of property and the cost of creation of wetlands of equal ecological value to those which are being lost.

v. If the Department determines that land may be donated as part or all of a contribution to mitigate for the destruction of freshwater wetlands, the Wetlands Mitigation Council must first determine that the donated land has the potential to be a valuable component of the wetlands ecosystem.

10. All mitigation projects shall be carried out on-site to the maximum extent practicable. Mitigation of wetlands, on-site or off-site, from other existing climax habitats is not practicable and is discouraged.

i. If on-site mitigation is found to be impracticable, off-site mitigation shall be considered and implemented within the same watershed or estuary if feasible.

11. All mitigation proposals submitted to the Department shall be prepared in accordance with N.J.A.C. 7:7E-3B.]

(j) (No change.)

[7:7E-3.28] **7:7-9.28** Wetlands buffers

(a) Wetlands buffer or transition area means an area of land adjacent to a wetland which minimizes adverse impacts on the wetlands or serves as an integral component of the wetlands ecosystem [(see Appendix, Figure 7)]. Wider buffers than those noted below may be required to

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establish conformance with [other Coastal Rules] **this chapter**, including, but not limited to,

**N.J.A.C. [7:7E-3.38 and 3.39] 7:7-9.36 and 9.37.**

1. (No change.)

2. For all other wetlands, including wetlands regulated under the [Coastal] Wetlands Act of 1970, a wetland buffer of up to 300 feet shall be established.

(b) – (e) (No change.)

[7:7E-3.29 (Reserved)]

7:7E-3.30 (Reserved)]

[7:7E-3.31] **7:7-9.29** Coastal bluffs

(a) A coastal bluff is a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes.

1. (No change.)

2. The landward limit of a coastal bluff is the landward limit of the area likely to be eroded within 50 years, or a point 25 feet landward of the crest of the bluff, whichever is farthest inland [(see Appendix, Figures 7 and 8, incorporated herein by reference)].

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3. Steep slopes, as **defined at** [(N.J.A.C. [7:7E-3.34)] **7:7-9.32**, are isolated inland areas with slopes greater than 15 percent. All steep slopes associated with shoreline processes or adjacent to the shoreline and associated wetlands, or contributing sediment to the system, will be considered coastal bluffs.

(b) Development is prohibited on coastal bluffs, except for linear development which meets the rule on the [Location of Linear Development] **location of linear development**, [(N.J.A.C. [7:7E-6.1)] **7:7-14.1**, shore protection activities which meet the appropriate [Coastal Engineering Use] **coastal engineering** rule[s], [(N.J.A.C. [7:7E-7.11)] **7:7-15.11**, and single-family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay and comply with N.J.A.C. [7:7E-7.2(e)] **7:7-15.2(e)** or (f).

(c) (No change.)

(d) Rationale: Coastal bluffs are most prominent in New Jersey along the Delaware River at Roebling and Florence and along the Raritan Bay at Aberdeen Township and Atlantic Highlands. They have a significant function in storm damage prevention and flood control, by eroding in response to wave action and resisting erosion caused by wind and rain runoff. Bluff erosion is also an important source of beach nourishment where the coastal bluff faces an open water body. Disturbance of coastal bluffs which undermines their natural resistance to wind and rain erosion increases the risk of their collapse and causes cuts in the bluffs. This increases danger to structures at the top of the bluff and reduces the bluff's ability to buffer upland area from coastal

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storms. Vegetation helps stabilize bluffs and can reduce the rate of erosion caused by wind and rain runoff. A minimum construction setback on the stable land is required to protect life and property, and reaffirms the setback requirement of the [Erosion Hazard Area] **erosion hazard area** rule, N.J.A.C. [7:7E-3.19] **7:7-9.19**.

[7:7E-3.32] **7:7-9.30** Intermittent stream corridors

(a) Intermittent stream corridors are areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The inland extent of these corridors is either the inland limit of soils with a seasonal high water table depth equal to, or less than one foot, or a disturbance of 25 feet measured from the top of the channel banks, whichever is greater [(see Appendix, Figures 7 and 9, incorporated herein by reference)].

1. Where an intermittent stream corridor is also a wetland, the [Wetlands] **wetlands** rule, [(N.J.A.C. [7:7E-3.27])] **7:7-9.27**, shall apply.

(b) (No change.)

[(c) Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited.]

**(c) If the intermittent stream is a regulated area under the Flood Hazard Area Control Act Rules, then all uses shall comply with N.J.A.C. 7:13.**

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(d) Intermittent streams not subject to the ebb and flow of the tide shall also comply with the Freshwater Wetlands Protection Act Rules, [(N.J.A.C. 7:7A)].

(e) (No change.)

[7:7E-3.33] **7:7-9.31** Farmland conservation areas

(a) (No change.)

(b) Farmland conservation areas shall be maintained and protected for open space or farming purposes. Farming or farm-dependent uses are permitted uses in farmland conservation areas. Housing is permitted only if it is an accessory use to farming. Mining is permitted only in accordance with a reclamation plan which meets the requirements of the [Mining Use] **mining use** rule, [(N.J.A.C. [7:7E-7.8]) **7:7-15.8**.

(c) - (d) (No change.)

[7:7E-3.34] **7:7-9.32** Steep slopes

(a) Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not coastal bluffs (see N.J.A.C. [7:7E-3.31] **7:7-9.29**). Steep slopes include natural swales and ravines, as well as man-made areas, such as those created through

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mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes.

(b) Development on steep slopes is discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats, riparian zones, or water areas are located adjacent to or at the base of the slope and on steep slopes which are forested as defined at N.J.A.C. [7:7E-5.5(c)] **7:7-13.5(c)**.

(c) - (d) (No change.)

[7:7E-3.35] **7:7-9.33** Dry borrow pits

(a) (No change.)

(b) Surface mining is conditionally acceptable, provided the mining use rule at N.J.A.C. [7:7E-7.8] **7:7-15.8** is satisfied.

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

(g) Solid waste disposal is conditionally acceptable on a case-by-case basis provided that:

1. - 2. (No change.)

3. The waste disposal complies with the solid and hazardous waste rule at N.J.A.C. [7:7E-8.22] **7:7-16.14**.

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(h) Filling or grading for construction is conditionally acceptable provided the fill, **including dredged material**, is clean and of a texture that will not disturb local groundwater flow. **For the purposes of this subsection, dredged material shall comply with Appendix G.**

(i) (No change.)

(j) Rationale: Dry borrow pits have been used successfully in Long Island to recharge depleted aquifers by channeling surface runoff and tertiary sewage effluent into them. These uses are encouraged in New Jersey's coastal areas, especially where there is a history of saline intrusion. There is a critical shortage in coastal areas of disposal sites for dredge spoil and solid waste. Dry borrow pits offer opportunities of low-impact disposal if they are compatible with existing uses, the leachate is carefully controlled and the site reclaimed on conclusion. Dry borrow pits have comparatively low environmental value and so are acceptable sites for development if all other policies are satisfied. **The use of dredged material of appropriate grain size and that is clean as fill in the reclamation of dry borrow pits promotes the State's longstanding policy of treating dredged material as a resource and to beneficially use dredged material in appropriate applications rather than relying on disposal of dredged material in dredged material management areas.**

[7:7E-3.36] **7:7-9.34** Historic and archaeological resources

(a) - (e) (No change.)

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(f) Recovery of shipwrecks consistent with the protection of historic values and environmental integrity of shipwrecks and their sites may be permitted subject to the conditions listed at (f)1 through 7 below. The recovery of shipwrecks must also be consistent with the shipwrecks and artificial reefs rule at N.J.A.C. [7:7E-3.13] **7:7-9.13**.

1. – 7. (No change.)

(g) (No change.)

(h) The ultimate decision on the requirement for a cultural resource survey will be made by the Department's **Division of Land Use Regulation** [Program], based on information received in response to public comments or information provided by the New Jersey Historic Preservation Office regarding the presence of known historic and prehistoric resources or the potential for their presence.

(i) Rationale: The range of historic and archaeological resources along the coast is diverse, [from the] **consisting of** oceanfront Victorian era architecture, [to ]examples of New Jersey's maritime heritage, [to ]colonial homes, and [to American Indian] **Native American** sites. The public interest requires the preservation of both representative and unique examples of historic and archaeological (cultural) resources of the coast, in order to provide present and future generations with a sense of the people who lived, worked, and visited the coast in the past. New Jersey's cultural heritage has become an important component of the coastal tourism economy,

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as more and more people visit these historic sites. Public interest in these historic and archaeological resources translates to significant commercial and economic contributions throughout the coastal zone, as manifested in hotel stays, sightseeing, food service patronage, historical tours, museum visits, recreational diving, and other historic/archaeological tourism related activities.

[DEP's] **The Department's** Historic Preservation Office maintains an up-to-date list of properties on the New Jersey Register of Historic Places. As the State Historic Preservation Officer, the Commissioner of [DEP] **the Department of Environmental Protection**[,] and the staff of the [DEP's] **Department's** Historic Preservation Office advise [DEP's] **the Department's Division of Land Use Regulation** [Program] on the historic resources aspects of coastal decisions.

For shipwrecks and shipwreck sites, the ability of the archaeologists to appropriately retrieve and preserve artifacts is gradually improving, but remains limited. Generally, the best way to preserve historic shipwrecks is to leave them in place until retrieval and preservation techniques improve. However, when the shipwreck is threatened by destruction or when the research and/or public benefits of immediate retrieval outweigh the impacts, salvage may be approved subject to conditions developed in consultation with the Historic Preservation Office, the State Museum, and other interested parties, including research and educational institutions. The decision to allow a project to proceed which could affect a shipwreck or shipwreck site will include consideration of a number of issues, including the recreational and educational opportunities provided by wrecks and wreck sites, their historic significance, and their habitat value. The preservation and salvage of New Jersey's historic shipwrecks and shipwrecks sites will be

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consistent with the Federal Abandoned Shipwreck Act Guidelines, issued under the authority of the Abandoned Shipwreck Act, [(Pub. L. 100-298;] 43 U.S.C. §§ 2101-[2106]06[)].

The requirement for historic and prehistoric resource surveys varies from site to site, and project to project. Therefore, the Department has established several categories of sites and projects which generally will not require such surveys. However, in an effort to ensure adequate protection of historic and of prehistoric resources, the Department may require such surveys, on a case-by-case basis. This requirement will be based on the determination that there is a known historic or prehistoric resource, or a reasonable potential for the presence of such a resource, which may be affected by the proposed development. Such a determination will be based on such factors as the presence of known cultural sites, the presence of known sites nearby, and the known presence of sites in a similar topographic setting.

[7:7E-3.37] **7:7-9.35** (No change in text.)

[7:7E-3.38] **7:7-9.36** Endangered or threatened wildlife or plant species habitats

(a) Endangered or threatened wildlife or plant species habitats are terrestrial and aquatic (marine, estuarine, or freshwater) areas known to be inhabited on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife or plant identified as “endangered” or “threatened” species on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing. The definition of endangered or threatened wildlife or plant species habitats includes a sufficient buffer area to ensure continued survival of the population of the species as well as areas that serve an essential

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role as corridors for movement of endangered or threatened wildlife. Absence of such a buffer area does not preclude an area from being endangered or threatened wildlife or plant species habitat.

1. (No change.)

2. Information on the areas mapped as endangered or threatened plant species habitat on the Department's Landscape Maps and the occurrence of endangered or threatened plant species habitat is available from the Department's **New Jersey Natural Heritage Program**, Office of Natural Lands Management, Natural Heritage [Database] **Data Request Form** at **Mail Code 501-04**, PO Box [404]**420**, Trenton, New Jersey 08625-[0404]**0420**.

3. (No change.)

(b) Development of endangered or threatened wildlife or plant species habitat is prohibited unless it can be demonstrated, through an [Endangered or Threatened Wildlife or Plant Species Impact Assessment] **endangered or threatened wildlife or plant species impact assessment** as described at N.J.A.C. [7:7E-3C.2] **7:7-11**, that endangered or threatened wildlife or plant species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

(c) Applicants for development of sites that contain or abut areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps shall either:

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1. Demonstrate compliance with this rule by conducting an [Endangered or Threatened Wildlife Species Impact Assessment] **endangered or threatened wildlife species impact assessment** in accordance with N.J.A.C. [7:7E-3C.2] **7:7-11.2**; or

2. Demonstrate that the proposed site is not endangered or threatened wildlife species habitat and this rule does not apply by conducting an [Endangered or Threatened Wildlife Species Habitat Evaluation] **endangered or threatened wildlife species habitat evaluation** in accordance with N.J.A.C. [7:7E-3C.3] **7:7-11.3**.

(d) – (e) (No change.)

(f) The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and [Non Game] **Nongame** Species Conservation Act, N.J.S.A. 23:2A-1 et seq. These lists include wildlife species that are endangered and threatened in New Jersey as well as wildlife species officially listed as endangered or threatened pursuant to the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq. Because the lists are periodically revised by the Department in accordance with N.J.S.A. 23:2A-1 et seq., the lists are not published as part of this rule. The lists are found at N.J.A.C. 7:25-4.13 and [7:25-]4.17, the rules adopted pursuant to the Endangered and [Non Game] **Nongame** Species Conservation Act. To obtain a copy of the most current Endangered and Threatened Wildlife lists, please contact the Department, Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, [www.state.nj.us/dep/fgw/ensphome.htm](http://www.state.nj.us/dep/fgw/ensphome.htm), or by writing to the Division at **Mail Code 501-03**, PO

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Box [400]420, Trenton, New Jersey 08625-[0400]0420.

(g) The Department is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. [13:1B15] **13:1B-154**. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, includes plant species determined by the Department to be endangered in the State as well as plant species officially listed as endangered or threatened or under active consideration for Federal listing as [Endangered] **endangered** or [Threatened] **threatened**. Because the Endangered Plant Species List is periodically revised based on new information documented by the Department, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the Department, Division of Parks and Forestry, Office of Natural Land Management, **Mail Code 501-04**, PO Box [404]420, Trenton, NJ 08625-[0404]0420.

(h) – (i) (No change.)

[7:7E-3.39] **7:7-9.37** (No change in text.)

[7:7E-3.40] **7:7-9.38** Public open space

(a) – (d) (No change.)

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(e) Development in Atlantic City is acceptable within existing public open space provided the public open space is a street right-of-way or the Boardwalk and the development meets the standards of N.J.A.C. [7:7E-3.49(e)] **7:7-9.47(e)** through (j).

(f) (No change.)

(g) All new development adjacent to public open space will be required to provide an adequate buffer area and to comply with the [Buffers and Compatibility of Uses] **buffers and compatibility of uses** rule, [(N.J.A.C. [7:7E-8.13)] **7:7-16.11**. The buffer required will be dependent upon adjacent land uses and potential conflicts between users of public open space and the proposed adjacent land use.

(h) (No change.)

[7:7E-3.41] **7:7-9.39** Special hazard areas

(a) Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property, such as the navigable air space around airports and seaplane landing areas, potential evacuation zones, and areas where hazardous substances as defined at N.J.S.A. 58:10-23.11b[k] are used or disposed, including adjacent areas and areas of hazardous material contamination.

(b) (No change.)

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(c) Approvals from the Department's [Division of] Solid and Hazardous Waste **Program** shall be obtained prior to the commencement of any hazardous substance investigations or cleanup activities at contaminated sites.

(d) (No change.)

[7:7E-3.42] **7:7-9.40** (No change in text.)

[7:7E-3.43] **7:7-9.41** Special urban areas

(a) Special urban areas are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. Under N.J.S.A. 52:27D-178 et seq., the Department of Community Affairs (DCA) establishes a list of qualifying municipalities each fiscal year. DCA's list of qualifying municipalities may be obtained on request from the Department's [Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.**

(b) (No change.)

(c) Housing, hotels, motels, and mixed use development, which is consistent with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, the public access

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rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**, and the Hudson River [Waterfront Area] **waterfront area** rule, N.J.A.C. [7:7E-3.48] **7:7-9.46**, where applicable, are acceptable only over large rivers where water dependent uses are demonstrated to be infeasible. These uses are conditionally acceptable on structurally sound existing pilings, or where at least one of the following criteria is met:

1. – 3. (No change.)

(d) Housing, hotels, motels, and mixed use development are acceptable in filled water's edge areas, provided that development is consistent with the filled water's edge rule at N.J.A.C. [7:7E-3.23] **7:7-9.23** and public access is provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(e) Rationale: This rule helps link [the] **New Jersey's** Coastal Management Program with other State efforts to focus on and restore New Jersey's urban areas. The rule would be applied to State actions on major proposals, such as shopping centers, outside urban areas which could drain resources from nearby urban areas, as well as to projects both in and out of urban areas which could help stimulate social and economic activity in urban areas.

The [Filled Water's Edge] **filled water's edge** rule which reserves the waterfront for water dependent uses should not be strictly applied in special urban areas in all cases. Housing, hotels, motels, and other commercial developments, which benefit from a waterfront location and stimulate the revitalization of a special urban area, would be consistent with State coastal

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objectives, and urban policy. This would also be true for such development over water areas.

However, new development over water areas must be limited to Large Rivers (the Delaware, Hudson, and Raritan) where the existing development density is high and where danger from

storm surge is minimal, must not increase the total water area covered by piers or pilings to

prevent the extension of non-water dependent uses into previously undeveloped [Water Areas]

**water areas** and must not unreasonably restrict public access between the development and the

waterbody. In addition, development on piers must not be detrimental to fishery resources.

Public access must be allowed since the water area over which the structure is to be built is an

area impressed with the public trust doctrine. To forbid access along the water's edge on decks

built in conjunction with the development would be an unreasonable restraint on public access.

However, it would not be unreasonable to limit night access by the general public in residential

areas over the water.

[7:7E-3.44] **7:7-9.42** Pinelands National Reserve and Pinelands Protection Area

(a) (No change.)

(b) Coastal development shall be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.).

1. (No change.)

2. The Department's **Division of Land Use Regulation** [Program] and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the

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February 8, 1988, Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the Department's **Division of Land Use Regulation** [Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **at the address and telephone number set forth at N.J.A.C. 7:7-1.6.**

(c) – (d) (No change.)

[7:7E-3.45] **7:7-9.43** Hackensack Meadowlands District

(a) – (f) (No change.)

(g) The Department's Division of Land Use Regulation and New Jersey Meadowlands Commission will coordinate the review of proposed developments and activities within the Hackensack Meadowlands District through the process outlined in the November 9, 2005, Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. A copy of the Memorandum of Agreement may be obtained from the Department's Division of Land Use Regulation at[, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **the address or telephone number set forth at N.J.A.C. 7:7-1.6.**

(h) (No change.)

[7:7E-3.46] **7:7-9.44** Wild and scenic river corridors

(a) – (b) (No change.)

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(c) Development of docks, piers, and moorings on the Great Egg Harbor River and Maurice River and their tributaries shall comply with the following:

1. (No change.)
2. On the Great Egg Harbor River and Maurice River, development of a dock, pier, or mooring within 75 feet of the edge of a navigation channel[, as defined at N.J.A.C. 7:7E-3.7,] is prohibited.
3. On the tributaries to the Great Egg Harbor River and Maurice River, development of a dock, pier, or mooring within 25 feet of the edge of a navigation channel, [as defined at N.J.A.C. 7:7E-3.7,] is prohibited.

(d) Where the need for shoreline stabilization has been demonstrated, biostabilization of eroding shorelines shall be used where feasible. These systems include live branch cuttings, live facings, live stakes, vegetative cuttings, vegetated earth buttresses, coir fiber products, fiber plugs, plants, fiber pallets, fiber carpet, and wood stake anchor systems. These materials shall be installed in accordance with the construction guidelines of Chapter 16, "Streambank and Shoreline Stabilization Protection," of the National Resources Conservation Service Engineering Handbook, National Engineering Handbook (NEH), Part 650, 1996, published by the United States Department of Agriculture, herein incorporated by reference as amended and supplemented. This document is available on the web at [www.NTIS.gov] [www.NTIS.gov](http://www.NTIS.gov) for a fee (order number PB98114358). Standards for structural shore protection are found at N.J.A.C. [7:7E-7.11] **7:7-15.11.**

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(e) – (h) (No change.)

(i) Rationale: This rule reflects and incorporates the goals of the National Wild and Scenic Rivers Act, which recognizes outstandingly remarkable scenic, recreational, fish and wildlife, historic, cultural, and similar values of certain rivers of the State, in addition to the goals of reducing loss of life and property resulting from the over development of floodplains. The primary purpose of the National Wild and Scenic Rivers Act is to protect the free-flowing character and the outstandingly remarkable resource values of designated rivers. Construction within the established boundary that may adversely affect the reasons why a river was designated into the national system is prohibited, except for linear development in the public interest where no alternative is feasible. Such development must minimize impacts and provide mitigation.

The limits on the length of a dock on the Great Egg Harbor River or Maurice River help assure that docks will not adversely affect the outstandingly remarkable scenic and recreational resources in the future, including when the navigational channel changes. It will ensure continued use of the rivers for kayaking and canoeing without encumbrance by lengthy docks. Seine fisheries, including fisheries for alewife herring, have operated on these rivers for years. The marine fish and fisheries rule, N.J.A.C. [7:7E-8.2] **7:7-16.2**, will ensure protection of the fisheries on these rivers. Hard engineering structures cause the velocity of the river to increase and thus increase the potential for scouring. In an effort to maintain these river corridors in a natural state to the maximum extent practicable, natural embankment stabilization techniques such as live cuttings and earth buttresses are encouraged.

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[7:7E-3.47] **7:7-9.45** (No change in text.)

[7:7E-3.48] **7:7-9.46** Hudson River [Waterfront Area] **waterfront area**

(a) (No change.)

(b) Non-industrial development within the Hudson River [Waterfront Area] **waterfront area** shall conform with the criteria as set forth in (d) below, which govern allowable building height, massing, and public access. Industrial development, including water dependent transportation (passenger and vehicular) and cargo handling facilities, shall conform with the criteria to the extent practical consistent with public safety and the operational requirements of such facilities.

(c) Hudson River [Waterfront Area] **waterfront area** development shall be consistent with all other applicable [Coastal Zone Management] rules with particular attention given to N.J.A.C. [7:7E- 3.40] **7:7-9.38**, Public open space[,]; N.J.A.C. [7:7E-3.41] **7:7-9.39**, Special hazard[s] areas[,]; N.J.A.C. [7:7E-3.43] **7:7-9.41**, Special urban areas[,]; N.J.A.C. [7:7E-3.50] **7:7-9.48**, Lands and waters subject to public trust rights[,]; N.J.A.C. [7:7E-7.14] **7:7-15.14**, High rise structures[,]; N.J.A.C. [7:7E-8.11]:**7-16.9**, Public access rule[,]; N.J.A.C. [7:7E-8.12]:**7-16.10**, Scenic resources and design[,]; and N.J.A.C. [7:7E-8.4] **7:7-16.3**, Water [Quality] **quality**.

(d) The following standards apply to all developments proposed on piers and will be used by the Department as a guide for developments proposed on platforms. In some cases, a platform

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may, in effect, function as upland and, thus, be more appropriately reviewed under rules that regulate upland development.

1. Non-industrial development upon piers is conditionally acceptable provided that specific amounts of usable landscaped public open space are incorporated into the project, as provided below:

i. - viii. (No change.)

ix. All pier structures shall meet the requirements of the [Flood] **flood** hazard areas rule at N.J.A.C. [7:7E-3.25] **7:7-9.25**.

(e) All waterfront development along the Hudson River shall develop, maintain, and manage a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. The developer shall, by appropriate instrument of conveyance, create a conservation restriction in favor of the Department. [The] **In addition to complying with N.J.A.C. 7:7-18, the** conservation restriction shall define the physical parameters of the walkway and the allowable uses, address the maintenance and management duties, and identify the responsible party. Development of each project's public access system shall conform to this special area policy and to the Hudson Waterfront Walkway Planning and Design Guidelines (1984) and the Hudson Waterfront Walkway Design Standards (1989), subject to the following clarification:

1. – 2. (No change.)

(f) Applications which vary in detail from the standards of this rule are discouraged, but will be considered for approval if they would provide greater public access and/or protection of

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natural or scenic resources than would be afforded by strict compliance with this rule and the development, as proposed, would remain in compliance with N.J.A.C. [7:7E-3.50] **7:7-9.48**.

Applicants proposing a development which varies in detail from the standards of this rule are encouraged to contact the Department for guidance when conceptual plans have been prepared.

[7:7E-3.49] **7:7-9.47** Atlantic City

(a) – (c) (No change.)

(d) The construction of new commercial piers or expansion of existing commercial piers is prohibited, unless the pier is associated with a marina which meets the [Resort Recreational Use] **resort recreational use** rule, N.J.A.C. [7:7E-7.3] **7:7-15.3**], and the Marina Development Standards at N.J.A.C. 7:7E-7.3A] or meets the standards at [N.J.A.C. 7:7E-3.49](c) **above**.

(e) The following standards apply to all development proposed in the Boardwalk right-of-way as defined at (e)1 below:

1. (No change.)

2. Elevated pedestrian bridges are acceptable provided they meet the criteria of (e)2i through [vi] v below:

i. - iii. (No change.)

iv. The elevated pedestrian bridge shall be transparent with the exception of the support structure; **and**

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[v. The elevated pedestrian bridge shall connect to an existing pier as defined at (c)1 above;  
and]

[vi.] v. There shall be no more than one pedestrian bridge per [existing pier] **casino-hotel**.

3. – 5. (No change.)

(f) – (l) (No change.)

[7:7E-3.50] **7:7-9.48** Lands and waters subject to public trust rights

(a) (No change.)

(b) Public access to lands and waters subject to public trust rights shall be provided in accordance with the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**. Development that does not comply with N.J.A.C. [7:7E-8.11] **7:7-16.9**, Public access, is discouraged in lands and waters subject to public trust rights.

(c) (No change.)

**7:7-9.49 Dredged material management areas**

(a) **A dredged material management area is an area documented through historical data, including, but not limited to, aerial photography, historic surveys, and/or previously issued permits, as having been previously used for the placement of sediment associated with the dredging of State and/or Federal navigation channels and marinas.**

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**(b) Development that changes the land use of a dredged material management area owned by a State or Federal agency is discouraged.**

**(c) Development that changes the land use of a dredged material management area owned by a person, entity, or local governmental entity is conditionally acceptable provided the Department determines that:**

**1. The previous use of the area was for the one-time placement of dredged material or the dredged material management area is not located within hydraulic pumping distance of a State or Federal navigation channel; and**

**2. The purchase of the property by the State for use as a dredged material management area is not feasible.**

**(d) The beneficial use of dredged material from the dredged material management area in a lawfully permitted manner is encouraged, provided environmental impacts associated with the removal of the dredged material are minimized to the maximum extent practicable.**

**(e) Rationale: The primary purpose of a dredged material management area is to facilitate maintenance and safe navigation of State and Federal navigation channels and marinas. Dredged material management areas dewater and retain dredged materials until such time as the material can be excavated for beneficial use. Beneficial use of dredged**

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**material provides long term capacity within the dredged material management area. The continued use of these areas for the management of sediments removed from State and Federal navigation channels and marinas to maintain navigation is critical to the State's recreational and commercial boating industry and marine commerce.**

(**Agency Note:** The coastal permit application fees currently codified as N.J.A.C. 7:7-10 are recodified, with amendments, at N.J.A.C. 7:7-25.)

#### SUBCHAPTER [3A.] **10. STANDARDS FOR BEACH AND DUNE ACTIVITIES**

[7:7E-3A.1] **7:7-10.1** Purpose and scope

(a) This subchapter sets forth the standards applicable to routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks. These standards are referenced at N.J.A.C. [7:7E-3.16] **7:7-9.16**, Dunes; N.J.A.C. [7:7E- 3.17] **7:7-9.17**, Overwash areas; N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion hazard areas; N.J.A.C. [7:7E-3.22] **7:7-9.22**, Beaches; and N.J.A.C. [7:7E-7.11] **7:7-15.11**, Coastal engineering. In addition, N.J.A.C. [7:7E-3A.2, 3A.3 and 3A.4] **7:7-10.2, 10.3, and 10.4** are the standards for the [coastal] general permit for beach and dune maintenance activities, N.J.A.C.

**7:7-[7.6]6.2. The standards in this subchapter are organized as follows:**

1. The standards applicable to routine beach maintenance, including debris removal and clean-up; mechanical sifting and raking; maintenance of access ways; removal of sand from street ends[;], boardwalk promenades and residential properties; repairs or reconstruction of

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existing gazebos and dune walkover structures[.]; and limited sand transfers from the lower beach to the upper beach or alongshore, are found at N.J.A.C. [7:7E-3A.2] **7:7-10.2**;

2. The standards that apply to the restoration of all beaches that are impacted by coastal storms with a recurrence interval to or exceeding a five-year storm event are found at N.J.A.C. [7:7E-3A.3] **7:7-10.3**;

3. The standards for dune creation and maintenance, including the placement and/or repair of sand fencing, the planting and fertilization of appropriate dune vegetation, the maintenance and clearing of beach access pathways less than eight feet in width, and the construction or repair of approved dune walkover structures are found at N.J.A.C. [7:7E- 3A.4] **7:7-10.4**; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. [7:7E-3A.5] **7:7-10.5**.

(b) Beach and dune maintenance activities subject to this subchapter shall comply with any applicable management plan for protection of State and Federally listed threatened and endangered species, as approved by the Department and the [U.S. Fish and Wildlife Service] **USFWS**.

[7:7E-3A.2] **7:7-10.2** Standards applicable to routine beach maintenance

(a) Routine beach maintenance includes debris removal and clean-up; mechanical sifting and raking; maintenance of accessways; removal of sand accumulated beneath a boardwalk; removal of sand from street ends, boardwalks/promenades, and residential properties; the repair or reconstruction of existing boardwalks, gazebos, and dune walkover structures; and limited sand

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transfers from the lower beach to the upper beach or alongshore (shore parallel). Sand transfers from the lower beach profile to the upper beach profile are specifically designed to restore berm width and elevation, to establish/enhance dunes, and to repair dune scarps. Activities which preclude the development of a stable dune along the back beach are not considered to be routine beach maintenance activities, pursuant to this section. Specifically, the bulldozing of sand from the upper beach (berm) to the lower beach (beach face), for the purpose of increasing the berm width or flattening the beach profile, is not considered to be routine maintenance, except as provided at (a)9 below.

1. - 3. (No change.)

4. In areas documented by the Department as habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers [(*Charadrius melodus*)] (*Charadrius melodus*), Least Terns [(*Sternula antillarum*)] (*Sternula antillarum*), and Black Skimmers [(*Rynchops niger*)] (*Rynchops niger*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles, shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting seasons. The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available from the [Department's] Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. - iii. (No change.)

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iv. The restrictions contained in (a)4 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat, due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**.

5. In areas documented by the Department as supporting known occurrences of Federally listed endangered or threatened plant species such as seabeach amaranth [(*Amaranthus pumilus*)] (*Amaranthus pumilus*), or known occurrences of State listed endangered plant species, such as sea-beach knotweed [(*Polygonum glaucum*)] (*Polygonum glaucum*), no beach raking, other mechanical manipulation of the beach, or use of non-emergency vehicles, shall take place between May 15 and November 30.

i. The Department, in cooperation with the [U.S. Fish and Wildlife Service] **USFWS**, shall develop a list of present and documented habitat areas where this restriction shall apply based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the [Department's] Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. (No change.)

iii. The restrictions contained in (a)5 above may be waived if the Department determines that the identified areas do not support occurrences of Federally listed endangered or threatened plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall

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be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C.

[7:7E-1.7] **7:7-1.6.**

6. (No change.)

7. The excavation of sand accumulated beneath a boardwalk is conditionally acceptable provided:

i. - iii. (No change.)

iv. Where sand is removed from the landward dune slope, the slope must be:

(1) (No change.)

(2) Revegetated in accordance with N.J.A.C. [7:7E-3A.4(b)] **7:7-10.4(b)** and (c).

8. - 9. (No change.)

(b) Projects involving the transfer of sand from the lower beach profile to the upper beach profile, or alongshore, are acceptable, in accordance with the following standards:

1. 5. (No change.)

6. In areas of documented habitat for threatened or endangered beach nesting shorebirds such as Piping Plovers [(*Charadrius melodus*)] (*Charadrius melodus*), Least Terns [(*Sternula antillarum*)] (*Sternula antillarum*), and Black Skimmers [(*Rynchops niger*)] (*Rynchops niger*), no sand transfers shall take place between March 15 and August 31.

i. The Department's Division of Fish and Wildlife shall develop a list of specific areas where this restriction shall apply, based on documented habitat during the most recent nesting seasons.

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The list of restricted areas shall be updated annually by the Division of Fish and Wildlife, at the end of each nesting season and will be available [upon request] from the [Department's] Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**. The updated list shall be provided by the Department to each permittee prior to March 1 of each year.

ii. – iii. (No change.)

iv. The restrictions contained in (b)6 above may be waived if the Department's Division of Fish and Wildlife determines that the identified areas do not represent suitable threatened or endangered beach nesting shorebird habitat due to beach erosion or other causes. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**.

7. In areas documented by the Department as supporting known occurrences of Federally-listed endangered or threatened plant species, or known occurrences of State-listed endangered plant species, no sand transfers shall take place between May 15 and November 30.

i. The Department, in cooperation with the [U.S. Fish and Wildlife Service] **USFWS**, shall develop a list of present and documented habitat areas where this restriction shall apply, based on occurrence locations during the previous seasons. The list of restricted areas shall be updated annually and will be available from the Department's Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**. The updated list shall be provided by the Department to each permittee prior to May 1 of each year.

ii. (No change.)

iii. The restrictions contained in (b)7 above may be waived if the Department determines that the identified areas do not support occurrences of a Federally listed endangered or threatened

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plant species, or occurrences of State listed endangered plant species. Requests for such a waiver shall be made in writing to the Division of Land Use Regulation at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**.

8. - 9. (No change.)

[7:7E-3A.3] **7:7-10.3** Standards applicable to emergency post-storm beach restoration

(a) This section on emergency post-storm beach restoration will apply to all beaches which are impacted by coastal storms with a recurrence interval equal to or exceeding a five-year storm event. Emergency post-storm beach restoration projects not specifically identified in this section may be authorized by the Department through an [Emergency Permit] **emergency** authorization pursuant to N.J.A.C. 7:7-[1.7]**21** if the Department determines that there is an imminent threat to lives or property.

(b) – (c) (No change.)

(d) The bulldozing of sand from the lower beach profile to the upper beach profile, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. (No change.)

2. The beach face cannot be graded to a slope steeper than [1:3] **one vertical to three horizontal**.

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(e) - (g) (No change.)

[7:7E-3A.4] **7:7-10.4** Standards applicable to dune creation and maintenance

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

(d) The construction of elevated timber dune walkover structures shall be in accordance with the standards and specifications (or similar specifications) described in Beach Dune Walkover Structures (Florida Sea Grant, 1981). The construction of elevated dune walkover structures, particularly at municipal street-ends and other heavily used beach access points is preferred to the construction of pathways or walkways through the dunes.

1. Copies of the DEP and Florida Sea Grant reports are available from the Department at the address set forth at N.J.A.C. [7:7E-1.7] **7:7-1.6**.

(e) – (f) (No change.)

[7:7E-3A.5] **7:7-10.5** Standards applicable to the construction of boardwalks

(a) The construction of oceanfront or bayfront boardwalks should address a number of engineering concerns related to structural support, resistance to vertical and horizontal water and wind loads, and scouring. The construction of boardwalks along tidal shoreline is acceptable, in accordance with the following standards:

1. (No change.)

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2. Support piles should be driven to a depth of at least 10 feet (mean sea level), for all [V-zone] **V zone** locations. In [A-zones] **A zones**, the depth of penetration should be at least [-]five feet (mean sea level);

3. – 5. (No change.)

[SUBCHAPTER 3C.] **SUBCHAPTER 11. STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF AN ENDANGERED OR THREATENED WILDLIFE OR PLANT SPECIES HABITAT IMPACT ASSESSMENT AND/OR ENDANGERED OR THREATENED WILDLIFE SPECIES HABITAT EVALUATION**

[7:7E-3C.1] **7:7-11.1** Purpose and scope

(a) This subchapter sets forth the standards for conducting an [Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment] **endangered or threatened wildlife or plant species habitat impact assessment** and for conducting an [Endangered or Threatened Wildlife Species Habitat Evaluation] **endangered or threatened wildlife species habitat evaluation**. One or both must be employed by an applicant seeking to demonstrate compliance with or inapplicability of N.J.A.C. [7:7E-3.38] **7:7-9.36** when the site contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps. This subchapter also sets forth the standards for reporting the results of an [Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment] **endangered or threatened wildlife or plant species habitat impact assessment** and an [Endangered or Threatened Wildlife Species Habitat Evaluation] **endangered or threatened wildlife species habitat evaluation**.

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(b) An [Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment] **endangered or threatened wildlife or plant species habitat impact assessment** is required to demonstrate that endangered or threatened wildlife or plant species habitat as defined at N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)** would not, directly or through secondary impacts on the relevant site or in the surrounding area, be adversely affected by the proposed development. The standards for conducting an impact assessment pursuant to N.J.A.C. [7:7E-3.38 (b)] **7:7-9.36(b)**, (d), and (e) are found at N.J.A.C. [7:7E-3C.2] **7:7-11.2**.

(c) **Pursuant to N.J.A.C. 7:7-9.36(c)**, [An Endangered or Threatened Wildlife Species Habitat Evaluation] **an endangered or threatened wildlife species habitat evaluation** is required to demonstrate that a site does not contain suitable **endangered or threatened wildlife or plant species** habitat, as defined at N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)**[, pursuant to N.J.A.C. 7:7E-3.38]. The standards for conducting an evaluation are found at N.J.A.C. [7:7E-3C.3] **7:7-11.3**.

(d) The reporting requirements for habitat evaluations and impact assessments are found at N.J.A.C. [7:7E-3C.4] **7:7-11.4**.

[7:7E-3C.2] **7:7-11.2** Standards for conducting [Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments] **endangered or threatened wildlife or plant species habitat impact assessment**

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(a) [These standards shall be used by applicant] **Applicants** who choose not to dispute the Department designation of the site as endangered or threatened wildlife species habitat[. Applicants] shall demonstrate compliance with N.J.A.C. [7:7E-3.38(b)] **7:7-9.36(b)** by providing information required at this section and N.J.A.C. [7:7E-3C.4] **7:7-11.4**. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened wildlife species that resulted in identification of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)** and/or (d).

(b) [These standards shall be used by applicants if] **If** an endangered or threatened plant species has been documented to be on the site or a portion of the site or an area abutting the site[.], [Applicants] **applicants** shall demonstrate compliance with N.J.A.C. [7:7E-3.38(b)] **7:7-9.36(b)** by providing information required at this section and N.J.A.C. [7:7E-3C.4] **7:7-11.4**. The required information shall demonstrate that the proposed development will not negatively affect the population(s) or habitat of endangered or threatened plant species documented to be on the site or a portion of the site or on an area abutting the site.

(c) (No change.)

[7:7E-3C.3] **7:7-11.3** Standards for conducting [Endangered or Threatened Wildlife Species Habitat Evaluations] **endangered or threatened wildlife species habitat evaluation**

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(a) [These standards shall be used by applicants] **Applicants** who dispute the Department designation of the site as endangered or threatened wildlife species habitat, or dispute the boundary of that habitat[. Applicants who dispute the Department's determination] shall provide information that demonstrates that the habitat is not suitable for each of the endangered or threatened wildlife species that resulted in [that resulted in] identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)** and/or (d).

(b) Habitat evaluations for endangered or threatened wildlife species pursuant to N.J.A.C. [7:7E-3.38(c)] **7:7-9.36(c)** shall be conducted for each wildlife species described in (a) above.

This habitat evaluation shall:

1. – 3. (No change.)

(c) A survey for the endangered or threatened wildlife species that resulted in identification of the site, a portion of the site, or an area abutting the site, as endangered or threatened wildlife species habitat in accordance with N.J.A.C. [7:7E-3.38(a)] **7:7-9.36(a)** and/or (d), will only be considered in the context of supplementing information on habitat suitability. If such a survey is conducted, it shall be conducted consistent with techniques established in the scientific literature.

[7:7E-3C.4] **7:7-11.4** Standards for reporting the results of impact assessments and habitat evaluations

(a) (No change.)

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(b) [For wildlife] **Wildlife** habitat evaluations [only,] **shall include** a narrative[, including] **with** supporting documentation, including maps, photographs, and field logs, which contains the following:

1. A description, for each species, of the findings of the habitat evaluation performed in accordance with N.J.A.C. [7:7E-3C.3] **7:7-11.3**;
2. If a survey was conducted in accordance with N.J.A.C. [7:7E-3C. 3(b)] **7:7-11.3(c)**, literature citations for the methodology used and a description of how the methodology was applied to the survey, giving the following information: surveyor's name(s), dates and times surveys were performed, number of samples, and number of replications. This information shall be provided for each species surveyed; and
3. (No change.)

(c) [For impact] **Impact** assessments [only,] **shall include** a narrative[, including] **with** supporting documentation, such as maps and photographs, which contains the following:

1. – 2. (No change.)

#### [SUBCHAPTER 4.] **SUBCHAPTER 12. GENERAL WATER AREAS**

[7:7E-4.1] **7:7-12.1** Purpose and scope

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(a) General [Water Areas] **water areas** are all water areas which are located below either the spring high water line or the normal water level of non-tidal waters. [that] **General water areas** are subject to this subchapter and to [Special Area] **special area** rules.

(b) General [Water Areas] **water areas** are divided by volume and flushing rate into eight categories as described below:

1. "Atlantic Ocean" includes the area of the Atlantic Ocean that extends out to the three geographical mile limit of the New Jersey territorial sea and is bounded by the boundaries of New York and Delaware [(see Appendix, Figure 13c)].

2. "Lakes, ponds and reservoirs" are relatively small water bodies with no tidal influence or salinity. Many are groundwater fed, while others serve as surface aquifer recharge areas. Lakes that are the result of former mining operations are not included in this definition, but are defined at N.J.A.C. [7:7E-3.14] **7:7-9.14**, Wet borrow pits.

3. - 4. (No change.)

5. "Medium rivers, creeks, and streams" are rivers, streams, and creeks with a watershed of less than 1,000 square miles. This definition includes waterways such as the Hackensack, Passaic, Oldmans, Big Timber, Pennsauken, Navesink, Manasquan, Toms, Wading, Mullica, Great Egg, Maurice, Cohansey, Salem, and Rancocas [(see Appendix, Figures 13c-e, incorporated herein by reference)].

6. "Open bays" are large, semi-confined estuaries with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into the upper portion. Open bays are limited to the Delaware Bay, Raritan Bay, Sandy Hook Bay, and Upper New York Bay [(see Appendix, Figure 13b, incorporated herein by reference)].

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7. (No change.)

8. “Tidal guts” are the waterway connections between two estuarine bodies of water. Also known as thorofares or canals, tidal guts control the mix of salt and freshwater. Examples include the Arthur Kill and Kill Van Kull [(see Appendix, Figures 13a-e, incorporated herein by reference)].

(c) N.J.A.C. [7:7E-4.2 through 4.20] **7:7-12.2 through 12.24** set forth the requirements for specific types of development within [General Water Areas] **general water areas** as defined at (a) above. In many cases an area already identified as a [Special Area] **special area** will also fall within the definition of a [General Area] **general area**. In these cases, both [General and Special Area] **general and special area** rules apply. In case of conflict between [General and Special Area] **general and special area** rules, the more specific [Special Area] **special area** rules shall apply.

[7:7E-4.2] **7:7-12.2** Shellfish aquaculture

(a) (No change.)

(b) Shellfish aquaculture is encouraged in all general water areas as defined at N.J.A.C.

[7:7E-4.1] **7:7-12.1**, provided the activity:

1. – 5. (No change.)

(c) – (d) (No change.)

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[7:7E-4.3] **7:7-12.3** (No change in text.)

[7:7E-4.4] **7:7-12.4** Docks and piers for cargo and commercial fisheries

(a) (No change.)

(b) Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable provided:

1. – 2. (No change.)

3. The associated use of the adjacent land meets all applicable [Coastal Zone Management] rules **of this chapter**.

(c) The standards for port uses are found at N.J.A.C. [7:7E-7.9] **7:7-15.9**. The standards for the construction of a dock or pier composed of fill and retaining structures are found at N.J.A.C. [7:7E-4.10] **7:7-12.11**.

(d) Rationale: Water dependent industry and commercial fishing are important components of New Jersey's economy. Docks and piers for these purposes are conditionally acceptable provided they will not interfere with navigation, and that the associated facility is consistent with [the Coastal Zone Management rules] **this chapter**.

[7:7E-4.5] **7:7-12.5** Recreational docks and piers

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(a) (No change.)

(b) Recreational docks and piers, including jet ski ramps, and mooring piles, are conditionally acceptable provided:

1. - 4. (No change.)

**5. If the dock, pier, or boat mooring is associated with a lot that has frontage on both a man-made lagoon and a natural waterway, the dock, pier, or boat mooring shall be located on the man-made lagoon, unless locating the dock, pier, or boat mooring on the lagoon would not otherwise comply with this section or any other provisions of this chapter;**

[5.] **6.** Space between horizontal planking is maximized and width of horizontal planking is minimized to the maximum extent practicable. Under normal circumstances, a minimum of 3/8 inch, 1/2 inch, 3/4 inch, or one inch space is to be provided for four inch, six inch, eight to 10 inch, or 12 inch plus wide planks, respectively. **The Department may consider an alternative dock design that allows sunlight penetration equal or greater than that allowed by the spacing of planking described in this paragraph;**

[6.] **7.** The width of the structure shall not exceed twice the clearance between the structure and the surface of the ground below or the water surface at mean high tide (measured from the bottom of the stringers), except for floating docks whose width shall not exceed eight feet. Under typical circumstances, the maximum width of the structure shall be eight feet over water and six feet over wetlands and intertidal flats, except as noted at (b)[6iii]7iii below. For the purposes of this section, an intertidal flat is a low lying strip of land along a shoreline located between spring

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high and spring low tides. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

i. - iii. (No change.)

Recodify existing 7. and 8. as **8. and 9.** (No change in text.)

(c) The construction of recreational docks and piers within areas designated by the Department as shellfish habitat [must] **shall** comply with the standards specified under the shellfish habitat rule, N.J.A.C. [7:7E-3.2] **7:7-9.2.**

(d) The construction of recreational docks and piers within submerged vegetation areas [must] **shall** comply **with** the standards specified under the submerged vegetation rule, N.J.A.C. [7:7E-3.6] **7:7-9.6.**

(e) For sites which have existing dock or pier structures exceeding eight feet in width over water areas and/or wetlands, which were constructed prior to September 1978 and for which the applicant proposes to increase the coverage over the water area or wetland by relocating or increasing the number or size of docks or piers, the existing oversized structures must be reduced to a maximum of eight feet in width over water areas and six feet in width over wetlands and intertidal flats. All structures proposed as part of an expansion must comply with all of the applicable [Coastal Zone Management] rules **of this chapter.**

(f) (No change.)

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(g) Rationale: Docks and piers constructed through filling would permanently destroy most ecological value of the area filled and are consequently discouraged. **Docks and piers constructed in water with insufficient water depth causes increased turbidity resulting in an adverse impact to special areas and water quality.** Docks and piers [with the maximum spacing between horizontal planking and of the minimum practicable width will allow sunlight penetration into the water and onto the bottom, thus allowing continued] **that maximize sunlight penetration into the water and onto the bottom, allow the continuation of** photosynthesis by plants underneath the structure. “[Also, spaced] **Spaced** planking helps protect loosening of boards during high water levels and wave slap from underneath. In cases where it is demonstrated that the width of the dock must exceed eight feet (for example, fishing piers), the dock or pier shall be sized so as to accommodate anticipated use, while minimizing impacts to [Special Areas] **special areas** by reducing the width of the structure over intertidal and subtidal shallows and wetlands, and by increasing the height of the structure over these [Special Areas] **special areas** consistent with the requirements for public safety.

Docks and piers built on pilings will undergo ice heaving, frequently leading to structural damage, during thick ice conditions in areas with significant tidal action. Normal length pilings need to be resunk annually due to ice raising unless some type of water circulation system is installed or ice is broken up daily. Floating docks need to be removed before winter and bottom floatation needs to be serviced annually. Cantilevered docks at a height above winter ice and tidal action levels do not have these problems but have limits in load bearing capacity and must be fastened to a bulkhead.

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Jet skis have been gaining popularity among New Jersey's boating public. Jet ski ramps which can accommodate the "dry" docking of these vehicles can be designed to satisfy the needs of the public while minimizing adverse impacts to the environment.

[7:7E-4.6] **7:7-12.6** Maintenance dredging

(a) Maintenance dredging is the **periodic** removal of accumulated sediment from previously [authorized and] legally dredged navigation and access channels, marinas, lagoons, canals, or boat moorings for the purpose of [maintaining a previously authorized water depth and width for] safe navigation.

1. [To] **For a project to be considered maintenance dredging[;], the applicant shall demonstrate through historical data, including, but not limited to, previously issued dredging permits, previous dredging contracts, historic bathymetric surveys, and/or aerial photography that:**

i. The proposed dredge area [must be] **is** limited to the same [depth,] length and width as [the] a previous dredging operation; [and]

ii. [For natural water areas, the area must have been either:] **The proposed water depth is the same as a previous dredging operation or as historical water depths within the proposed dredge area; and**

[(1)] **iii.** [Currently]. **The proposed dredge area has historically been** used for navigation or mooring of vessels requiring the proposed water depth[; or

(2) Dredged within the last 10 years].

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**(b) Maintenance dredging and the management of the dredged material shall be conducted in accordance with Appendix G.**

[(b)] (c) Maintenance dredging is conditionally acceptable to the authorized depth, length, and width within all [General Water Areas] **general water areas** to ensure that adequate water depth is available for safe navigation, provided:

1. An acceptable dredged material placement site, with sufficient capacity will be used[.] (see N.J.A.C. [7:7E-4.8] **7:7-12.9**, Dredged material disposal in water areas, [and] N.J.A.C.

[7:7E-7.12] **7:7-15.12**, Dredged material placement on land, **and Appendix G**). **The Department will make an acceptable use determination for the beneficial use of dredged material in accordance with Appendix G;**

2. Pre-dredging chemical and physical analysis of the dredged material [and/or its elutriate], **including water quality predictive analyses for surface water and ground water** may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;

3. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and [slurry or decant water overflows] **discharges from dredged material management areas (see N.J.A.C. 7:7-9.49)** shall meet

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applicable [State] Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may require the permittee to conduct biological, physical, and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;

4. If predicted water quality parameters are likely to exceed [State] Surface Water Quality Standards at N.J.A.C. 7:9B, or Ground Water Quality Standards at N.J.A.C. 7:9C, or if pre-dredging chemical analysis of dredged material [or elutriate], **including surface or ground water quality predictive analyses**, reveals significant contamination, the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under specific circumstances identified at [(b)7] (c)7 below;

5. For mechanical dredges [such as clamshell bucket, dragline, grab, or ladders], deploying silt curtains at the dredging site may be required, if feasible based on site conditions **as provided in Appendix G**. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. [The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned] **The Department may also require the use of additional best management practices when highly contaminated sediments are to be dredged in accordance with Appendix G;**

6. For hydraulic dredges, specific operational procedures designed to minimize water quality impacts, such as removal of **the** cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts, may be required;

7. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

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i. (No change.)

ii. Water bodies downstream of known anadromous fish spawning sites under N.J.A.C.

[7:7E-3.5] **7:7-9.5**, Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

iii. (No change.)

iv. Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. [7:7E-3.2] **7:7-9.2**; and

8. Maintenance dredging side slopes shall not be steeper than [3:1] **three vertical to one horizontal** adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

[(c)] **(d)** Reprofiling[, which is] **consists of** the movement of [material] **sediments** from [one] **a specific** area of a berth or channel to [an] **a specific** adjacent[,] **and** deeper location, **without removing the sediments from the water body. Reprofiling is prohibited** [discouraged] in all water areas, except the New York-New Jersey Harbor Area [as provided at (c)1 below.] **of Region 1, as described in Appendix G, excluding the Raritan Bay and its tributaries east of the Cheesequake Creek, provided:**

[1. Reprofiling is conditionally acceptable in the New York-New Jersey Harbor Area north of Sandy Hook, excluding the Raritan Bay and its tributaries east of the Cheesequake Creek provided:]

Recodify existing i. and ii. as **1. and 2.** (No change in text.)

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[iii.] **3.** The depth of the [material] **sediments** to be [removed] **moved by the reprofiling operation** is limited to three feet;

[iv. There exists a suitable adjacent deep water area with sufficient capacity to accommodate the relocated material within which the material will be stable and located so as not to interfere with adjacent navigation channels or berths; and]

**4. The adjacent deep water area into which the sediments will be moved has sufficient capacity to accommodate the relocated sediments in a stable manner, without interfering with the use of adjacent navigation channels or berths; and**

[v.] **5.** (No change in text).

[(d)] **(e)** (No change in text.)

[(e) The Department has prepared a dredging technical manual, titled “The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey’s Tidal Waters,” October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department’s Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.]

(f) Rationale: Maintenance dredging is necessary to provide **for the safe navigation of State and Federal navigation channels and to provide** access to marinas, docks, ports, and other appropriate water dependent development.[, but it] **Safe navigation is critical to the State’s**

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**recreational and commercial boating industry and marine commerce. However, maintenance dredging** must be carried out in such a way that [Special Areas] **special areas** and other identified environmentally sensitive areas are not unnecessarily disturbed. [Areas that were once dredged, but which have been abandoned for more than 10 years, will have been recolonized by a naturally functioning benthic community. Therefore, the impact associated with disturbance of these areas will be similar to impacts associated with dredging in an area not previously dredged, and as such projects will be evaluated as new dredging.]

Potential water column impacts vary with each type of dredging method employed, that is, mechanical or hydraulic. Mechanical methods have been documented to release more suspended sediments at the dredging site than hydraulic methods. Hydraulic dredging causes greater mixing of sediments with water which is an important consideration when dredging contaminated sites, since slurry water is usually released into the water body.

Previously dredged areas typically accumulate black muds high in clay and silt, detritus, and other organics and, if sources are present, toxic heavy metals, petroleum, and chlorinated hydrocarbons. The majority of potentially toxic contaminants are closely bound to fine grained sediment particles and may or may not be available for uptake by aquatic organisms. Bioaccumulation testing is necessary to determine if there is contaminant uptake.

Presently available equipment and operational practices can contain or reduce off site movement of suspended particles. Efficiency and applicability of control equipment depends on hydrologic conditions at the site.

The information available on aquatic species responses and/or mortality due to dredge-induced water quality changes is incomplete. It is known however that egg and larval forms of

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aquatic biota are more sensitive than adult stages. American oyster eggs and larvae are known to be sensitive to turbidity levels and durations that typically occur at mechanical dredging sites. Turbidity is known to block upstream migration of striped bass. Turbidity may, therefore, block other anadromous species during spring upstream migration.

Little information exists on the resuspension of fecal bacteria in contaminated sediments. The potential exists that a dredging turbidity plume could carry fecal bacteria into harvestable shellfish beds or human bathing beaches. This may result in unacceptable human health hazards.

Aquatic finfish and blue crabs which winter in New Jersey's estuarine and tidal waters are lethargic at cold water temperatures. Large scale mechanical or hydraulic dredging could entrain and kill significant numbers, since they would not be able to evacuate a dredging area.

Reprofiling is generally [discouraged] **prohibited** under [the Coastal Zone Management rules] **this chapter** because it merely moves dredged material rather than removing it from the system. Ultimately, this material is likely to have to be removed, resulting in handling the material twice and increasing the impacts associated with the movement of the accumulated sediment. Reprofiling is acceptable under limited circumstances as an interim measure in the New York-New Jersey Harbor [area] **Area** when other management techniques are unavailable, as it will allow existing maritime uses to continue operation while a more permanent solution is sought.

Propwash dredging is indiscriminate, releasing sediment into the water column with no control to minimize impacts on water quality, or control of the fate of the resuspended sediment. Sediment resuspended in this manner could smother shellfish beds, submerged vegetation

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habitats, and result in the loss of navigability in adjacent berths and channels. Thus propwash dredging is prohibited under these rules.

[7:7E-4.7] **7:7-12.7** New dredging

(a) New dredging is the removal of sediment that does not meet the definition of maintenance dredging at N.J.A.C. [7:7E-4.6] **7:7-12.6** or the definition of environmental dredging at N.J.A.C. **7:7-12.8**. The temporary or permanent displacement or removal of sediment for the purpose of installing submerged pipelines and cables is considered new dredging.

(b) New dredging and the management of the dredged material shall be conducted in accordance with Appendix G.

[(b)] (c) New dredging is conditionally acceptable in all [General Water Areas] **general water areas** for boat moorings, navigation channels, [or] anchorages, or **submerged cable or pipelines** provided:

1. (No change.)
2. The facilities served by the new dredging satisfy the location requirements for [Special Water's Edge Areas] **special water's edge areas**;
3. (No change.)
4. The dredge area causes no significant disturbance to [Special Water or Water's Edge Areas] **special water or water's edge areas**;

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5. – 7. (No change.)

8. [Dredging] **The new dredging** will have no adverse impacts on groundwater resources;

9. (No change.)

10. [Dredging] **The new dredging** shall be accomplished consistent with all of the following conditions, as appropriate to the dredging method:

i. An acceptable dredged material placement site with sufficient capacity will be used. (See N.J.A.C. [7:7E-4.8] **7:7-12.9**, Dredged material disposal in water areas, and N.J.A.C. [7:7E-7.12] **7:7-15.12**, Dredged material placement on land.). **The Department will make an acceptable use determination for the beneficial use of dredged material in accordance with Appendix G;**

ii. Pre-dredging chemical and physical analysis of the dredged material [and/or its elutriate], **including water quality predictive analyses for surface water and ground water** may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation and bioassay testing of sediments, may also be required as needed to determine the acceptability of the proposed placement site for the dredged material. The results of these tests will be used to determine if contaminants may be resuspended at the dredging site and what methods may be needed to control their escape. The results will also be used to determine acceptability of the proposed dredged material placement method and site;

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and [slurry water overflows] **discharges from dredged material management areas (see N.J.A.C. 7:7-9.49)** shall meet applicable [State] Surface Water Quality Standards at N.J.A.C. 7:9B. The Department may

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require the permittee to conduct biological, physical, and chemical water quality monitoring before, during, and after dredging and disposal operations to ensure that water quality standards are not exceeded;

iv. If predicted water quality parameters are likely to exceed [State] Surface Water Quality Standards at **N.J.A.C. 7:9B**, or **Ground Water Quality Standards at N.J.A.C. 7:9C**, or if pre-dredging chemical analysis of dredged material [or elutriate], **including surface water and ground water quality predictive analyses**, reveals significant contamination, then the Department will work cooperatively with the applicant to fashion acceptable control measures and will impose seasonal restrictions under the specific circumstances identified at (b)[11vii]**10vii** below;

v. For new dredging using mechanical dredges [such as clamshell bucket, dragline, grab, or ladders,] deploying silt curtains at the dredging site may be required, if feasible based on site conditions **as provided in Appendix G**. Where the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets may be required. [The Department may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned] **The Department may also require the use of additional best management practices when highly contaminated sediments are to be dredged;**

vi. For hydraulic dredges, specific operational procedures designed to minimize water quality impacts, such as removal of **the** cutter head, flushing of pipeline sections prior to disconnection, or limitations on depth of successive cuts, may be required;

vii. The Department may authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

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(1) (No change.)

(2) Water bodies downstream of known anadromous fish spawning sites under N.J.A.C.

[7:7E-3.5] **7:7-9.5**, Finfish migratory pathways, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(3) (No change.)

(4) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. [7:7E-3.2] **7:7-9.2**; and

viii. Side slopes shall not be steeper than [3:1] **three vertical to one horizontal** adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

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

[(d)] **(e)** New dredging or excavation to create new lagoons for residential development is prohibited in wetlands, N.J.A.C. [7:7E-3.27] **7:7-9.27**, wetlands buffers, N.J.A.C. [7:7E-3.28] **7:7-9.28**, **and** endangered or threatened wildlife or plant species habitats, N.J.A.C. [7:7E-3.38] **7:7-9.36**, and discouraged elsewhere.

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

[(f)] The Department has prepared a dredging technical manual, titled "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal

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Waters,” October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department’s Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.]

(g) With the exception of [N.J.A.C. 7:7E-4.7(b), (c), (d) and (e)] **(c), (e), and (f)** above, new dredging is discouraged.

(h) Rationale: **New dredging is performed to create new or expand existing navigation or access channels, marinas, lagoons, canals, or boat moorings, or to make these areas accessible to ships of deeper draft. New dredging is also performed as part of the installation of some submerged pipelines and cables.**

New dredging is sometimes necessary if water dependent elements of New Jersey's economy are to expand, but as with maintenance dredging, [Special Areas] **special areas** and other environmentally sensitive areas must not be unnecessarily disturbed.

New and maintenance dredging are similar in their potential water quality and biological impacts. The additional impacts associated with new dredging are permanent physical changes in water depth, circulation, and sediment types. Dredged areas which are deeper than surrounding waters or deeper than connecting channels are known to have seasonally anoxic (devoid of oxygen) bottom waters. This results from poor vertical mixing and/or lateral circulation, formation of a thermocline (static cool bottoms waters unable to mix vertically) and

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biochemical exhaustion of dissolved oxygen. Benthic organisms and finfish can not survive in anoxic waters.

Propwash dredging is indiscriminate, releasing sediment into the water column with no control to minimize impacts on water quality, or control the fate of the resuspended sediment. Sediment resuspended in this manner could smother shellfish beds, submerged vegetation habitats, and result in the loss of navigability in adjacent berths and channels. Therefore propwash dredging is prohibited under these rules.

The ecological values of intertidal and subtidal shallows are summarized in N.J.A.C. [7:7E-3.15] **7:7-9.15**. These ecological values will be weighed against loss of this habitat in comparison to the public value to be served by the new dredging.

**New dredging for the installation of submerged pipelines or cables is conditionally acceptable provided the dredging complies with the conditions of this section, the general water area rule specific to the project and the energy facility use rule, where applicable.**

#### **7:7-12.8 Environmental dredging**

**(a) Environmental dredging means new dredging performed in a special hazard area designated as such pursuant to N.J.A.C. 7:7-9.39 specifically to remove contaminated sediments for the purpose of remediating to an environmental standard as specified in the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E.**

**(b) Environmental dredging and the management of the dredged material shall be:**

**1. Conducted in accordance with either:**

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**i. A Remedial Action Work Plan that has either been approved by the Department or a licensed site remediation professional pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) Rules, N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation, N.J.A.C. 7:26E; or**

**ii. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Sections 104, 106, 120, 121, or 122 (42 U.S.C. §§ 9604, 9606, 9620, 9621, and 9622, respectively); and**

**2. Comply with:**

**i. The applicable conditions set forth in the new dredging rule at N.J.A.C. 7:7-12.7(c)10; and**

**ii. Appendix G.**

**(c) Rationale: Environmental dredging is intended to remove sediments for the purpose of remediating to an environmental standard as specified in the Department's Technical Requirements for Site Remediation, N.J.A.C. 7:26E, while minimizing the spread of contaminants to the surrounding environment during dredging operations.**

[7:7E-4.8] **7:7-12.9** Dredged material disposal

**(a) Dredged material disposal is the discharge of sediments removed during dredging operations in water areas. Dredged material disposal does not include the beneficial use of dredged material for the purposes of habitat creation, restoration, or enhancement, artificial reef construction, or the establishment of living shorelines.**

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(b) The standards relevant to dredged material disposal in water areas are as follows:

1. Dredged material disposal is prohibited in tidal guts, man-made harbors, medium rivers, **as described at N.J.A.C. 7:7-12.1(b)5**, creeks and streams, and lakes, ponds, and reservoirs.

Dredged material disposal is discouraged in open bays, and semi-enclosed and backbays, where the water depth is less than six feet;

2. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that there is no feasible beneficial use or upland placement site available and [it is in conformance with the USEPA and US Army Corps of Engineers Guidelines (40 C.F.R. parts 220-228 and 230-232 and 33 CFR, parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act and the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA-503/8-91/001, February 1991, and Evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993, as appropriate to the proposed disposal site;] **the disposal complies with the following, incorporated herein by reference, as appropriate to the proposed disposal site:**

i. **The USEPA and U.S. Army Corps of Engineers Guidelines (40 CFR parts 220-228 and 230-232 and 33 CFR parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act. These documents are available on the web at [www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr136\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40cfr136_main_02.tpl) and [www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title33/33tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title33/33tab_02.tpl);**

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**ii. The U.S. Environmental Protection Agency and Department of the Army - U.S.**

**Army Corps of Engineers, 1998. Evaluation of Dredged Material Proposed for discharge in Waters of the U.S.-Testing Manual (Inland Testing Manual). EPA 823-B-98-004, February 1998. This document is available on the web at**

**[www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/testing.cfm](http://www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/testing.cfm);**

**iii. The U.S. Environmental Protection Agency and Department of the Army - U.S.**

**Army Corps of Engineers, 1991. Evaluation of Dredged Material Proposed for Ocean Disposal - Testing Manual, EPA-503/8-91/0001, February 1991. This document is available on the web at**

**[www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/gbook.pdf](http://www.water.epa.gov/type/oceb/oceandumping/dredgedmaterial/upload/gbook.pdf);**

**iv. The U.S. Army Corps of Engineers-New York District and U.S. Environmental Protection Agency, Region II, 1992. Guidance for Performing Tests on Dredged Material Proposed for Ocean Disposal, Draft 18 December 1992. This document is available on the web at [www.epa.gov/region02/water/dredge/testing.htm](http://www.epa.gov/region02/water/dredge/testing.htm); and**

**v. Appendix G;**

3. - 4. (No change.)

5. Overboard disposal of sediments consisting of less than 90 percent sand shall be conditionally acceptable in unconfined disposal sites when shallow waters preclude removal to [an upland or confined site] **a dredged material management area**. Such disposal shall comply with the following:

i. Shellfish habitats, [(as defined in N.J.A.C. [7:7E-3.2)] **7:7-9.2**, are not within 1,000 meters;

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ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources, [(as in N.J.A.C. [7:7E-3.2)] **7:7-9.2;**

iii. (No change.)

6. (No change.)

(c) The standards for dredged material placement on land are found at N.J.A.C. [7:7E-7.12] **7:7-15.12.**

[(d) The Department has prepared a dredging technical manual, titled “The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters,” October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department’s Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.]

[(e)] **(d)** (No change in text.)

[7:7E-4.9] **7:7-12.10** Solid waste or sludge dumping

(a) (No change.)

(b) The dumping of solid or semi-solid waste of any type in any [General Water Area] **general water area** is prohibited.

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(c) (No change.)

[7:7E-4.10] **7:7-12.11** Filling

(a) (No change.)

(b) Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at greater than 18 feet as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Freshwater Wetlands Protection Act [rules] **Rules**, N.J.A.C. 7:7A.

(c) Filling in a man-made lagoon[, as defined at N.J.A.C. 7:7E-1.8,] is discouraged unless:

1. The filling complies with [(d)] **(e)** below; or
2. In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated by the Department, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance with the mitigation rules at N.J.A.C. [7:7E-1.6] **7:7-17** shall not be required in such cases.

(d) Filling to establish a living shoreline to protect, restore or enhance a habitat area is conditionally acceptable provided the living shoreline complies with N.J.A.C. [7:7E-4.23] **7:7-12.23**.

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(e) Except as provided in (b) through (d) above, filling is discouraged in all other water areas.

In cases where there is no alternative to filling, filling is conditionally acceptable provided:

1. - 2. (No change.)

3. There is no feasible or practicable alternative site on an existing [Water's Edge] **water's edge**;

4. - 5. (No change.)

6. Minimal feasible interference is caused to [Special Areas] **special areas, as defined at N.J.A.C. 7:7-9**; and

7. (No change.)

(f) Mitigation shall be required for the filling of tidal water areas[at a ratio of one acre created to one acre lost in the same estuary] **in accordance with N.J.A.C. 7:7-17**. [The mitigation standards for the filling of intertidal and subtidal shallows are found at N.J.A.C. 7:7E-3.15(i) and (j).] Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. [7:7E-4.10(c)] **7:7-12.11(c)**;

2. Beach nourishment in accordance with N.J.A.C. [7:7E-7.11(f)] **7:7-15.11(f)**;

3. Construction of a replacement bulkhead in accordance with N.J.A.C. [7:7E-7.11(d)2i] **7:7-15.11(d)2i** or ii;

4. Establishment of living shorelines in accordance with N.J.A.C. [7:7E-4.23] **7:7-12.23**; and

5. Construction of a boat ramp in accordance with N.J.A.C. [7:7E-4.3] **7:7-12.3**.

(g) Filling of wetlands must comply with the wetlands rule, N.J.A.C. [7:7E-3.27] **7:7-9.27**.

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(h) Filling using clean sediment of suitable particle size and composition, or dredged material for which the Department has issued [a determination of] **an** acceptable use **determination in accordance with Appendix G**, is acceptable for beach nourishment and living shoreline projects provided it meets the standards of the coastal engineering rule, N.J.A.C. [7:7E-7.11(f)] **7:7-15.11(f)** or the living shoreline rule, N.J.A.C. [7:7E-4.23] **7:7-12.23**, respectively.

(i) Standards for the removal of unauthorized fill are as follows:

1. For filling which took place prior to September 26, 1980 (the effective date of the Coastal Zone Management rules Statewide, or prior to September 28, 1978 for areas within the [coastal area as defined by CAFRA (N.J.S.A. 13:19-4)]) **CAFRA area**, removal shall be required only if the fill has resulted in ongoing significant adverse environmental impacts, such as the blocking of an otherwise viable tidal wetland or water body, and its removal will alleviate the adverse impact.

2. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the [coastal area defined as defined by CAFRA (N.J.S.A. 13:19-4)]) **CAFRA area** removal shall be required if the fill does not comply with the standards of (b), (c), [or] (d), **or** (e) above.

(j) (No change.)

[7:7E-4.11] **7:7-12.12** (No change in text.)

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[7:7E-4.12] **7:7-12.13** Sand and gravel mining

(a) (No change.)

(b) Sand and gravel mining is discouraged in all water body types except as provided at (b)1 below.

1. Sand and gravel mining is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**, unless the water body was created by the mining process, in which case the use is conditionally acceptable provided:

i. Direct and indirect impacts to [Special] **special** areas are minimized;

ii. – vi. (No change.)

(c) Sand and gravel mining for the purposes of beach nourishment is conditionally acceptable provided:

1. – 4. (No change.)

5. The beach nourishment project complies with the coastal engineering rule, N.J.A.C. [7:7E-7.11(d)] **7:7-15.11(f)**.

(d) (No change.)

[7:7E-4.13] **7:7-12.14** (No change in text.)

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[7:7E-4.14] **7:7-12.15** Submerged pipelines

(a) (No change.)

(b) Submerged pipelines are conditionally acceptable provided:

1. The pipelines are not sited within [Special Areas] **special areas, as defined at N.J.A.C.**

**7:7-9**, unless no prudent and feasible alternate route exists;

2. - 5. (No change.)

(c) (No change.)

[7:7E-4.15] **7:7-12.16** Overhead transmission lines

(a) (No change.)

(b) Overhead transmission lines are prohibited over open bays, semi-enclosed and back bays, lakes, ponds, and reservoirs as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**. Overhead transmission lines are discouraged over large rivers as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**.

(c) Overhead transmission lines are conditionally acceptable over rivers, streams, creeks, and tidal guts as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**, provided:

1. - 4. (No change.)

(d) Rationale: Overhead transmission lines produce a negative environmental impact because they are aesthetically unattractive. They are prohibited or discouraged because the visual impact is so great that it counters the [Scenic Resources and Design] **scenic resources**

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**and design** rule at N.J.A.C. [7:7E-8.12] **7:7-16.10**. The use of underground transmission lines, however, minimizes the visual impacts. Siting overhead transmission lines over such narrow water bodies as rivers, streams, creeks, and tidal guts, is conditionally acceptable where there is no alternative to crossing the water body because the aesthetic impacts would not be as severe as the impacts of siting transmission lines over wider water bodies.

[7:7E-4.16] **7:7-12.17** Dams and impoundments

(a) (No change.)

(b) Except for medium rivers, creeks, and streams as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**, the construction of dams and impoundments is prohibited. The construction of these structures is conditionally acceptable in medium rivers, creeks, and streams as defined at N.J.A.C. [7:7E-4.1] **7:7-12.1**, provided:

1. - 3. (No change.)

(c) (No change.)

[7:7E-4.17] **7:7-12.18** Outfalls and intakes

(a) (No change.)

(b) Outfalls and intakes are conditionally acceptable provided that the use associated with the intake or outfall meets applicable [Coastal Zone Management] rules **of this chapter**.

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(c) (No change.)

[7:7E-4.18] **7:7-12.19** (No change in text.)

[7:7E-4.19] **7:7-12.20** Vertical wake or wave attenuation structures

(a) Vertical wake or wave attenuation structures are structures designed to protect boat moorings, including those at marinas, by intercepting wakes or waves and reducing the wake or wave energy which would normally impact the adjacent boat mooring areas. Typically, timber, metal, or vinyl wake or wave attenuation structures are designed and utilized to protect boat moorings. For the purposes of this section, a vertical wake or wave attenuation structure does not include a breakwater constructed of concrete or rubble mound. Breakwaters designed to protect shoreline areas shall comply with the filling rule, N.J.A.C. [7:7E-4.10] **7:7-12.11**, and the coastal engineering rule at N.J.A.C. [7:7E-7.11] **7:7-15.11**.

(b) - (e) (No change.)

[7:7E-4.20] **7:7-12.21** Submerged cables

(a) (No change.)

(b) Submerged cables, or portions thereof, which are not located in the Atlantic Ocean shall meet the following conditions:

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1. The cable shall not be sited within [Special Areas] **special areas**, unless no prudent and feasible alternate route exists;

2. – 4. (No change.)

(c) Submerged cables, or portions thereof, which are sited in the Atlantic Ocean shall meet the following conditions:

1. Siting a cable in the Atlantic Ocean is discouraged unless the cable complies with the following:

i. If the cable is either sited within surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, or sited within areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear, no prudent and feasible land-based alternate route exists and the cable follows the shortest route to waters beyond the surf clam areas and areas where marine fish are commercially harvested using mobile bottom-tending gear; and

ii. If the cable is sited within prime fishing areas, N.J.A.C. [7:7E-3.4] **7:7-9.4**, shipwreck and artificial reef habitats, N.J.A.C. [7:7E-3.13] **7:7-9.13**, or historic and archaeological resources, N.J.A.C. [7:7E-3.36] **7:7-9.34**, no prudent and feasible alternate route exists outside of these special areas and the cable follows the route with the least disturbance to these special areas;

2. The submerged cable, shall be buried to a depth of at least 1.2 meters both in surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, and in areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear except where it is demonstrated that it is not practicable to bury the cable to 1.2 meters due to geologic or topographic features or crossing of existing in-service cables. Where it is demonstrated that

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achieving the depth of 1.2 meters is not practicable, the cable shall be buried as close as practicable to the above standard;

3. Where a submerged cable will cross an existing in-service cable either within surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, or within areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

i. – ii. (No change.)

iii. The location of the cable route shall be adjusted after consultation with the fishing interest groups identified in N.J.A.C. 7:7-[4.2(a)3]**24.3(f)** in order to reduce the impact of cable crossings on commercial fishing, to the maximum extent practicable; and

iv. (No change.)

4. Where a submerged cable will cross an existing out-of service cable either within surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, or within areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear, the cable company shall minimize the impact of cable crossings on commercial fishing and minimize the risks to the proposed and existing cables, as follows:

i. – iii. (No change.)

5. – 7. (No change.)

8. After the submerged cable has been installed, a long-term inspection and maintenance plan, approved by the Department, shall be implemented both within surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, and within areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-**

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**16.2**, are commercially harvested using mobile bottom tending gear, to insure that the cable remains at the authorized depth and location. The plan shall provide for the following:

i. –v. (No change.)

9. A report containing the results of the initial inspection required in (c)8i above shall be submitted by the permittee to the Department within six months following the inspection. The report shall identify all areas where inactive cable has been cut and all areas where the cable is not buried to a depth of 1.2 meters, and indicate the actual depth in those areas. The report shall also provide the installed route of the cable. All locations shall be reported using latitude and longitude coordinate pairs, in the WGS 84 (World Geodetic System 1984) datum, that were arrived at using the global positioning system (GPS). To reduce the impacts of fishing on cables by notifying the commercial fishing industry of the locations of areas where the cable is buried less than 1.2 meters deep, a copy of the report shall be submitted to the fishing interest groups identified in N.J.A.C. 7:7-[4.2(a)3]**24.3(f)**;

10. (No change.)

11. Within two years of taking the cable out of service pursuant to Federal Communications Commission regulations, the submerged cable shall be removed both from surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, and from areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear. The Department may allow all or portions of the cable to remain in place if leaving the cable in place would not result in a long term adverse impact to the ocean and/or ocean resources, and the cable would not unreasonably interfere with fishing or other uses of the seabed. A permittee who seeks to leave an inactive cable in place shall submit a request, including the reasons and justification for

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leaving the cable in place. The Department shall solicit public input on the request, including input from the fishing interest groups identified in N.J.A.C. 7:7-[4.2(a)3] **24.3(f)**; and

12. If portions of the cable located either within surf clam areas, N.J.A.C. [7:7E-3.3] **7:7-9.3**, or within areas where marine fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear, are not buried to a depth of 0.6 meters, the permittee shall provide a one-time monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The amount of each mitigation contribution provided under this section shall be based on the length of cable that is not buried to a depth of 0.6 meters, based on the inspection required in (c)8i above. The contribution will be calculated at the rate of \$100.00 per meter of cable which is buried to a depth of less than 0.6 meters. [Moneys] **Monies** in the [Shellfish Habitat Mitigation] **Department's dedicated account for shellfish habitat mitigation** are to be administered by the Department's Bureau of Shellfisheries and utilized for shellfish habitat restoration, enhancement, and related research projects.

(d) Rationale: Historically, the installation of surface laid submerged cables in the ocean has made certain areas effectively off limits to certain elements of the fishing industry, due to the possibility of snagging a cable. In estuarine areas, the installation of submerged cables may disrupt the ecosystem in which a submerged cable is placed. Therefore, the installation of submerged cables is discouraged in estuarine [Special Areas] **special areas** unless no prudent and feasible alternate route exists. In the ocean, cable routes may encounter the [Surf Clam] **surf clam** and [Historic and Archaeological Resources Special Areas] **historic and archaeological resources special areas**, as well as areas where marine fish are commercially harvested using

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mobile bottom-tending gear. Trans-Atlantic submerged cables have no alternative to crossing the ocean, but cables extending from one United States landing to another United States landing may have alternatives available. Therefore, the installation of such cables is discouraged in areas where [Marine] **marine** fish, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, are commercially harvested using mobile bottom-tending gear and in [Surf] **surf** clam areas, unless no prudent and feasible alternate land-based route exists. To minimize conflict between cables and marine fisheries, including surf clamming, a cable for which there is no alternative location must take the shortest route to waters beyond Surf clam areas and areas where which [Marine] **marine** fish are harvested using mobile bottom-tending gear. These standards governing installation and long-term maintenance of ocean cables have been developed taking into account current fishing technology, fishing practices, and burial technology in order to minimize the conflict between the cable and fishing industries.

[7:7E-4.21] **7:7-12.22** Artificial reefs

(a) (No change.)

(b) New reefs shall be sited in accordance with the following:

1. The reef site shall not be located in the following special areas: surf clam areas (N.J.A.C. [7:7E 3.3] **7:7-9.3**), prime fishing areas (N.J.A.C. [7:7E-3.4] **7:7-9.4**), navigation channels (N.J.A.C. [7:7E-3.7] **7:7-9.7**), inlets (N.J.A.C. [7:7E-3.9] **7:7-9.9**), [and] submerged infrastructure routes (N.J.A.C. [7:7E-3.12] **7:7-9.12**) and historic and archaeological resources (N.J.A.C. [7:7E-3.36] **7:7-9.34**);

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2. The reef site shall be located in the Atlantic Ocean, **except for one estuarine reef that shall be allowed in the Lower Delaware Bay to be constructed by the Department;**

3. - 7. (No change.)

(c) – (f) (No change.)

[7:7E-4.23] **7:7-12.23** Living shorelines

(a) (No change.)

(b) The establishment of a living shoreline to protect, restore, or enhance a habitat area is conditionally acceptable provided:

1. (No change.)

2. The living shoreline complies with the following:

i. It disturbs the minimum amount of special areas, as defined at N.J.A.C. [7:7E-3] **7:7-9**, necessary to successfully implement the project plan. The Department may approve a reduction in the size of a particular special area in order to allow an increase in a different special area if the Department determines that the activities causing the reduction are sufficiently

environmentally beneficial to outweigh the negative environmental effects of the reduction; and

ii. It does not include placement of fill beyond the footprint of the shoreline as it appeared on the applicable Tidelands Map[(baseline photography dated 1977/1978)], except for a structural component of the project intended to reduce wave energy.

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(c) The beneficial use of dredged material is acceptable in the establishment of a living shoreline provided [it is determined by the Department that the material is acceptable for use in a living shoreline] **the material complies with Appendix G.**

(d) (No change.)

[7:7E-4.22] **7:7-12.24** Miscellaneous uses

(a) Miscellaneous uses are uses of [Water Areas] **water areas** not specifically defined in this section or addressed in the use rules, N.J.A.C. [7:7E-7] **7:7-15.**

(b) Water dependent uses of [Water areas] **water areas** not identified in the use rules will be analyzed on a case-by-case basis to ensure that adverse impacts are minimized. Non-water dependent uses are discouraged in all [Water Areas] **water areas.**

(c) Rationale: Uses which are not water dependent are discouraged in general water areas. Discouraged uses can only be approved if it can be demonstrated that the proposed development is in the public interest and mitigation for the impact is provided [(N.J.A.C. 7:7E-1.8)]. Water areas are ecologically sensitive areas that provide habitat for a variety of species and therefore the impacts to these areas need to be minimized.

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[SUBCHAPTER 5.] **SUBCHAPTER 13. REQUIREMENTS FOR [IMPERVIOUS] NON-POROUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS**

[7:7E-5.1] **7:7-13.1** Purpose and scope

(a) This subchapter sets forth requirements **applicable in general land areas and certain special areas** for [impervious] **non-porous** cover and vegetative cover on sites in the upland waterfront development area[, as defined at N.J.A.C. 7:7E-5.2,] and in the CAFRA area[, as defined at N.J.A.C. 7:7E-5.2]. [In addition] **These requirements are set forth as follows:**

1. For a site in the upland waterfront development area, the applicable [impervious] **non-porous** cover limits and vegetative cover percentages are determined under N.J.A.C. [7:7E-5A] **7:7-13.6 through 13.14**, based on the site's growth rating, development potential, and environmental sensitivity; and

2. For a site in the CAFRA area, the applicable [impervious] **non-porous** cover limits and vegetative cover percentages are determined under N.J.A.C. [7:7E-5B] **7:7-13.15 through 13.19**, based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.

(b) General [Land Areas] **land areas** are all land areas [, as defined at N.J.A.C. 7:7E-1.8,] that are subject to this chapter and that are located outside of [Special Water's Edge Areas] **special water's edge areas**. Special [Water's Edge Areas] **water's edge areas** are identified at N.J.A.C. [7:7E-3.16] **7:7-9.16** through [3.32] **9.30**.

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(c) This subchapter [and N.J.A.C. 7:7E-5A and/or 5B apply] **applies** to development in [General Land Areas, Special Land Areas] **general land areas, special land areas as defined at N.J.A.C. 7:7-9.1(a)3**, and the following seven [Special Water's Edge Areas] **special water's edge areas**:

1. **Overwash areas** (N.J.A.C. [7:7E-3.17] **7:7-9.17**)[, Overwash areas];
2. **Coastal high hazard areas** (N.J.A.C. [7:7E-3.18] **7:7-9.18**)[, Coastal high hazard areas];
3. **Erosion hazard areas** (N.J.A.C. [7:7E-3.19] **7:7-9.19**)[, Erosion hazard areas];
4. **Barrier island corridor** (N.J.A.C. [7:7E-3.20] **7:7-9.20**)[, Barrier island corridor];
5. **Filled water's edge** (N.J.A.C. [7:7E-3.23] **7:7-9.23**)[, Filled water's edges];
6. **Existing lagoon edges** (N.J.A.C. [7:7E-3.24] **7:7-9.24**)[, Existing lagoon edges]; and
7. **Flood hazard areas** (N.J.A.C. [7:7E-3.25] **7:7-9.25**)[, Flood hazard areas].

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

1. The development of [a] **one or two** single-family homes or duplex dwellings unless such development results in development of more than [one] **two** single-family homes or duplex dwellings either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-2.1(b)8] **2.2(b)8**;

2. A linear development[, as defined in N.J.A.C. 7:7E-1.8], except that this subchapter [and N.J.A.C. 7:7E-5A and 5B] shall apply if the linear development is wholly within a development and/or serves the development;

3. A mining operation, under N.J.A.C. [7:7E-7.8] **7:7-15.8**;

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4. - 7. (No change.)

8. Water treatment plants; [or]

9. Electrical substations[.]; **or**

**10. Wind turbines.**

(e) If a site is located in the Hackensack Meadowlands District, as defined under N.J.S.A. 13:17-1 et seq., the Department shall not apply the requirements [in N.J.A.C. 7:7E-5 and 5A] **at N.J.A.C. 7:7-13.1 through 13.14**, but shall apply the requirements for that area set forth at N.J.A.C. [7:7E-3.45] **7:7-9.43**.

(f) A site may include land both within the upland waterfront development area and within the CAFRA area. Where this occurs each portion of the site is treated separately and the [impervious] **non-porous** cover limits and vegetative cover percentages for the different portions of the site are determined under N.J.A.C. [7:7E-5A] **7:7-13.6 through 13.14** or [5B] **13.15 through 13.19** as appropriate.

(g) The rules in this subchapter [and N.J.A.C. 7:7E-5A and 5B] do not preempt the application of any municipal ordinance that would result in more restrictive [impervious] **non-porous** cover requirements or more extensive vegetative cover requirements than would otherwise be applicable to a development site under this subchapter [and N.J.A.C. 7:7E-5A and 5B].

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[7:7E-5B.1 Purpose and scope

(a) This subchapter sets impervious cover limits and vegetative cover percentages for sites in the CAFRA area. For a site in the CAFRA area, impervious cover limits and vegetative cover percentages are based on the site's location in a coastal center; in a Coastal Planning Area; in a CAFRA center, CAFRA core, or CAFRA node; or on a military installation.]

[(b) Except] **(h) Within the CAFRA area, except** as may be required by law, it is not the intent of this subchapter that the extent to which a municipality has or has not conformed its ordinances or development master plan to this subchapter be considered by any department, agency, or instrumentality of State government in:

1.- 3. (No change)

[(c)] **(i)** Subsection [(b)] **(h)** above shall not be construed to:

1. - 3. (No change.)

4. Prevent the Department from considering secondary impacts in accordance with N.J.A.C.

[7:7E-6.3] **7:7-14.3.**

[(d)] **(j)** Compliance with the [impervious cover] **non-porous** cover limits and vegetative cover percentages of this subchapter shall not exempt any development from the [Special Areas] **special areas** rules at N.J.A.C. [7:7E-3] **7:7-9**, the resource rules at N.J.A.C. [7:7E-8] **7:7-16**, or any other provision of this chapter.

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[7:7E-5.2] **7:7-13.2** Definitions

In addition to the terms defined at N.J.A.C. [7:7E-1.8] **7:7-1.5**, the following [words and] terms are defined for purposes of this subchapter [and N.J.A.C. 7:7E-5A and 5B]:

["100 percent affordable housing" means a development in which all dwelling units are available at a sales price or rent within the means of a low or moderate income household as defined by the Council on Affordable Housing pursuant to N.J.A.C. 5:94.]

"CAFRA center" means a center with a boundary incorporated by reference or revised in accordance with N.J.A.C. [7:7E-5B.3] **7:7-13.16**.

"CAFRA core" means a core with a boundary incorporated by reference or revised in accordance with N.J.A.C. [7:7E-5B.3] **7:7-13.16**.

"CAFRA node" means a node with a boundary incorporated by reference or revised in accordance with N.J.A.C. [7:7E-5B.3] **7:7-13.16**.

...

"Coastal center" means a center in the CAFRA area with a boundary delineated by the Department for the purpose of applying the requirements for [impervious] **non-porous** cover and vegetative cover at N.J.A.C. [7:7E-5 and 5B] **7:7-13.1 through 13.5 and 13.15 through 13.19**

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until such time as, in accordance with N.J.A.C. [7:7E-5B.6] **7:7-13.19**, the coastal center expires or in accordance with N.J.A.C. [7:7E-5B.3] **7:7-13.16**, the coastal center is superseded by the CAFRA center. There are two categories of coastal centers, mainland coastal centers and non-mainland coastal centers. Each of these centers may be further categorized as a coastal regional center, coastal town, coastal village or coastal hamlet.

“Coastal Critical Environmental Site” means a Critical Environmental Site in the CAFRA area with a boundary incorporated by reference in accordance with N.J.A.C. [7:7E-5B.6(h)] **7:7-13.19(f)**.

“Coastal Planning Area” means a planning area in the CAFRA area with a boundary incorporated by reference in accordance with N.J.A.C. [7:7E-5B.3] **7:7-13.16**.

...

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

...

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["Stormwater management facility" means a facility which receives, stores, conveys, or discharges stormwater runoff and is designed in accordance with all applicable local, county, and State regulations. A stormwater management facility may be a retention or detention basin; infiltration structure; grassed swale; filter fabric; rip-rap channel; and/or stormwater outfall.

"Tidelands Map" means the Tidelands Base Photo Map, adopted by the Department's Tidelands Resource Council under N.J.S.A. 13:1B-13.1 et seq.

"Upland waterfront development area" means all lands outside of the CAFRA area extending from the mean high water line of a tidal water body 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 from the mean high water line.]

[7:7E-5.3] **7:7-13.3** [Impervious] **Non-porous** cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) This section sets forth [impervious] **non-porous** cover requirements that apply to sites in the upland waterfront development and CAFRA areas. [Impervious] **Non-porous** cover limits, specific to each of these areas, are found at N.J.A.C. [7:7E-5A and 5B] **7:7-13.13 and 13.17.**

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(b) A stormwater management facility is not counted toward the [impervious] **non-porous** cover limit for a site.

**(c) A solar panel is not counted toward the non-porous cover limit for a site. However, the base or foundation of the solar panel, plate, canopy, or array shall be counted toward the non-porous cover on the site.**

[(c)] **(d)** The [impervious] **non-porous** cover allowed on a site shall be placed on the net land area on the site, as determined at [(d)] **(e)** below, and in addition, for an unforested site under N.J.A.C. [7:7E-5A.9(b)3] **7:7-13.13(b)3** or [5B.4(e)2] **13.17(e)2**, the [impervious] **non-porous** cover shall be placed on the area covered by buildings and/or asphalt or pavement legally existing on the site at the time the application is submitted to the Department. If the amount of [impervious] **non-porous** cover calculated [under N.J.A.C. 7:7E-5, 5A and/or 5B] is greater than the net land area of the site, the acreage of the [impervious] **non-porous** cover allowed on the site shall be the acreage of the net land area. The placement of [impervious] **non-porous** cover may be further restricted by other provisions in this chapter. For example, placement of [impervious] **non-porous** cover would be discouraged in critical wildlife habitat under N.J.A.C. [7:7E-3.39] **7:7-9.37**.

[(d)] **(e)** To determine the acreage of the net land area on a site:

1. (No change.)

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2. Identify all areas on the site that are classified as one of the following [Special Water's Edge Areas] **special water's edge areas**:

- i. Dunes (N.J.A.C. [7:7E-3.16] **7:7-9.16**);
- ii. Bay islands (N.J.A.C. [7:7E-3.21] **7:7-9.21**);
- iii. Beaches (N.J.A.C. [7:7E-3.22] **7:7-9.22**);
- iv. Wetlands (N.J.A.C. [7:7E-3.27] **7:7-9.27**);
- v. Wetland buffers (N.J.A.C. [7:7E-3.28] **7:7-9.28**);
- vi. Coastal bluffs (N.J.A.C. [7:7E-3.31] **7:7-9.29**); and
- vii. Intermittent stream corridors (N.J.A.C. [7:7E-3.32] **7:7-9.30**);

3. – 4. (No change.)

5. The result is the net land area to be used in calculating the [impervious] **non-porous** cover limits [in N.J.A.C. 7:7E-5A and 5B] **under N.J.A.C. 7:7-13.13 and 13.17**.

[(e)] **(f)** If a site or a portion of a site is a contaminated site, as defined at N.J.A.C. 7:26E-1.8 in the Department's Technical Requirements for [the] **Site Remediation** [of Contaminated Sites], the [impervious] **non-porous** cover limit for the site may be increased if required under the Technical Requirements for [the] Site Remediation [of Contaminated Sites] at N.J.A.C. 7:26E in order to properly remediate the contaminated portion of the site.

[7:7E-5.4] **7:7-13.4** Vegetative cover requirements that apply to sites in the upland waterfront development and CAFRA areas

(a) This section sets forth vegetative cover requirements that apply to sites in the upland

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waterfront development and CAFRA areas. Vegetative cover percentages, specific to each of these areas, are found at N.J.A.C. [7:7E-5A and 5B] **7:7-13.14 and 13.18**. More trees may be planted or preserved than required, and if so, the herb/shrub area shall be reduced proportionately.

(b) If a site is located in the [northern waterfront region or] urban area region **or northern waterfront region as defined at N.J.A.C. 7:7-13.6(d)1 and 2, respectively**, in the upland waterfront development area; or if a site is located in a CAFRA center, CAFRA core, or CAFRA node; or if the area of trees on a site required to be planted and/or preserved as calculated under (b)1 below is smaller than one acre, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is calculated under N.J.A.C. [7:7E-5A.10 or 5B.5] **7:7-13.14 or 13.18**; and

2. The area (in acres) of the site that would have been required under N.J.A.C. [7:7E-5A.10 or 5B.5] **7:7-13.14 or 13.18** to be planted and/or preserved in trees is not subject to (d) or (e) below but shall instead be planted and/or preserved in a mix of trees and herb/shrub vegetation adapted to the substrate and other environmental conditions of the site.

(c) If a residential development of 24 units or fewer that is not part of a larger development is proposed on a site in the upland waterfront development area or in the CAFRA area and does not meet the criteria at (b) above, the vegetative requirements with respect to trees are as follows:

1. The area (in acres) of the site that shall be planted in trees and/or preserved in trees is

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calculated under N.J.A.C. [7:7E-5A.10 or 5B.5] **7:7-13.14 or 13.18.**

2. The area (in acres) of a forested site or portion to be preserved in trees is not subject to (d) below. However, the trees preserved shall be protected from any future development by a [recorded] conservation restriction [enforceable by the Department] **that complies with N.J.A.C. 7:7-18, which restriction:**

i. – iii. (No change.)

3. (No change.)

(d) For sites other than those that meet (b) or (c) above, when trees are required to be planted or preserved under N.J.A.C. [7:7E-5A or 5B] **7:7-13.14 or 13.18**, the trees shall be planted and/or preserved in a tree cluster as follows:

1. Trees preserved and/or planted shall be located in a cluster within the boundaries of one lot that shall not be further subdivided. However, on a site with existing non-contiguous forested areas larger than five acres each, the Department may require that a tree cluster be preserved on a lot located in each of the forested areas. The tree cluster should, to the maximum extent practicable, be adjacent to existing on-site or off-site forests or other natural resources, such as critical wildlife habitat areas as defined at N.J.A.C. [7:7E-3.39] **7:7-9.37**, or water bodies;

2. (No change.)

3. The tree cluster shall be protected from any future development by a [recorded] conservation restriction [which] **that complies with N.J.A.C. 7:7-18. In addition, the conservation restriction shall** require[s] that the tree cluster be preserved in its natural state, and prohibits removal or clearing of dead trees greater than five inches in diameter at four and

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one-half feet above ground except to prevent a safety hazard; and which prohibits removal, clearing, or mowing of live vegetation, including trees, unless it is demonstrated to the Department that such removal will result in habitat enhancement;

4. – 5. (No change.)

(e) (No change.)

(f) Herb/shrub vegetation required under N.J.A.C. [7:7E-5A or 5B] **7:7-13.14 or 13.18** shall be adapted to the substrate and other environmental conditions of the site. For example, many species common in inland areas are not well adapted to the acid sandy soils common along the coast.

(g) The vegetative cover required on a site shall be planted or preserved only on the net land area determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**.

[7:7E-5.5] **7:7-13.5** Determining if a site is forested or unforested

(a) The vegetative cover percentage that applies to a site [under N.J.A.C. 7:7E-5A or 5B] **in the upland waterfront development area or CAFRA area** varies depending on whether the site is forested. If only a portion of a site is forested, separate vegetative cover percentages shall be calculated for the forested and unforested portions of the site.

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(b) The following will be considered to be unforested for the purposes of determining vegetative cover percentages:

1. A site[, as defined at N.J.A.C. 7:7E-1.8, which] **that** is smaller than one acre; and
2. (No change.)

(c) To determine if a site or portion of a site is forested:

**1. The limit of the forest shall be identified using aerial photographs obtained from the Department at [www.state.nj.us/dep/gis/](http://www.state.nj.us/dep/gis/); and**

**2. If the aerial photograph contains areas of sporadic coverage that have not been identified as forest by the applicant, the applicant shall lay a one-half acre grid system provided by the Department. Any grid block containing 33 percent or greater forest cover, shall be considered as forest for the purposes of this chapter, unless the applicant demonstrates in accordance with (d) below that the size and density of the trees in the area are not sufficient for the area to be considered forest.**

**(d) If the Department identifies forest areas on a lot that have not been so identified by the applicant, the Department shall require the applicant to measure the trees and determine the density of the trees on the lot using the following method:**

1. Select two 25-foot by 25-foot plots in each acre of the site as follows:

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i. The plots shall be located in the portion of each acre with the highest density of trees[, as defined at N.J.A.C. 7:7E-1.8], based on a visual inspection;

[ii. If any half-acre of the site has fewer than one tree per 100 square feet, no plots need be selected on that half-acre;]

[iii.] **ii.** If the tree size and density are very uniform over some or all of the site, [fewer plots may be selected] **one plot may be selected** in the area of uniformity. **Where only one plot is measured, the point total from the one plot shall be doubled to determine the total point value for the sampled acre under (d)5 below;**

2. (No change.)

3. Score each tree as follows:

| <u>Diameter of tree</u>          | <u>Points</u> |
|----------------------------------|---------------|
| <b>One to three inches</b>       | <b>2</b>      |
| [2 to 4 inches                   | 1             |
| >4 to 12 inches                  | 2             |
| >12 inches                       | 4]            |
| <b>&gt;Three to seven inches</b> | <b>4</b>      |
| <b>Seven to 12 inches</b>        | <b>6</b>      |
| <b>&gt;12 inches</b>             | <b>8</b>      |

4. Add together the scores for all of the trees in **each of** the plots;

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5. If the total score for [a] **both** plots is equal to or greater than 16, the [plot] **sampled acre** is forested. For example, if [a] **the two** 25-foot by 25-foot plots contain[s] **a total of** three trees which are [three] **two** inches in diameter, [three] **two** trees which are six inches in diameter, and [three] **one** tree[s] which [are] **is** 15 inches in diameter, the score for the [plot] **sampled acre** would be:  $[(3 \times 1) + (3 \times 2) + (3 \times 4) = 21]$   $(3 \times 2) + (2 \times 4) + (1 \times 8) = 22$ , and the [plot] **sampled acre** is considered forested;

6. If a [plot] **sampled acre** is forested, the Department shall assume that the half-acre [of the site] surrounding [the plot] **all sides of the sampled acre** is also forested, [unless additional plots are sampled in that half-acre and the scores demonstrate that the half-acre is not entirely forested] **except for the surrounding areas that are sampled by the applicant and score under 16 utilizing the analysis specified in (d)1 through 5 above.** In that case, a sufficient number of plots shall be sampled to delineate the forested portion of the [half-acre] **surrounding area**; and

7. (No change.)

**(e) The limit of the forest shall be the outermost edge of the canopy of the forest area identified in (c) and (d) above.**

[SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER  
PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA]

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[7:7E-5A.2] **7:7-13.6** Upland waterfront development area regions and growth ratings

(a) – (c) (No change.)

(d) The regions are as follows:

1. The urban area region, which is the land within the upland waterfront development area that is within a special urban area, as described at N.J.A.C. [7:7E-3.43] **7:7-9.41**;

2. – 8. (No change.)

(e) (No change.)

[7:7E-5A.3] **7:7-13.7 Determining the [Environmental] environmental sensitivity of a site in the upland waterfront development area**

(a) The environmental sensitivity of a site **in the upland waterfront development area** is based on the soil type and the depth to seasonal high water table or the presence of paving or structures. Different portions of a site may have different environmental sensitivities.

(b) - (d) (No change.)

[7:7E-5A.4] **7:7-13.8 Determining the [Development] development potential of a site in the upland waterfront development area**

(a) Development potential is determined by the type of development proposed and the presence or absence of certain development-oriented elements at or near the site of the proposed

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development, including roads; wastewater conveyance, treatment and disposal system; and existing development. Development potential may be high, medium or low, as determined under N.J.A.C. [7:7E-5A.5 through 5A.7] **7:7-13.9 through 13.11**. A single development potential applies to an entire site.

(b) If a development proposed on a site is inconsistent with the applicable Areawide Water Quality Management Plan adopted under N.J.A.C. 7:15, the development potential cannot be determined for the site. Any development that is inconsistent with the applicable Areawide Water Quality Management Plan is prohibited under N.J.A.C. [7:7E-8.4(b)] **7:7-16.3(b)**.

(c) The types of development are:

1. Residential or minor commercial development, which includes housing, hotels, motels, minor commercial facilities of a neighborhood or community scale with 700 or fewer parking spaces and less than 100,000 square feet of enclosed building area, and mixed use developments that are predominantly residential. For the purposes of this section and N.J.A.C. [7:7E-5A.5] **7:7-13.9**, residential or minor commercial development also includes libraries, daycare centers, municipal or other government administrative, public works, or emergency service buildings, and churches, synagogues, or other houses of worship;

2. Major commercial or industrial development, which includes all industrial development, warehouses, offices, manufacturing plants, energy facilities, wholesale and major shopping centers with more than 100,000 square feet of enclosed building area, and major parking facilities with more than 700 parking spaces. For the purposes of this section and N.J.A.C. [7:7E-

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5A.6] **7:7-13.10**, major commercial or industrial development also includes solid waste facilities and wastewater treatment plants; and

3. (No change.)

(d) The development potential for a site shall be determined as follows:

1. If a proposed development is a residential or minor commercial development as described at [(b)1] (c)1 above, the development potential for the site is determined under N.J.A.C. [7:7E-5A.5] **7:7-13.9**;

2. If a proposed development is a major commercial or industrial development as described at [(b)2] (c)2 above, the development potential for the site is determined under N.J.A.C. [7:7E-5A.6] **7:7-13.10**; and

3. If a proposed development is a campground development as described at [(b)3] (c)3 above, the development potential for the site is determined under N.J.A.C. [7:7E-5A.7] **7:7-13.11**.

(e) If a proposed development is not a residential development, a minor commercial development, a major commercial development, an industrial development, or a campground development, the development potential for the site shall be that for the most similar type of development described at [(b)] (c) above.

[7:7E-5A.5] **7:7-13.9 Determining the [Development] development potential for a residential or minor commercial development site in the upland waterfront development area**

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(a) Subject to the limitation at N.J.A.C. [7:7E-5A.4(b)] **7:7-13.8(c)1**, the development potential for a residential development site or a minor commercial development site **in the upland waterfront development area** is determined using (b) through (d) below.

(b) – (d) (No change.)

[7:7E-5A.6] **7:7-13.10 Determining the [Development] development** potential for a major commercial or industrial development site **in the upland waterfront development area**

(a) Subject to the limitations at N.J.A.C. [7:7E-5A.4(c)4] **7:7-13.8(c)2**, the development potential for a major commercial or industrial development site **in the upland waterfront development area** is determined under (b) through (d) below.

(b) – (d) (No change.)

[7:7E-5A.7] **7:7-13.11 Determining the [Development] development** potential for a campground development site **in the upland waterfront development area**

(a) Subject to the limitations at N.J.A.C. [7:7E-5A.4(b)] **7:7-13.8(c)3**, the development potential for a campground development site **in the upland waterfront development area** is determined using (b) through (d) below.

(b) – (d) (No change.)

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[7:7E-5A.8] **7:7-13.12 Determining the [Development] development intensity of a site in the upland waterfront development area**

(a) The development intensity for a site **in the upland waterfront development area** is based on growth rating, environmental sensitivity, and development potential. Tables A through C below are used to determine the development intensity of a site or portion of a site. Because environmental sensitivity may be different for different portions of a site, development intensity can also be different for different portions of a site.

(b) To determine the development intensity for a site:

1. Determine the growth rating for the site under N.J.A.C. [7:7E-5A.2] **7:7-13.6**;
2. Determine the environmental sensitivity for each portion of the site under N.J.A.C. [7:7E-5A.3] **7:7-13.7**;
3. Determine the development potential for the site based on the site and the type of development under N.J.A.C. [7:7E-5A.4 through 5A.7] **7:7-13.8 through 13.11**;
4. (No change.)

[7:7E-5A.9] **7:7-13.13 [Impervious] Non-porous** cover limits for a site in the upland waterfront development area

(a) If a site or portion of a site is forested, as determined under N.J.A.C. [7:7E-5.5] **7:7-13.5**, the [impervious] **non-porous** cover limit is the acreage of the net land area on the site or portion as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-**

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**porous** cover percentage in Table D below for the development intensity that applies to the site or portion, as determined under N.J.A.C. [7:7E-5A.8] **7:7-13.12**.

(b) If a site or portion of a site is unforested, as determined under N.J.A.C. [7:7E-5.5] **7:7-13.5**, the [impervious] **non-porous** cover limit is the limit at (b)1, 2, or 3 below, whichever is higher:

1. The acreage of the net land area on the site or portion, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-porous** cover percentage in Table E below for the development intensity that applies to the site or portion, as determined under N.J.A.C. [7:7E-5A.8] **7:7-13.12**;

2. For a site located in the northern waterfront region or urban area region, as determined under N.J.A.C. [7:7E-5A.2(d)] **7:7-13.6(d)**, the amount of existing [impervious] **non-porous** cover located on a site as determined under (c) below; or

3. (No change.)

(c) For the purposes of determining [impervious] **non-porous** cover limits under (b) above, the amount of existing [impervious] **non-porous** cover is the highest of the following, provided the [impervious] **non-porous** cover was legally placed on the site:

1. The amount of [impervious] **non-porous** cover located on the site at the time the application is submitted to the Department;

2. The amount of [impervious] **non-porous** cover that appears on the applicable Tidelands Map[, as defined at N.J.A.C. 7:7E-5.2]; or

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3. The amount of [impervious] **non-porous** cover that was placed on the site under the authority of a coastal permit and after the date the photography was performed for the Tidelands Map identified under (c)2 above.

TABLE D

Percentages for Calculating [Impervious] **Non-Porous** Cover Limit  
for a Forested Site under N.J.A.C. [7:7E-5A.9] **7:7-13.13**

| <u>Development Intensity</u> | [Impervious] <b>Non-Porous</b><br>Cover<br><u>Percentage</u> |
|------------------------------|--|
| High development intensity   | 70 percent   |
| Medium development intensity | 40 percent   |
| Low development intensity    | 5 percent  |

TABLE E

Percentages for Calculating the [Impervious] **Non-Porous** Cover Limit  
For an Unforested Site under N.J.A.C. [7:7E-5A.9] **7:7-13.13**

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[Impervious] **Non-Porous**

Cover

| <u>Development Intensity</u>                            | <u>Percentage</u> |
|---|-------------------|
| High development intensity in the urban area region     | 90 percent        |
| High development intensity not in the urban area region | 80 percent        |
| Medium development intensity                            | 40 percent        |
| Low development intensity                               | 5 percent         |

[7:7E-5A.10] **7:7-13.14** Vegetative cover percentages for a site in the upland waterfront development area

(a) The area (in acres) on a site in the upland waterfront development area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. Identify the forested and/or unforested portions of the site, as determined under N.J.A.C.

[7:7E-5.5] **7:7-13.5**;

ii. (No change.)

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, by the tree preservation and tree planting percentages in Table F below for the development intensity that applies to the site or portion, as determined under N.J.A.C. [7:7E-5A.8] **7:7-13.12**; and

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iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, by the tree planting percentage in Table G below for the development intensity that applies to the site or portion, as determined under N.J.A.C. [7:7E-5A.8] **7:7-13.12**; and

2. To determine the area (in acres) of herb/shrub vegetation preservation and/or herb/shrub vegetation planting on the site:

i. For each portion of the site identified at (a)1ii above, subtract both the acreage of [impervious] **non-porous** cover allowed under N.J.A.C. [7:7E-5A.9] **7:7-13.13** and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site or portion, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing [impervious] **non-porous** cover on the site as determined under N.J.A.C. [7:7E-5A.9(b)2] **7:7-13.13(b)2** or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. [7:7E-5A.9(b)3] **7:7-13.13(b)3** exceeds the net land area on the site, as determined under N.J.A.C. [7:7E-5.3] **7:7-13.3(e)**, then trees shall be planted in the area (in acres) remaining after the acreage of [impervious] **non-porous** cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. [7:7E-5.4] **7:7-13.4**.

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1. - 2. (No change.)

[SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA]

[7:7E-5B.2] **7:7-13.15 Coastal Planning Areas in the CAFRA area**

(a) For purposes of this subchapter and consistent with all other rules in this chapter, descriptions and policy objectives for the Coastal Planning Areas **in the CAFRA area** are set forth in (b) through (f) below.

(b) – (f) (No change.)

[7:7E-5B.3] **7:7-13.16 Boundaries for Coastal Planning Areas, CAFRA centers, CAFRA cores, and CAFRA nodes; [Non]non-mainland coastal centers**

(a) The boundaries of the Planning Areas, the community development boundaries of centers, and the boundaries of cores and nodes formally approved by the State Planning Commission as of August 1, 1999, are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Planning Areas, CAFRA centers, CAFRA [Cores] **cores**, and CAFRA nodes and shall be operative for the purposes of applying the requirements for [impervious] **non-porous** cover and vegetative cover under [N.J.A.C. 7:7E-5 and] this subchapter, unless the Department, in accordance with (b) and (c) below, accepts a State Planning Commission formally approved new or changed boundary, or unless the Department, in accordance with (b)

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and (e) below, rejects a State Planning Commission formally approved new or changed boundary and subsequently promulgates a revised boundary.

(b) Whenever the State Planning Commission formally approves (see (h) below) any new or changed Planning Area boundary, any new or changed community development boundary, or any new or changed core or node boundary, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of [the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.,] **CAFRA** and this chapter. The Department shall not reject or reject and revise a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be clearly inconsistent with the purposes of [the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.,] **CAFRA** or this chapter. For those new or changed community development boundaries or new or changed core or node boundaries which are located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of [N.J.A.C. 7:7E-5 and] this subchapter.

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(c) If the Department determines under (b) above to accept the State Planning Commission formally approved new or changed Planning Area boundary, community development boundary, or core or node boundary, the accepted new or changed boundary is incorporated by reference as the boundary of the Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node, and shall be operative 30 calendar days after the date of publication of the New Jersey Register notice under (b) above. A CAFRA center boundary shall supersede the boundary for a corresponding coastal center, if any, in [Appendix 2 or Appendix 3, as applicable] **Appendix H**. CAFRA centers are listed for informational purposes in Appendix [5] **I** of this chapter. As part of the New Jersey Register notice published under (b) above, the Department shall incorporate into Appendix [5] **I** by administrative change the name of each CAFRA center for which the Department has accepted the boundary. However, in order to determine the location of a site with reference to the accepted boundaries of a CAFRA center, CAFRA core, or CAFRA node for purposes of determining the applicable [impervious] **non-porous** cover limit, an applicant shall refer to the CAFRA Planning Map in accordance with N.J.A.C. [7:7E-5B.4(b)] **7:7-13.17(b)**.

(d) – (e) (No change.)

(f) The CAFRA Planning Map, with all Coastal Planning Area, CAFRA center, CAFRA core, and CAFRA node boundaries operative under this section for purposes of [N.J.A.C. 7:7E-5 and] this subchapter, is available on the Department's Geographic Information System (GIS) and

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may be reviewed at the Department, 401 East State Street, Trenton, New Jersey 08625, [(609) 292-1143] **609-777-0672**.

(g) The boundaries delineated by the Department for non-mainland coastal centers, as defined at N.J.A.C. [7:7E-5.2] **7:7-13.2**, are described in Appendix [3] **H** of this chapter. [The boundaries for mainland coastal centers are described in Appendix 2 of this chapter.]

(h) (No change.)

(i) A site in the CAFRA area may include land in more than one coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node. Where this occurs, the [impervious] **non-porous** cover limits and vegetative cover percentages appropriate to the respective coastal center, Coastal Planning Area, CAFRA center, CAFRA core, or CAFRA node portions of the site apply.

(j) (No change.)

[7:7E-5B.4] **7:7-13.17** [Impervious] **Non-porous** cover limits for a site in the CAFRA area

(a) The [impervious] **non-porous** cover limit for a site in the CAFRA [Area] **area** shall be determined as follows:

1. If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the [impervious] **non-porous** cover limit is determined under (c) below. Note that the [impervious] **non-porous**

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cover limit for such a site is calculated based on the acreage of the total land area on the site, as opposed to the acreage of the net land area on the site;

2. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node but is located in the Coastal Metropolitan Planning Area or in a coastal center, the [impervious] **non-porous** cover limit is determined under (d) below;

3. If a site is not located in a CAFRA center, CAFRA core, or CAFRA node, and is not located in the Coastal Metropolitan Planning Area or in a coastal center, the [impervious] **non-porous** cover limit is determined under (e) below; and

4. If a site is located on a military installation, the [impervious] **non-porous** cover limit is determined under (f) below.

(b) To determine the location of a site for the purposes of determining the applicable [impervious] **non-porous** cover limit:

1. (No change.)

2. If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, determine if the site is located in a coastal center by referring to Appendix [2 and 3] **H**;

3. – 4. (No change.)

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the [impervious] **non-porous** cover limit is the limit at (c)1, 2, or 3 below, whichever is higher:

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1. The acreage of the total land area on the site as determined under N.J.A.C. [7:7E-5.3(d)1] **7:7-13.3(e)1**, multiplied by the [impervious] **non-porous** cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located;

2. For a site located in the Coastal Metropolitan Planning Area, the acreage of the net land area on the site as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-porous** cover percentage in Table H below for the Coastal Metropolitan Planning Area; or

3. The amount of legal, existing [impervious] **non-porous** cover located on the site, as determined under (g) below.

(d) Subject to the limitations regarding mainland coastal centers at N.J.A.C. [7:7E-5B.6(g)] **7:7-13.19(e)**, if a site is located in the Coastal Metropolitan Planning Area or in a coastal center, the [impervious] **non-porous** cover limit is the limit at (d)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-porous** cover percentage in Table H below for the type of coastal center in which the site is located; or

2. The amount of legal, existing [impervious] **non-porous** cover located on the site, as determined under (g) below.

(e) If the site is not located in a CAFRA center, CAFRA core, or CAFRA node, is not located in the Coastal Metropolitan Planning Area, and is not located in a coastal center, the [impervious] **non-porous** cover limit is the limit at (e)1, 2, or 3 below, whichever is higher:

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1. The acreage of the net land area on the site as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-porous** cover percentage in Table H below for the Coastal Planning Area in which the site is located; or

2. (No change.)

3. For a marina support facility at a legally existing and operating commercial marina including a marina operated by a public agency, commission or authority, the limit at (e)1 or 2 above or the amount of legal existing [impervious] **non-porous** cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal [impervious] **non-porous** cover, whichever is higher. For the purposes of this subsection, marina support facilities are boat rack systems, facilities for sewage treatment and marina support buildings. Marina support buildings, include, but are not limited to, showrooms, sheds, restrooms, and buildings for marine supplies, bait and tackle, boat sales, dock masters office(s), and boat repair, maintenance, and manufacturing.

(f) If a site is located on a military installation, the [impervious] **non-porous** cover limit is the limit at (f)1 or 2 below, whichever is higher:

1. The acreage of the net land area on the site as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, multiplied by the [impervious] **non-porous** cover percentage in Table H below for a military installation; or

2. The amount of legal, existing [impervious] **non-porous** cover located on the site, as determined under (g) below.

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(g) For the purposes of determining [impervious] **non-porous** cover limits under (c)3, (d)2, (e)3, and (f)2 above, the amount of existing [impervious] **non-porous** cover is the highest of the following, provided the [impervious] **non-porous** cover was legally placed on the site:

1. The amount of [impervious] **non-porous** cover located on the site at the time the application is submitted to the Department;

2. The amount of [impervious] **non-porous** cover that appears on the applicable 95-97 imagery; or

3. The amount of [impervious] **non-porous** cover that was placed under the authority of a coastal permit and after the date the photography was performed for the imagery in (g)2 above.

TABLE H

Percentages For Calculating [Impervious] **Non-Porous** Cover

Limits Under N.J.A.C. [7:7E-5B.4] **7:7-13.17**

| [Site Location] <b>Site Location</b>   | [Impervious Cover Percentage] <b>Non-Porous Cover Percentage</b> |
|--|--|
| CAFRA [Urban] <b>urban</b> center  | 90 percent   |
| CAFRA regional center<br>Coastal regional center<br>CAFRA core<br>CAFRA node | 80 percent   |

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|   |            |
|---|------------|
| CAFRA town<br>Coastal town<br>Military installation                     | 70 percent |
| CAFRA village<br>Coastal village  | 60 percent |
| CAFRA hamlet<br>Coastal hamlet  | 50 percent |
| Coastal Metropolitan Planning Area                                      | 80 percent |
| Coastal Suburban Planning Area, within a sewer service area[*]          | 30 percent |
| Coastal Suburban Planning Area, outside a [Sewer] sewer service area[*] | 5 percent  |
| Coastal Fringe Planning Area  | 5 percent  |
| Coastal Rural Planning Area   | 3 percent  |
| Coastal Environmentally Sensitive Planning Area                         | 3 percent  |

[\* "Sewer service area," for the purpose of this section, means the "sewer service area" as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and (c)5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3.

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Wastewater management plans and areawide water quality management plans may be reviewed at the Department's Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.]

[7:7E-5B.5] **7:7-13.18** Vegetative cover percentages for a site in the CAFRA area

(a) The area (in acres) on a site in the CAFRA area in which trees and/or herb/shrub vegetation shall be planted or preserved is calculated as follows:

1. To determine the area (in acres) of tree preservation and/or tree planting on the site:

i. Determine the location of the site for purposes of determining applicable vegetative cover percentages using the method described at N.J.A.C. [7:7E-5B.5(b)] **7:7-13.18(b)**;

ii. Identify the forested or unforested portions of the site, as determined under N.J.A.C. [7:7E-5.5] **7:7-13.5**; and

iii. For each forested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the forested site or forested portion as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, by the tree preservation percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

iv. For each unforested site or portion identified at (a)1ii above, multiply the acreage of the net land area on the site or portion, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, by the tree planting percentage in Table I below for the site location that applies to the site or portion, as determined under (a)1i above; and

2. To determine the area (in acres) of herb/shrub vegetation preservation or planting on the site, subtract both the acreage of the [impervious] **non-porous** cover allowed under N.J.A.C.

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[7:7E-5B.4] **7:7-13.17** and the acreage of tree planting and/or preservation required under (a)1 above from the acreage of the net land area on the site.

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing [impervious] **non-porous** cover on the site as determined under N.J.A.C. [7:7E-5B.4(c)] **7:7-13.17(c)**, (d), (e)3, or (f) or the acreage covered by buildings and/or asphalt or concrete pavement as determined under N.J.A.C. [7:7E-5B.4(e)2] **7:7-13.17(e)2**, exceeds the net land area on the site, as determined under N.J.A.C. [7:7E-5.3(d)] **7:7-13.3(e)**, then trees shall be planted in area (in acres) remaining after the acreage of [impervious] **non-porous** cover or acreage covered by buildings and/or asphalt or concrete pavement is subtracted from the acreage of the net land area on the site.

(c) The preservation or planting of trees and/or herb/shrub vegetation areas shall comply with the vegetative cover requirements at N.J.A.C. [7:7E-5.4] **7:7-13.4**.

1. - 2. (No change.)

TABLE I

Tree Preservation and Planting Percentages

For Forested and Unforested Sites

|  |  |                    |
|--|--|--------------------|
|  |  | [Tree preservation |
|--|--|--------------------|

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| <p>[Site Location]</p> <p><b>Site Location</b></p>   | <p>[Tree preservation<br/>percentage for forested<br/>portion of site]</p> <p><b>Tree preservation<br/>percentage for forested<br/>portion of site</b></p> | <p>and/or planting<br/>percentage for<br/>unforested<br/>portion of site]</p> <p><b>Tree preservation<br/>and/or planting<br/>percentage for<br/>unforested<br/>portion of site</b></p> |
|--|--|---|
| <p>CAFRA urban center</p> <p>CAFRA regional center</p> <p>Coastal regional center</p> <p>CAFRA core</p> <p>CAFRA node</p> <p>Military installation</p> | <p>10 percent</p>  | <p>0 percent</p>  |
| <p>CAFRA town</p> <p>Coastal town</p>  | <p>25 percent</p>  | <p>5 percent</p>  |
| <p>CAFRA village</p> <p>Coastal village</p>  | <p>30 percent</p>  | <p>5 percent</p>  |
| <p>CAFRA hamlet</p> <p>Coastal hamlet</p>  | <p>40 percent</p>  | <p>5 percent</p>  |

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|   |            |           |
|---|------------|-----------|
| Coastal Metropolitan Planning Area  | 10 percent | 0 percent |
| Coastal Suburban Planning Area, within a sewer service area[*]  | 35 percent | 5 percent |
| Coastal Suburban Planning Area, outside a sewer service area[*]<br>Coastal Fringe Planning Area<br>Coastal Rural Planning Area<br>Coastal Environmentally Sensitive Planning Area | 70 percent | 5 percent |

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[\*]"Sewer service area, "for the purpose of this section, means the “sewer service area” as described at N.J.A.C. 7:15-5.16(a) and 5.18(c)4 and 5, and identified in a wastewater management plan in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15-5 and/or in an areawide water quality management plan in accordance with N.J.A.C. 7:15-3. Wastewater management plans and areawide water quality management plans may be reviewed at the Department’s Division of Watershed Management, 401 East State Street, Trenton, New Jersey; 609-984-0058.]

[7:7E-5B.6] **7:7-13.19** Mainland coastal centers

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(a) On [February 7, 2005] **March 15, 2007**, the boundaries delineated by the Department for **mainland** coastal centers not located on barrier islands, oceanfront spits, or peninsulas in the CAFRA area expired. The expired boundaries [for such coastal centers are] **were** re-established [as the boundaries for mainland coastal centers once all conditions set forth at (b)1 or 2 below are met] **under the Permit Extension of Act of 2008 as amended January 18, 2010, and September 19, 2012**. The boundaries of mainland coastal centers are described in Appendix [2] **J** of this chapter. [The boundaries for coastal centers that expired on February 7, 2005 that do not meet the conditions set forth at (b) below are described in Appendix 4 of this chapter.]

[(b) A mainland coastal center is established under this section if, as explained at (a) above, the boundaries of the coastal center expired on February 7, 2005 and the coastal center is:

1. Located in a municipality that, prior to July 5, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3; or
2. Located in a municipality that:
  - i. By August 4, 2005, submits to the Office of Smart Growth a resolution of the municipal governing body requesting a pre-petition meeting in accordance with N.J.A.C. 5:85-7.3. The resolution shall identify the expired coastal centers described in Appendix 4 that the municipality seeks to re-establish. Only the expired coastal centers identified in the resolution shall be re-established;
  - ii. Prior to October 15, 2005, holds a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3; and

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iii. Prior to March 15, 2006 obtains a determination from the Executive Director of the Office of Smart Growth, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for plan endorsement is complete.]

[(c)] (b) The boundaries of the mainland coastal centers established in accordance with [(b)] (a) above [and described in Appendix 2] shall expire in accordance with [(c)] 1 or 2 below, as applicable] **P.L. 2012, c. 48 on December 31, 2014**. On and after the expiration of the mainland coastal centers, the [impervious] **non-porous** cover limits and vegetative cover percentages for all sites in the CAFRA area, except for sites in the non-mainland coastal centers in Appendix [3] **H** of this chapter, shall be determined in accordance with N.J.A.C. [7:7E-5B.4(c)] **7:7-13.7(c)**, (e), or (f).

[1. On March 15, 2006, if the municipality in which the mainland coastal center is located has not obtained a determination from the Executive Director of the Office of Smart Growth, in accordance with N.J.A.C. 5:85-7.5, that its initial petition for plan endorsement is complete; or  
2. On March 15, 2007.]

[(d)] (c) To reflect changes in mainland coastal centers occurring after February 6, 2006, the Department shall publish in the New Jersey Register a notice of administrative change when the boundaries of a mainland coastal center [are established under (a) and (b) above or] expire under [(c)] (b) above.

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[(e)] **(d)** The areas identified at [(e)]**(d)**1 through 6 below shall not be considered part of a mainland coastal center, except for purposes of (f) [and (h)] below:

1. – 4. (No change.)
5. Wetlands as defined at N.J.A.C. [7:7E-3.27] **7:7-9.27**; and
6. (No change.)

[(f)] For purposes of any CAFRA permit application that was received by the Department prior to February 7, 2005, assigned an agency project number pursuant to N.J.A.C. 7:7-4.4 (a) i or ii and proposes a development in a mainland coastal center established in accordance with (b) above that has not expired pursuant to (c) above, the impervious cover limits and vegetative cover percentages shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and N.J.A.C. 7:7E-5B.5, respectively, provided the CAFRA permit application is complete for final review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2006.]

[(g)] **(e)** For **the** purposes of any CAFRA permit [application that was received by the Department after February 6, 2005 and proposes a development in a mainland coastal center established in accordance with (b) that has not expired pursuant to (c)] **issued for a development within a re-established mainland coastal center pursuant to (a)** above:

1. The [impervious] **non-porous** cover limits and vegetative cover percentages for those portions of the site located within the mainland coastal center shall be determined in accordance with N.J.A.C. [7:7E-5B.4(d) and 5B.5] **7:7-13.17(d) and 13.18**, respectively, provided no portion of the proposed development[, as defined at N.J.A.C. 7:7E-1.8], is located outside the

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boundaries of the mainland coastal center, or in one of the areas identified at [(e)1] **(d)1** through 6 above.

2. If any portion of the proposed development[, as defined at N.J.A.C. 7:7E-1.8,] is located outside of the mainland coastal center boundaries, or in one of the areas identified at [(e)1] **(d)1** through 6 above, then the [impervious] **non-porous** cover limits and vegetative cover percentages for the entire development shall be determined in accordance with N.J.A.C. [7:7E-5B.4(e) and 5B.5] **7:7-13.17(e) and 13.18**, respectively, for the appropriate Coastal Planning Area.

[(h) For purposes of any CAFRA permit application that proposes a 100 percent affordable housing development in a mainland coastal center established in accordance with (b)1 above or an expired coastal center located in a municipality that, prior to October 15, 2005 held a pre-petition meeting with the Office of Smart Growth in accordance with N.J.A.C. 5:85-7.3, the impervious cover limits and vegetative cover requirements shall be determined in accordance with N.J.A.C. 7:7E-5B.4(d) and 5B.5, respectively, provided the CARA permit application is complete for final review pursuant to N.J.A.C. 7:7-4.6 prior to March 15, 2007. Such applications shall not be subject to the restrictions at (g) above. This provision shall no longer be applicable to developments proposed within a mainland coastal center or an expired coastal center if the Department establishes a corresponding CAFRA center pursuant to N.J.A.C. 7:7E-5B.2(c) or (e).]

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[(i)] **(f)** For the purposes of [(e)] **(d)**6 above, the boundaries of the Critical Environmental Sites on the State Plan Policy Map adopted by the State Planning Commission on March 1, 2001, are incorporated by reference into this subchapter. These boundaries are the boundaries of the Coastal Critical Environmental Sites. Whenever the State Planning Commission formally approves any new or changed Critical Environmental Site boundary within a mainland coastal center, the Department shall evaluate the new or changed boundary to determine whether it is consistent with the purposes of [the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.,] **CAFRA** and this chapter. The Department shall not reject, or reject and revise, a boundary unless it finds that accepting the State Planning Commission approved boundary would result in unacceptable harm to the coastal ecosystem or the resources of the built or natural environment, or would otherwise be inconsistent with the purposes of [the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.] **CAFRA** or this chapter. For those new or changed Critical Environmental Site boundaries located within the Pinelands National Reserve, the Department shall also, in consultation with the New Jersey Pinelands Commission, determine whether the boundaries are consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979 (N.J.S.A. 13:18A-1 et seq.). Within 90 calendar days after the date on which the State Planning Commission formally approves such boundary, the Department shall publish in the New Jersey Register a notice of its determination to accept, reject, or reject and revise the boundary for the purposes of [(e)] **(d)** above.

1. (No change.)

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2. If the Department determines under this subsection to reject the State Planning Commission formally approved new or changed Critical Environmental Site boundary, any applicable boundary incorporated by reference under this subsection shall continue to be operative, except as provided under [(i)3] **(f)3** below.

3. (No change.)

#### SUBCHAPTER [6.] **14. GENERAL LOCATION RULES**

##### [7:7E-6.1] **7:7-14.1** Rule on location of linear development

(a) A linear development [, as defined at N.J.A.C. 7:7E-1.8,] shall comply with the specific location rules to determine the most acceptable route, to the maximum extent practicable. If part of the proposed alignment of a linear development is found to be unacceptable under the specific location rules **(for example, the proposed alignment does not result in the linear development impacting the least possible area)**, that alignment [(perhaps not the least possible distance)] may nonetheless be acceptable, provided the following conditions are met:

1. There is no prudent or feasible alternative alignment which would have less impact on sensitive areas and marine fish or fisheries, as defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**;

2. – 4. (No change.)

##### [7:7E-6.2] **7:7-14.2** Basic location rule

(a) A location may be acceptable for development under N.J.A.C. [7:7E-3, 4, 5, 5A, 5B and 6] **7:7-9, 12, 13, and 14**, but the Department may reject or conditionally approve the proposed development of the location as reasonably necessary to:

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1. – 3. (No change.)

[7:7E-6.3] **7:7-14.3** Secondary impacts

(a) (No change.)

(b) Coastal development that induces further development shall demonstrate, to the maximum extent practicable, that the secondary impacts of the development will satisfy [the Coastal Zone Management rules] **this chapter**. The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas **as defined at N.J.A.C. 7:7-9** and to protect and preserve coastal resources.

1. (No change.)

2. Secondary impact analysis must include an analysis of the likely geographic extent of induced development, its relationship to the State Development and Redevelopment Plan, an assessment of likely induced point and non-point air and water quality impacts, and evaluation of the induced development in terms of all applicable [Coastal Zone Management rules] **special area rules, N.J.A.C. 7:7-9; general water area rules, N.J.A.C. 7:7-12; requirements for non-porous cover and vegetative cover for general land areas and certain special areas, N.J.A.C. 7:7-13; location rules, N.J.A.C. 7:7-14; and resource rules, N.J.A.C. 7:7-16.**

3. (No change.)

(c) Rationale: Further development stimulated by new development and the cumulative effects of coastal development, including development not directly managed by [NJDEP] **the**

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**Department**, may gradually adversely affect the coastal environment. The capacity of existing infrastructure does, however, limit the amount and geographic extent of possible additional development. Secondary impact analysis, particularly of proposed infrastructure, enables [NJDEP] **the Department** to ascertain that the direct, short-term effects, and the indirect or secondary effects of a proposed development will be consistent with the basic objectives of [the] **New Jersey's Coastal Management Program**. Secondary impact analysis enables [NJDEP] **the Department** to evaluate likely cumulative impacts in the course of decision-making on specific projects.

#### SUBCHAPTER [7.] **15. USE RULES**

##### [7:7E-7.1] **7:7-15.1 Purpose and scope**

Many types of development seek to locate in the coastal zone. The second stage in the screening process of the Coastal Zone Management rules involves analysis of appropriate uses of coastal resources. Use rules are rules and conditions applicable to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, conditions contained in the use rules must be satisfied in addition to the location rules (N.J.A.C. [7:7E-2 through 6] **7:7-9 through 14**), and the resource rules described in the following subchapter (N.J.A.C. [7:7E-8] **7:7-16**).

##### [7:7E-7.2] **7:7-15.2 Housing [use rules]**

- (a) (No change.)

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(b) Standards relevant to water area and water's edge housing are as follows:

1. New housing or expansion of existing habitable housing is prohibited in [Water Areas] **water areas**. Reconstruction of existing habitable structures on pilings located over water areas is conditionally acceptable except when damaged by wind, water, or waves, in which case reconstruction is prohibited.

2. In special urban areas and along large rivers where water dependent uses are demonstrated to be infeasible, new housing is also acceptable on structurally sound existing pilings, or where piers have been removed as part of the harbor clean-up program, the equivalent pier area may be replaced in the same or another location.

i. – ii. (No change.)

iii. New housing acceptable under this rule shall be consistent with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

3. Housing is conditionally acceptable in the filled water's edge, provided that it meets the requirements of the filled water's edge rule, N.J.A.C. [7:7E-3.23] **7:7-9.23**, lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**. The residential development shall comply with the requirements for [impervious] **non-porous** cover and vegetative cover that apply to the site under N.J.A.C. [7:7E-5 and either N.J.A.C. 7:7E-5A or 5B] **7:7-13**, except on bay islands where the requirements of the bay islands rule, [(N.J.A.C. [7:7E-3.21])**7:7-9.21**], shall apply.

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading, or other means is conditionally acceptable provided that the conditions of the

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existing lagoon edge rule, [(N.J.A.C. [7:7E-3.24)] **7:7-9.24**, and the filling rule, [(N.J.A.C. [7:7E-4.10)] **7:7-12.11**, are satisfied.

5. – 7. (No change.)

(c) Standards relevant to floating homes are as follows:

[1. A floating home is any waterborne structure designed and intended primarily as a permanent or seasonal dwelling, not for use and a recreation vessel, which will remain stationary for more than 10 days.]

Recodify existing 2. and 3. as **1. and 2.** (No change in text.)

(d) Standards relevant to cluster development are as follows:

1. (No change.)

2. Rationale: The open space that is produced by clustering can be returned to the community as common open space. The location policies define certain sensitive areas where development is limited. When such areas are present on site, the acceptable gross density may have to be reduced, unless the net density can be increased by clustering. Where municipal zoning requires minimum lot sizes that preclude clustering, applicants are encouraged to seek local approval, through new ordinances and/or variances, to maintain the permissible gross density by clustering. [DEP] **The Department** will aid this endeavor by providing a rationale and testimony, as appropriate, especially for the protection of sensitive areas. Cluster developments lessen the impact of construction by preserving valued soil, open space,

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vegetation, and aquifer recharge resources. Some cluster developments also increase insulation and reduce energy consumption due to shared walls between units.

(e) Standards relevant to the development of [a] **one or two** single-family homes or duplexes and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than [one]**two** single family homes or duplexes either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8]**2.2(b)8**, and provided the single-family home(s) or duplex(es) and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. [7:7E-3.22] **7:7-9.22**, Beaches, [7:7E-3.27] **7:7-9.27**, Wetlands, [7:7E-3.28] **7:7-9.28**, Wetland buffers, and [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or vegetation species habitats;

**2. On filled water's edge sites that have included a water dependent use at any time since July of 1977, development shall comply with the filled water's edge rule, N.J.A.C. 7:7-9.23.**

[2.] **3.** Development shall comply with N.J.A.C. [7:7E-3.16] **7:7-9.16**, Dunes, except as provided under (e)[2i]**3i** or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)[2i(2)]**3i(2)** below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

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(1) – (2) (No change.)

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, and the information in the Department’s Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) (No change.)

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead, existing on July 19, 1993, need not comply with the [Dunes] **dunes** rule at N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

(1) The road, seawall or bulkhead is of sufficient size to be designated as the [V-zone] **V zone** boundary on the [municipal flood insurance rate map] **FIRM**;

(2) – (3) (No change.)

(4) The area of proposed construction is designated as an [A-Zone, B-Zone or C-Zone] **A zone, B zone, or C zone** on the [municipal Flood Insurance Rate Map] **FIRM**;

(5) - (6) (No change.)

[3.] **4.** Development shall comply with N.J.A.C. [7:7E-3.31] **7:7-9.29**, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. [7:7E-3.31(a)] **7:7-9.29(a)**. If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (e)[10i]**12i** below, unless the development meets either (e)[3i]**4i** or ii below:

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i. (No change.)

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)[3i]4i above, and does not exceed the cumulative surface area of the developed bluff area on the site. If all or part of the proposed development on the coastal bluff is located landward of the existing developed bluff area, an equivalent area of the existing developed bluff area shall be restored through the planting of native woody vegetation species.

[4.] **5.** Development shall comply with N.J.A.C. [7:7E-3.18] **7:7-9.18**, Coastal [High Hazard Areas] **high hazard areas**, and N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, except as excluded under (i) below;

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the [Coastal High Hazard Areas] **coastal high hazard areas** rule, N.J.A.C. [7:7E-3.18] **7:7-9.18**, or [Erosion Hazard Areas] **erosion hazard areas** rule at N.J.A.C. [7:7E-3.19] **7:7-9.19** if:

(1) – (3) (No change.)

[5.] **6.** Public access shall be provided in accordance with the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

Recodify existing 6. - 8. as **7. - 9.** (No change in text.)

[9.] **10.** The development shall comply with the requirements of the [Flood] **flood hazard areas** rule at N.J.A.C. [7:7E-3.25] **7:7-9.25**;

[10.] **11.** (No change in text.)

[11.] **12.** Development shall comply with the following setbacks:

i. - ii. (No change.)

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iii. On a non-oceanfront site with existing or proposed shore protection structures, the single family home or duplex and/or accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction [in a form approved by the Department] **that complies with N.J.A.C. 7:7-18** is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (e)[10i]**12i** above;

[12.] **13.** The standards for the expansion or reconstruction (with or without expansion) of a single family home or duplex are found at N.J.A.C. [7:7E-7.2(f)] **7:7-15.2(f)**;

[13.] **14.** Rationale: Single-family homes and duplexes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. However, in view of the extensive development that has occurred along the coast and the minimal impacts associated with the development of [an individual] **one or two** single-family homes or duplexes, construction of these developments on dunes and coastal bluffs, and within coastal high hazard areas and erosion hazard areas, is acceptable in certain situations.

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Development of [a] **one or two** single-family homes or duplexes on a dune may be acceptable in cases where the development is proposed on the landward slope of a secondary [of] **or** tertiary dune or the dune is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead. **One or two** single-family homes or duplexes may be constructed on the landward slope of the secondary or tertiary dune where the intervening dune is of sufficient volume to provide protection during a 100-year storm, without the construction having a significant adverse long-term impact on the natural functioning of the beach and dune system. Similarly, the development of [a] **one or two** single-family homes or duplexes on a dune that is isolated from a beach and dune system by an existing paved public road, public seawall, or public bulkhead that is of a sufficient size to eliminate the protective functioning of the isolated dune is acceptable, since the development will not have a significant adverse impact on the natural functioning of the beach and dune system. Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive developments have already occurred. Infill single family homes or duplexes are found to be acceptable because such development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developed to the degree currently existing in that area. With regards to coastal bluffs, since the disturbance associated with the development of [a] **one or two** single-family homes or duplexes is minimal and, therefore, will not adversely affect the stability of the coastal bluff, [the setback requirements have been modified to allow] the construction of single-family homes or duplexes **is allowed** within 10 feet of the crest of the coastal bluff, except along high-energy

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shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay and where excavation is proposed.

(f) Standards relevant to the expansion, or reconstruction (with or without expansion) of a legally constructed habitable single-family home or duplex and/or accessory development (such as garages, sheds, pools, driveways, grading, excavation, filling, and clearing, excluding shore protection structures) which does not result in the development of more than one single-family home or duplex either solely or in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8] **2.2(b)8**, and provided the single-family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. Development shall comply with N.J.A.C. [7:7E-3.22] **7:7-9.22**, Beaches, [7:7E-3.27] **7:7-9.27**, Wetlands, [7:7E-3.28] **7:7-9.28**, Wetland buffers, and [7:7E-3.38] **7:7-9.36**, Endangered or threatened wildlife or vegetation species habitats;

2. Development shall comply with N.J.A.C. [7:7E-3.16] **7:7-9.16**, Dunes, except as provided under (f)2i through [iv] **iii** below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (f)2i(2) below, whichever is most landward, need not comply with the dunes rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

(1) – (2) (No change.)

(3) The beach area adjacent to the proposed development is either naturally stable without beach nourishment or naturally accretional without beach nourishment, as determined by using the method described at N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**,

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and the information in the Department's Geographic Information System (GIS) database as found in the Historical Shoreline coverage 1836-1986; and

(4) (No change.)

ii. Development that is located on a dune which is isolated from a beach and dune system by a paved public road, public seawall, or public bulkhead, existing on July 19, 1993, need not comply with the dunes rule at N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the site and the development meet all of the following criteria:

(1) The road, seawall, or bulkhead is of sufficient size to be designated as the [V-zone] **V zone** boundary on the [municipal flood insurance rate map] **FIRM**;

(2) – (3) (No change.)

(4) The area of proposed construction is designated as an [A-Zone, B-Zone or C-Zone] **A zone, B zone or C zone** on the [municipal Flood Insurance Rate Map] **FIRM**;

(5) – (6) (No change.)

iii. Development that is located on a dune need not comply with the [Dunes] **dunes** rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the development meets the following criteria:

(1) - (4) (No change.)

(5) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) (No change.)

(B) Native dune vegetation shall be planted as necessary to establish vegetative cover in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration and Creation Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are

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available upon request from the Department's [Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6;** and

(6) A conservation restriction for the dune areas waterward of the existing and/or approved single-family home or duplex and/or accessory development **that complies with N.J.A.C. 7:7-18** is recorded [in accordance with N.J.A.C. 7:7-1.5(b)18].

iv. Development that is located on a dune and entails the enclosure of an existing deck, patio, or porch, need not comply with the [Dunes] **dunes** rule, N.J.A.C. [7:7E-3.16] **7:7-9.16**, if the development meets the following criteria:

(1) (No change.)

(2) The deck, patio, or porch enclosure is located on the non-waterward side of the single-family home or duplex[, as defined at N.J.A.C. 7:7-1.3];

(3) – (6) (No change.)

(7) The dune area waterward of the single-family home or duplex is enhanced as follows:

(A) (No change.)

(B) Native dune vegetation shall be planted in accordance with the specifications contained in the Guidelines and Recommendations for Coastal Dune Restoration Projects (DEP, 1985) and/or Restoration of Sand Dunes Along the Mid-Atlantic Coast (U.S. Soil Conservation Service, 1992). These documents are available upon request from the Department's [Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 292-0060] **Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6;** and

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(8) A conservation restriction for the dune areas waterward of the existing and/or approved single family home or duplex and/or accessory development **that complies with N.J.A.C. 7:7-18** is recorded [in accordance with N.J.A.C. 7:7-1.5(b)].

3. Development shall comply with N.J.A.C. [7:7E-3.31] **7:7-9.29**, Coastal bluffs, if the site is located on the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. Coastal bluffs are defined at N.J.A.C. [7:7E-3.31(a)] **7:7-9.29(a)**. If the site is not located on one of the four water bodies listed above, the development shall comply with the setback requirements at (f)[10i]**11i** below, unless the development meets either (f)3i or ii below:

i. – ii. (No change.)

4. Development shall comply with N.J.A.C. [7:7E-3.18] **7:7-9.18**, Coastal [High Hazard Areas] **high hazard areas**, and N.J.A.C. [7:7E-3.19] **7:7-9.19**, Erosion [Hazard Areas] **hazard areas**, except as excluded under (i) below.

i. Development that is located on a site partially or completely within a coastal high hazard area or erosion hazard area need not comply with the [Coastal High Hazard Areas] **coastal high hazard areas** rule, N.J.A.C. [7:7E-3.18] **7:7-9.18**, or [Erosion Hazard Areas] **erosion hazard areas** rule at N.J.A.C. [7:7E-3.19] **7:7-9.19** if:

(1) – (3) (No change.)

5. Public access shall be provided in accordance with the [Public] **public** access rule, N.J.A.C. [7:7E-8.11.] **7:7-16.9**;

6. – 8. (No change.)

9. The development shall comply with the requirements of the [Flood] **flood** hazard areas rule at N.J.A.C. [7:7E-3.25.] **7:7-9.25**;

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10. (No change.)

11. Development shall comply with the following setbacks:

i. - ii. (No change.)

iii. On a non-oceanfront site with existing or proposed shore protection structures, the single-family home or duplex and accessory structures (except decks) shall be set back at least 15 feet from existing or proposed shore protection structures. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction [in a form approved by the Department] **that complies with N.J.A.C. 7:7-18** is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure. A site with coastal bluffs shall instead comply with (f)[10i]**11i** above;

12. The standards for the development of [a] **one or two** single-family homes or duplexes are found at N.J.A.C. [7:7E-7.2(e)] **7:7-15.2(e)**;

13. Rationale: [Single family homes and duplexes are the most prevalent type of development along the developed oceanfront communities of the Jersey Coast. This rule recognizes the importance of protecting the safety of local residents from the natural shoreline changes and hazard areas, especially in the event of a storm. However, in view of the extensive development that has occurred along the coast and the minimal impacts associated with the development of an individual single family home or duplex, construction of these developments

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on dunes and coastal bluffs, and within coastal high hazard areas and erosion hazard areas, is acceptable in certain situations.

Development of a single family home or duplex on a dune may be acceptable in cases where the development is proposed on the landward slope of a secondary or tertiary dune or the dune is isolated from a beach and dune system by a paved public road, public seawall or public bulkhead. One single family home or duplex may be constructed on the landward slope of the secondary or tertiary dune where the intervening dune is of sufficient volume to provide protection during a 100-year storm, without the construction having a significant adverse long-term impact on the natural functioning of the beach and dune system. Similarly, the development of a single family home or duplex on a dune that is isolated from a beach and dune system by an existing paved public road, public seawall or public bulkhead that is of a sufficient size to eliminate the protective functioning of the isolated dune is acceptable, since the development will not have a significant adverse impact on the natural functioning of the beach and dune system.]

Prior to the 1993 amendments, single-family homes and duplexes were not regulated under CAFRA. [Three provisions allowing] **This rule allows for the limited** expansion or reconstruction with or without expansion[)] of a single-family home or duplex located on a dune that existed prior to July 19, 1993 (date of CAFRA amendments), [have been incorporated into this rule,] in recognition of the impact of the CAFRA amendments on these developments. [These provisions include: (1) the one time expansion of an existing single family home or duplex on the landward side of the dwelling; (2) the demolition of a single family home or duplex and replacement with a larger dwelling on the dune provided the reconstructed dwelling

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is located further landward than the existing dwelling; and (3) the enclosure of an existing deck, patio or porch. These provisions] **The limited expansion of an existing single-family home or duplex** will not have a significant long-term, adverse impact on the natural functioning of the beach and dune system since they are limited in size and can not be located on the waterward side of the dwelling. Further, [these provisions] **the rule** requires that the dune waterward of the existing dwelling be enhanced through the placement of sand and the planting of native dune vegetation thus improving the functioning of the existing dune.

Single-family homes and duplexes may be developed in some coastal high hazard areas and erosion hazard areas where extensive developments have already occurred. Infill single-family homes or duplexes are found to be acceptable, because their development will not alter the existing need for public expenditure in shore protection at these locations, the risk involved is reduced to a minimum in terms of the quantity and intensity of developments that will be permitted and it would allow the infill sites to be developed to the degree currently existing in that area. With regards to coastal bluffs, since the disturbance associated with the development of a single-family home or duplex is minimal and, therefore, will not adversely affect the stability of the coastal bluff, the [setback requirements have been modified to] **rule** allows the construction of single-family homes or duplexes within 10 feet of the crest of the coastal bluff, except along high-energy shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay and where excavation is proposed.

(g) (No change.)

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[7:7E-7.3] **7:7-15.3** Resort/recreational [use]

(a) – (c) (No change.)

(d) Standards relevant to marinas are as follows:

1. (No change.)

2. New marinas or expansion or renovation (including, but not limited to, dredging, bulkhead construction and reconstruction, and relocation of docks) of existing marinas for recreational boating are conditionally acceptable if:

i. (No change.)

ii. Restrooms and at least one portable toilet emptying receptacle shall be provided at a marina. The portable toilet emptying receptacle requirement may be satisfied either by the installation of a receptacle device or by the designation of either a pumpout facility or restroom facility for this use; and

(1) (No change.)

(2) Discharge to a subsurface sewerage disposal system constructed in accordance with N.J.A.C. 7:9-2 and N.J.A.C. [7:7E- 8.21] **7:7-16.14**; or

(3) (No change.)

iii. New marina facilities and expansions and renovation of existing marinas shall provide public access in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

3. – 5. (No change.)

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[6. Recreational boating facilities are acceptable provided that they are designed and located in order to cause minimum feasible interference with the commercial boating industry.]

[7.] **6.** (No change in text.)

[8.] **7. Except for the marinas satisfying the requirements specified at N.J.A.C. 7:7-9.2, the [Construction] construction of new marinas within areas designated by the Department as shellfish habitat is prohibited. Expansions of existing marinas within shellfish habitat areas shall comply with the standards of the [Shellfish Habitat] shellfish habitat rule, [(N.J.A.C. [7:7E-3.2]) 7:7-9.2 and [Submerged Vegetation] submerged vegetation rule, [(N.J.A.C. [7:7E-3.6]) 7:7-9.6.**

[9. Marinas shall comply with the design standards set forth in N.J.A.C. 7:7E-7.3A to the maximum extent practicable.]

**8. The construction of a restaurant at a new or existing marina facility is acceptable provided:**

**i. The marina facility supports 25 or more dockage units consisting of either dry dock storage or wet slips;**

**ii. In the case of an existing marina facility, the existing upland marina support facilities (including boat rack systems and marina support buildings providing services such as showrooms, maintenance and repair, marine supplies, bait and tackle sales, boat sales, and the dock master's office buildings) shall be preserved to the maximum extent practicable such that the marina use on the site is not compromised. The existing wet slips servicing the marina shall not be reduced in number except as may be necessary to reconfigure the wet slips to accommodate different size vessels;**

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**iii. In the case of a new marina facility, the facility includes the development of an appropriate mix of dry storage and berthing areas, and marina support facilities providing services such as showrooms, maintenance and repair, marine supplies, bait and tackle sales, boat sales, and the dock master's office;**

**iv. The restaurant is located landward of the mean high water line;**

**v. The restaurant shall be set back a minimum of 15 feet from a shore protection structure and 25 feet from the mean high water line where no shore protection structure is present;**

**vi. The marina facility provides onsite pumpout facilities and restrooms for marina and restaurant patrons; and**

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

[10.] **9.** In addition to complying with all other applicable portions of these rules, all new, expanded, and renovated boat mooring facilities with five or more slips which are located on any portion of the Navesink River, Shrewsbury River, or Manasquan River (upstream of the Route 35 Bridge) or the St. George's Thorofare shall meet the conditions in (d)[10i] **8i** through **iii** below. Renovation shall include complete or partial alteration of any portion of a structure, including construction, reconstruction of or relocation of existing docks, piers, moorings, and bulkheads, and dredging. The conditions are:

i. (No change.)

ii. [With the exception of pilings, bulkhead sheathing and planking, and dock planking, shall be constructed of non-polluting materials.] **Bulkhead sheathing and planking, and dock**

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**planking, shall be of a nonpolluting material. Pilings are not subject to this requirement.**

In addition, this [restriction] **requirement** does not apply to any construction upland of the mean high water line; and

iii. The applicant and/or property owner shall finance monthly sampling and testing of fecal coliform levels per milliliter of water at five locations selected by the Department in the water in which the project is located. Testing shall be performed by a State-certified laboratory and shall be conducted beginning in the first month following the mooring of vessels and monthly thereafter for two full seasons of operation (that is, May 1 through October 31). The monitoring shall occur on the day of the month selected by the Department and no advance notice of the sampling day shall be given to the property-owner. Results of the monitoring shall be provided to the Department and the property-owner in writing by the laboratory within 10 calendar days after the date of sampling.

(1) – (3) (No change.)

(4) If the property owner fails to arrange for water sampling as required herein without first securing the express written permission of the Department to omit sampling for that month, the property owner shall be in violation of the terms of the permit issued under these rules and the Department shall notify the property owner in writing of its intention to revoke the permit and prohibit use of the project pending final revocation of the permit in accordance with N.J.A.C. 7:7-[4.11(b)]**27.8**.

[11.] **10. Rationale:** Marinas are located on land at the water's edge which exists only in limited supply and which, in its natural state, is indispensable to many land and water-related activities. The rules are intended to ensure that the area devoted to marinas is efficiently utilized

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to keep the size of the area required to a minimum to maintain the environmental integrity of the water and water's edge areas and to preserve the scenic and natural characteristics of the area. Facilities for sail and oar boating are encouraged because such boats consume less energy, are less disturbing to wildlife and pollute less than motor boats. Facilities offering rental boats and rental slips are encouraged because they reduce the need for construction of additional mooring facilities, serve a greater number of people, and afford the casual boater access to water-related recreation. Marina development which is permissible under these rules is encouraged to take place on filled water's edge lands because they are of low environmental sensitivity. [Marina development within areas designated as shellfish habitat is prohibited since it would result in the condemnation or contamination of shellfish habitat and adversely affect the water quality of the water body.]

**As a water-dependent use, marinas are an essential component of the State's waterfront communities, providing necessary infrastructure and services to the boating public. However, over the last several years the State has seen a decrease in the money spent on recreational boating as well as a decrease in the number of boat registrations. This in turn has resulted in a loss of jobs, revenue, and services at marina facilities, as well as the conversion of some marinas to non-water dependent uses. To preserve existing marinas and the services they provide, while minimizing their impacts to coastal resources, the expansion of existing marinas or construction of new marinas in limited situations in shellfish habitat is conditionally acceptable.**

**New Jersey's waterfront communities are diverse, active lands, where people come to enjoy being in close proximity to the water and where the economy thrives. Restaurants**

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**located along tidal waterways allow the public to enjoy this resource and provide the community with an economic benefit. Allowing for the construction of a restaurant at a new or existing marina facility that provides dockage for 25 or more dockage units consisting of either dry dock storage or wet slips will expand the public's opportunity for both visual and physical access and will provide marina facilities with a year-round use making them more economically viable, while assuring that marina functions continue to be provided.**

The Navesink River, Shrewsbury River, and Manasquan River (upstream of the Route 35 Bridge), and St. George's Thorofare are particularly important shellfish habitats. The Navesink and Shrewsbury Rivers are unique in that they are the only two estuaries within the State which have soft clams in commercially viable densities. St. Georges Thorofare contains high densities of hard clams according to the 1985 Shellfish inventory conducted by the Division of Fish, Game and Wildlife, containing approximately 6.2 million hard clams in a 107-acre area. The high abundance of hard clams, together with the fact that this water body is poorly flushed, makes St. George's Thorofare critical to the shellfish industry and extremely sensitive to any potential pollution producing activity.

Federal, State, and local officials have recognized the importance of these rivers as shellfish habitat and the need to protect their water quality. As a result, pollution control programs such as the Navesink River Shellfish Protection Program have been implemented to protect and enhance water quality. On August 21, 1986, a Memorandum of Understanding was signed by the New Jersey Department of Environmental Protection and Energy, the New Jersey Department of Agriculture and the United States Department of Agriculture and the [United

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States Environmental Protection Agency], USEPA. The memorandum serves to "...formalize our commitment to the Navesink River Water Control Shellfish Protection Program, its primary goal of improving water quality in the Navesink River watershed to a point at which the river's full shellfishery and recreational potential may be attained." Water quality monitoring during 6 years of implementation of pollution controls on the Navesink from 1987-1993 have shown significant reductions in bacterial contamination of the Navesink River, to the point where the potential now exists for upgrading the shellfish classification of the river from "special restricted" to "seasonally approved." [.]

The Shrewsbury River has been included in the "Navesink River Shellfish Protection Program" since it is hydrologically connected to the Navesink River and is one of only two estuaries in New Jersey with commercially viable densities of soft clams. Concern over deterioration of the water quality in the Manasquan River and its effects upon shellfish compelled Monmouth and Ocean Counties, together with [DEPE] **the Department**, to form the "Monmouth/Ocean Alliance to Enhance the Manasquan River." This Alliance seeks to identify causes of shellfish water degradation and plan uses which would protect and enhance water quality in the Manasquan by requiring water quality monitoring at project sites located on the above listed waterways. The Department is honoring its commitment to maintain and eventually upgrade the water quality of these rivers. Monitoring affords the Department the opportunity for early intervention and thorough investigations should the water quality be adversely affected by the operation of projects permitted under this [Rule] **rule**.

(e) Standards relevant to amusement piers, parks, and boardwalks are as follows:

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1. New amusement piers are prohibited, except in areas with privately held riparian grants, where they are discouraged. Expanded or extended amusement piers, parks, and boardwalks at the water's edge or in the water, and the on-site improvement or repair of existing amusement piers, parks, and boardwalk areas are discouraged unless the proposed development meets the following conditions:

i. – v. (No change.)

vi. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**;

2. The expansion of a pier qualifying for [a General Permit under] **general permit 1 for amusement pier expansion**, N.J.A.C. 7:7-[7] **6.1** is acceptable.

3. (No change.)

[7:7E-7.4] **7:7-15.4** Energy facility [use rule]

(a) (No change.)

(b) Standards relevant to siting of new energy facilities, including all associated development activities, are as follows:

1. Energy facilities shall not be sited in [Special Areas] **special areas** as defined at N.J.A.C. [7:7E-3.1 through 3.42] **7:7-9.1 through 9.40**, [3.44] **9.42**, [3.46] **and 9.44**, and marine fish and fisheries areas defined at N.J.A.C. [7:7E-8.2] **7:7-16.2**, unless site-specific information demonstrates that such facilities will not result in adverse impacts to these areas;

2. Except for water dependent energy facilities, energy facilities shall be sited at least 500 feet inland of the mean high water line of tidal waters in the following areas:

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i. (No change.)

ii. The Western Ocean, Southern, Mullica Southern Ocean, Great Egg Harbor River, and Delaware Estuary regions, as defined at N.J.A.C. [7:7E-5A.2(d)] **7:7-13.6(d)**;

3. Notwithstanding (b)2 above, wind and solar energy facilities, including blades, towers and site disturbance shall be sited at least 50 feet inland of the mean high water line of tidal waters, excluding manmade lagoons and manmade ditches, in the areas identified at (b)2i and ii above, except for the following:

i. A wind energy facility that meets N.J.A.C. [7:7E-3.49(c)5] **7:7-9.47(c)5**;

ii. - iii. (No change.)

4. Public access shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**; and

5. The scenic and visual qualities of coastal areas shall be maintained as important public resources in the siting of energy facilities, pursuant to N.J.A.C. [7:7E-8.12] **7:7-16.10**.

(c) Coastal energy facilities construction and operation shall not directly or indirectly result in net loss of employment in the State for any single year.

1. (No change.)

2. Rationale: Coastal energy facilities provide social and economic benefits to New Jersey and the nation by contributing to provision of energy, by purchasing materials and equipment, and by providing employment through facility construction and operation. However, energy facilities also can have an impact on the environment. Certain facility related environmental

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changes are perceived by travelers as reduced recreational resources. When travelers respond to loss of recreational resources by leaving the New Jersey shorefront for alternative recreational opportunities, their expenditures are lost from the New Jersey economy. The [rules on] Coastal Zone Management **Rules** are intended to assure that the net employment and economic impact for New Jersey of coastal energy facility development will not be negative and that energy facilities will be located such that impacts on the local tourism industry will not be excessive.

(d) – (f) (No change.)

(g) Standards relevant to repair and maintenance facilities are as follows:

1. Repair and maintenance facilities for vessels and equipment for offshore activities are encouraged in the Urban Area, Delaware River, and Northern Waterfront regions. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the CAFRA area [as defined at N.J.A.C. 7:7E-1.8], but not on a continual, long-term basis.

2. (No change.)

(h) – (q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. – 2. (No change.)

3. The Large Scale Wind Turbine Siting Map identifies areas where large scale wind turbines cannot be constructed in accordance with (r)1vii(1) and N.J.A.C. 7:7-[7.31] **6.26** in order to

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minimize adverse effects on birds and bats. The Department may revise the Large Scale Wind Turbine Siting Map based on new information on species occurrence, new information on appropriate buffers, or new information on impacts developed from ongoing monitoring or from published and unpublished studies or data, as follows:

i. – ii. (No change.)

4. (No change.)

(s) (No change.)

[7:7E-7.5] **7:7-15.5** Transportation [use rule]

(a) Standards relevant to roads are as follows:

1. New road construction must be consistent with the rule on location of linear development at N.J.A.C. [7:7E-6.1] **7:7-14.1**, and shall be limited to situations where:

i. – vi. (No change.)

2. (No change)

(b) (No change.)

(c) Standards relevant to bicycle and foot paths are as follows:

1. (No change.)

2. Linear bicycle and foot paths are encouraged along the edges of all water bodies, and from the water body to the nearest public road, provided they would not disturb [Special Areas]

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**special areas**, excluding flood hazard areas, [(N.J.A.C. [7:7E-3.25)] **7:7-9.25**, and riparian zones, [(N.J.A.C. [7:7E-3.26)]**7:7-9.26**, or subject to the user to danger.

3. – 4. (No change.)

(d) Standards relevant to parking facilities are as follows:

1. Parking facility standards apply to all of the following:

i. Any parking facility of which any part is within the area subject to the Waterfront

Development [Act] **Law**, [(N.J.S.A. 12:5-1 et seq.)];

ii. (No change.)

2. – 3. (No change.)

[7:7E-7.6] **7:7-15.6** Public facility [use rule]

(a) (No change.)

(b) Solid waste facility means any system, site, equipment, or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering, or disposal of solid waste, but shall not include a recycling center, a regulated medical waste collection facility authorized pursuant to N.J.A.C. 7:26-3A.39, or an intermodal container facility authorized pursuant to N.J.A.C. 7:26-3.6.

1. Solid waste facilities are conditionally acceptable provided:

i. (No change.)

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ii. The solid waste facility is not located in [a] coastal wetlands as provided at N.J.A.C. 7:7-  
[2.2(b)]**2.3(b)**; and

iii. The solid waste facility complies with the [Solid] **solid** and hazardous waste rule at  
N.J.A.C. [7:7E-8.22] **7:7-16.14**.

2. (No change.)

(c) Wastewater treatment facilities are conditionally acceptable provided:

1. (No change.)

2. The secondary impacts associated with the facility are consistent with [the Coastal Zone  
Management rules] **this chapter**; and

3. – 4. ( No change.)

(d) New or expanded public facilities other than those listed at (b) and (c) above are  
conditionally acceptable provided:

1. - 2. (No change.)

3. The public facility would not generate significant secondary impacts inconsistent with  
[the Coastal Zone Management rules] **this chapter**.

[7:7E-7.7] **7:7-15.7** Industry [use rule]

(a) Industry uses are uses that involve industrial processing, manufacturing, storage, or  
distribution activities. These uses include, but are not limited to, electric power production, food  
and food by-product processing, paper production, agri-chemical production, chemical

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processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Industrial uses do not include petroleum refining which is considered an energy use and, therefore, subject to the standards of N.J.A.C. [7:7E-7.4] **7:7-15.4**.

(b) Industrial uses are encouraged in special urban areas. Elsewhere, industrial uses are conditionally acceptable provided they comply with all applicable location and resource rules. Particular attention should be given to location rules which reserve the water's edge for water dependent uses (N.J.A.C. [7:7E-3.16] **7:7-9.16** and [7:7E-3.32] **9.30**); to the buffers and compatibility of uses rule, N.J.A.C. [7:7E-8.13] **7:7-16.11**, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**, which places public access requirements upon the use.

(c) – (g) (No change.)

[7:7E-7.8] **7:7-15.8** Mining [use rule]

(a) New or expanded mining operations on land, and directly related development, for the extraction and/or processing of construction sand, gravel, ilmenite, glauconite, and other minerals are conditionally acceptable, provided that the following conditions are met (mining is otherwise exempted from the [General Land Areas] **general land areas** rule, but shall comply with the [Special Areas,] **special areas** and [General Water Area] **general water area** rules):

1. – 2. (No change.)

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3. Buffer areas are provided in accordance with N.J.A.C. [7:7E-8.13] **7:7-16.11**, using existing vegetation and/or new vegetation and landscaping, to provide maximum feasible screening of new on-land extractive activities and related processing from roads, water bodies, marshes, and recreation areas. The [Buffers] **buffers** and [Compatibility of Uses] **compatibility of uses** rule, [(N.J.A.C. [7:7E-8.13]) **7:7-16.11**], provides guidance related to buffer treatment. A minimum buffer area of 500 feet will be required to existing residential development;

4. – 7. (No change.)

8. The mine development and reclamation plan minimizes the area and time of disruption of agricultural operations and provides for storage and restoration of all Agricultural Class I, II, and III soils, so that there will be no net loss in the area covered by these soils whenever feasible. The placement of soils may be acceptable to an alternate location if a need is demonstrated, there is no net loss in the area covered by these soils and the placement is consistent with [all other coastal rules] **this chapter**.

(b) The proposed mining, extension of existing mining, or associated mining activities in freshwater wetlands or freshwater wetlands transition areas is subject to the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) In addition, proposed mining extension of existing mining or associated mining activities within the 100-year floodplain is subject to the flood hazard areas rule at N.J.A.C. [7:7E-3.25] **7:7-9.25**.

(c) (No change.)

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[7:7E-7.9] **7:7-15.9** Port [use rule]

(a) – (b) (No change.)

(c) New port uses outside of existing ports as defined at N.J.A.C. [7:7E-3.11(a)] **7:7-9.11(a)** are acceptable only when there is a clear demonstration of need, and when suitable land and water area is not available in or adjacent to an existing port.

(d) - (g) (No change.)

[7:7E-7.10] **7:7-15.10** Commercial facility [use rule]

(a) Standards relevant to hotels and motels are as follows:

1. (No change.)
2. New, expanded, or improved hotels and motels are conditionally acceptable provided that the development complies with all [Location] **location** and [Resource] **resource** rules and with the rule for high-rise structures and is compatible in scale, site design, and architecture with surrounding development.
3. (No change.)
4. In special urban areas, new hotel, motel, or restaurant development is acceptable in the filled water's edge and over large rivers on structurally sound pilings, provided it is consistent with rules on [Filled Water's Edge] **filled water's edge** (N.J.A.C. [7:7E-3.23] **7:7-9.23**) and [Special Urban Areas] **special urban areas** (N.J.A.C. [7:7E-3.43] **7:7-9.41**), and the existing

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total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

**5. All new hotel or motel development, as well as the expanded portion of an existing hotel or motel, located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet landward from the existing or proposed shore protection structures. Decks attached to the proposed new or expanded existing hotel or motel are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the location of the existing or proposed shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.**

[5.] **6.** (No change in text.)

(b) Standards relevant to retail trade and services are as follows:

1. Retail [and] trade **and** services is a broad category including, but not limited to, establishments selling merchandise for personal and household consumption, such as food stores and clothing stores; offices; service establishments such as banks and insurance agencies;

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establishments such as restaurants and night clubs; and establishments for participant sports such as bowling alleys and indoor tennis courts.

2. In special urban areas, new or expanded retail trade and service establishments are conditionally acceptable in filled water's edge areas and over large rivers on structurally sound existing pilings as part of mixed use developments, provided that the development is consistent with the rules on [Filled Water's Edge] **filled water's edge** (N.J.A.C. [7:7E-3.23] **7:7-9.23**) and [Special Urban Areas] **special urban areas** (N.J.A.C. [7:7E-3.43] **7:7-9.41**), and the existing total area of water coverage is not expanded except where it can be demonstrated that extensions are functionally necessary for water dependent uses.

3. Elsewhere in the coastal zone, new or expanded retail trade and service establishments are conditionally acceptable provided that the development:

- i. Complies with all applicable [Location] **location** and [Resource] **resource** rules;
- ii. – iii. (No change.)

**4. All new retail trade and service establishments as well as expanded portions of existing retail trade and service establishments located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet landward from the existing or proposed shore protection structures. Decks attached to the proposed new or expanded existing retail trade and service establishments are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the**

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**required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the location of the existing or proposed shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.**

[4.] **5.** (No change in text.)

(c) Standards relevant to convention centers and arenas are as follows:

1. – 2. (No change.)

**3. All new convention centers or arenas, as well as expanded portion of an existing convention center or arena, located on a non-oceanfront site with existing or proposed shore protection structures, shall be set back at least 15 feet from such shore protection structures. Decks attached to the proposed new or expanded convention centers or arenas are not subject to this setback requirement. If there is no alternative to locating the proposed development at least 15 feet landward of the shore protection structure, the Department shall reduce the required setback if an engineering certification is submitted demonstrating that, after the proposed development has been constructed, the shore protection structure can be replaced within 18 inches of the existing shore protection structure and a conservation restriction that complies with N.J.A.C. 7:7-18 is recorded for the property which states that any reconstruction of a shore protection structure shall be within 18 inches of the existing shore protection structure.**

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[3.] **4.** (No change in text.)

[7:7E-7.11] **7:7-15.11** Coastal engineering

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

(d) The construction, maintenance, or reconstruction of a bulkhead shall comply with the following:

1. A bulkhead that is subject to wave runup forces, specifically, a bulkhead in a [V-Zone] **V zone** as described at N.J.A.C. [7:7E-3.18] **7:7-9.18**, shall be designed and certified by a professional engineer to withstand the forces of wave runup, [and shall include a splash pad on the landward side. The splash pad must have a minimum width of 10 feet, and may be constructed of concrete, asphalt or other erosion resistant material. If a cobblestone or similar splash pad is used, an appropriate sub-base and filter cloth shall be incorporated into the design]. The use of rip-rap along the seaward toe of the bulkhead structure may be required on a case-by-case basis as a means to limit the scour potential;

2. (No change.)

(e) Dune restoration, creation, and maintenance projects as non-structural shore protection and/or storm damage reduction measures, are encouraged. These projects, including sand fencing, revegetation, additions of non-toxic appropriately sized material, and measures to control pedestrian and vehicular traffic, shall comply with N.J.A.C. [7:7E-3A] **7:7-10**, Standards for Beach and Dune Activities.

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(f) Beach nourishment projects as non-structural shore protection and/or storm damage reduction measures are encouraged, provided:

1. – 3. (No change.)

4. Public access to the nourished beach is provided in accordance with the lands and waters subject to the public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48**, and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

(g) Structural shore protection and/or storm damage reduction measures that are conducted using monies from the Shore Protection Fund established by N.J.S.A. 13:19-16 and/or any other Department monies shall comply with (g)1 and 2 below.

1. The construction of new shore protection structures or expansion or fortification of existing shore protection structures, including, but not limited to, jetties, groins, seawalls, bulkheads, gabions, and other retaining structures to retard longshore transport and/or to prevent tidal waters from reaching erodible material, is acceptable only if the structure meets all of the following conditions:

i. - v. (No change.)

vi. If the proposed project requires filling of a water area, the filling is consistent with **the** filling rule, N.J.A.C. [7:7E-4.10] **7:7-12.11**, and all other applicable rules in this chapter; and

2. Public access to the shore protection project shall be provided in accordance with the lands and waters subject to public trust rights rule, N.J.A.C. [7:7E-3.50] **7:7-9.48** and the public access rule, N.J.A.C. [7:7E-8.11] **7:7-16.9**.

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(h) (No change.)

[7:7E-7.12] **7:7-15.12** Dredged material placement on land

(a) Dredged material placement is the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, capping material, topsoil, bricks, and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line. The standards for dredged material disposal in [Water Areas] **water areas** are found at N.J.A.C. [7:7E-4.8] **7:7-12.9**.

(b) Dredged material placement on land is conditionally acceptable provided that the use is protective of human health, groundwater quality, and surface water quality, and manages ecological risks. Testing of the dredged material may be required as needed to determine the acceptability of the placement of the material on a particular site **in accordance with Appendix G**.

(c) Dredged material disposal and/or construction of a confined disposal facility is prohibited in wetlands unless the criteria found at N.J.A.C. [7:7E-3.27] **7:7-9.27** are met.

(d) - (e) (No change.)

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(f) Dredged material [disposal] **placement** in wet and dry borrow pits is conditionally acceptable (see N.J.A.C. [7:7E-3.14, and 3.35] **7:7-9.14 and 9.33**).

(g) - (h) (No change.)

(i) The Department has prepared a dredging technical manual, titled “The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey’s Tidal Waters,” October 1997, which provides guidance on dredged material sampling, testing, transporting, processing, management, and placement. The manual is available from the Department’s Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038.]

[(j)] (i) (No change in text.)

[7:7E-7.13] **7:7-15.13** National defense facilities [use rule]

(a) (No change.)

(b) National defense facilities are conditionally acceptable provided the development meets either (b)1 or 2 below:

1. The proposed facility is consistent with all relevant [Coastal Zone Management rules] **sections of this chapter**; or

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2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with [Coastal Zone Management rules] **this chapter**, and will result in minimal feasible degradation of the natural environment.

(c) (No change.)

(d) Rationale: Providing for the national defense is the responsibility of the [federal] **Federal** government, and the New Jersey Coastal Management Program will not question the findings of a [federal] **Federal** defense agency with respect to national security needs.

The requirements that coastal dependent facility comply with [the Rules on Coastal Zone Management] **this chapter** only to the maximum extent feasible is in keeping with Section 306(c)(8) of the Federal [CZMA] **Coastal Zone Management Act**, which requires consideration of the national interest in the siting of facilities necessary to meet requirements which are other than local in nature.

[7:7E-7.14] **7:7-15.14** High-rise structures

(a) (No change.)

(b) The standards for high-rise structures are as follows:

1. (No change.)

2. High-rise structures within the view of coastal waters shall be separated from coastal waters by at least one public road or an equivalent area (at least 50 feet) physically and visually open to the public except as provided by N.J.A.C. [7:7E-3.48] **7:7-9.46**;

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3. **Where the high-rise structure is a building or complex of buildings that comprises both a low-rise component(s) that is six stories or 60 feet or less in height as measured from preconstruction ground level and a component(s) that is more than six stories or more than 60 feet in height as measured from existing preconstruction ground level, [The] the longest lateral dimension of [any high rise structure] each component that is more than six stories or more than 60 feet in height as measured from existing preconstruction ground level must be oriented perpendicular to the beach or coastal waters[, except for]. This restriction does not apply to** a high-rise structure that is located in the Redevelopment Zone of the City of Long Branch and authorized pursuant to the Long Branch Redevelopment Zone Permit at N.J.A.C. 7:7-7[.4.];

4. **To the maximum extent practicable, [The] the** proposed structure must not block the view of dunes, beaches, horizons, skylines, rivers, inlets, bays, or oceans that are currently enjoyed from existing residential structures, public roads, or pathways[, to the maximum extent practicable];

5. High-rise structures outside of the Hudson River waterfront special area as defined by N.J.A.C. [7:7E3.48] **7:7-9.46** shall not overshadow the dry sand beach between 10:00 A.M. and 4:00 P.M. between June 1 and September 20, and shall not overshadow waterfront parks year round;

6. The proposed structure must be in character with the surrounding transitional heights and residential densities, or be in character with a municipal comprehensive development scheme requiring an increase in height and density which is consistent with all applicable [Coastal Zone Management rules] **sections of this chapter;**

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7. – 8. (No change.)

(c) The high-rise structures rule shall not apply to the following types of development:

1. Development in Atlantic City [on existing ocean piers which meets the standards at N.J.A.C. 7:7E-3.49(c) or pedestrian bridges which meet the standards at N.J.A.C. 7:7E-3.49(i)1];

2. – 3. (No change.)

(d) Rationale: Considerable recent residential development along the coast, from the Palisades to the barrier islands, has taken the form the high-rise, high-density towers. While conserving [of] land, some high-rise structures represent a visual intrusion, cause adverse traffic impacts, and cast shadows on beaches and parks. [The policy] **This rule** seeks not to ban high rise structures, but to provide criteria for their development at suitable locations **and in appropriate orientation with regard to the coastline** in the coastal zone.

#### SUBCHAPTER [8.] 16. RESOURCE RULES

[7:7E-8.1] **7:7-16.1** (No change in text.)

[7:7E-8.2] **7:7-16.2** Marine fish and fisheries

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

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(c) The following coastal activities are conditionally acceptable provided that the activity complies with the appropriate general water area rule(s) at N.J.A.C [7:7E-4] **7:7-12**;

1. (No change.)

2. Sand and gravel mining to obtain material for beach nourishment, provided:

i. - ii. (No change.)

iii. Any alteration of existing bathymetry within [Prime Fishing] **prime fishing** areas, as defined at N.J.A.C. [7:7E-3.4] **7:7-9.4**, does not reduce the high fishery productivity of these areas; and

iv. (No change.)

3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any rules developed and adopted pursuant thereto; [and]

4. The establishment of living shorelines to protect, restore, or enhance a habitat area, in accordance with N.J.A.C. [7:7E-4.23.] **7:7-12.23**; and

**5. Construction of a recreational dock or pier in accordance with N.J.A.C. 7:7-12.5.**

(d) (No change.)

[7:7E-8.4] **7:7-16.3** Water [Quality]**quality**

(a) As required by Section 307(f) of the Federal Coastal Zone Management Act [(P.L. 92-583)], **16 U.S.C. §§ 1451 et seq.**, Federal, State, and local water quality requirements established under the **Federal** Clean Water Act, [(133 U.S.C. §§ 1251 et seq.,)] shall be the water resource standards of the coastal management program. These requirements include not

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only the minimum requirements imposed under the Clean Water Act but also the additional requirements adopted by states, localities, and interstate agencies pursuant to Section 510 of the Clean Water Act and such statutes as the New Jersey Water Pollution Control Act, **N.J.S.A. 58:10A-1 et seq.** In the Delaware River Basin, the requirements include the prevailing “Basin Regulations-Water Quality” adopted by the Delaware River Basin Commission as part of its Comprehensive Plan. In the waters under the jurisdiction of the Interstate Environmental Commission in the New Jersey-New York metropolitan area, the requirements include the Interstate Environmental Commission’s Water Quality Regulations. Department rules related to water pollution control and applicable throughout the entire coastal zone include, for example, the Surface Water Quality Standards (N.J.A.C. [7:9-4] **7:9B**), [the rules concerning Wastewater Discharge Requirements (N.J.A.C. 7:9-5),] the [Ground-Water] **Ground Water** Quality Standards (N.J.A.C. 7:9C), and the [Regulations Concerning the] New Jersey Pollutant Discharge Elimination System **rules** (N.J.A.C. 7:14A).

(b) – (c) (No change.)

[7:7E-8.5] **7:7-16.4** (No change in text.)

[7:7E-8.6] **7:7-16.5** Groundwater use

(a) (No change.)

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(b) Coastal development shall demonstrate, to the maximum extent practicable, that the anticipated groundwater withdrawal demand of the development, alone and in conjunction with other groundwater diversions proposed or existing in the region, will not cause salinity intrusions into the groundwaters of the zone, will not degrade groundwater quality, will not significantly lower the water table or piezometric surface, or significantly decrease the base flow of adjacent water sources. Groundwater withdrawals shall not exceed the aquifer's safe yield.

1. Coastal development shall conform with all applicable [DEP] **Department** and, in the Delaware River Basin, Delaware River Basin Commission requirements for groundwater withdrawal and water diversion rights.

(c) (No change.)

Recodify existing N.J.A.C. 7:7E-8.7 and 8.8 as **7:7-16.6 and 16.7** (No change in text.)

[7:7E-8.9 (Reserved)]

[7:7-8.10] **7:7-16.8** Air quality

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

(c) Coastal development shall be located and designed to take full advantage of existing or planned mass transportation infrastructures and shall be managed to promote mass transportation services, in accordance with the traffic rule, N.J.A.C. [7:7E-8.14] **7:7-16.12**.

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(d) (No change.)

[7:7E-8.11] **7:7-16.9** Public access

(a) Public access to the waterfront is the ability of the public to pass physically and visually to, from, and along tidal waterways and their shores and to use such shores, waterfronts and waters for activities such as navigation, fishing, and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public accessways and public access areas include streets, paths, trails, walkways, easements, paper streets, dune walkovers/walkways, piers and other rights-of way. No authorization or approval under this chapter shall be deemed to relinquish public rights of access to and use of lands and waters subject to public trust rights in accordance with N.J.A.C. [7:7E-3.50] **7:7-9.48**. Further, no authorization or approval under this chapter shall be considered a Tidelands approval or shall exempt an applicant from the obligation to obtain a Tidelands approval, if needed.

(b) In addition to the broad coastal goals outlined at N.J.A.C. [7:7E] **7:7-1.1(c)**, public access shall be provided in a manner designed to achieve the following public access goals:

1. - 5. (No change.)

(c) (No change.)

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(d) Municipal Public Access Plans shall satisfy the goals specified at N.J.A.C. [7:7E]7:7-1.1(c) and the public access goals at (b) above. Municipal Public Access Plans shall additionally meet the requirements at (d)1 through 4 below, as well as all other requirements of this section.

1. (No change.)

2. Municipal Public Access Plans shall require public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E- 3.48(a)2] 7:7-9.46(a)2 consistent with N.J.A.C.[ 7:7E-3.48(d)] 7:7-9.46(d) and (e).

3. Municipal Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. [7:7E-8.11(u)] 7:7-16.9(u).

4. (No change.)

(e) – (f) (No change.)

(g) A Municipal Public Access Plan shall not require:

1. Public access along the Hudson River in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] 7:7-9.46(a)2 inconsistent with N.J.A.C. [7:7E- 3.48(e)] 7:7-9.46(e).

Public access elsewhere in the Hudson River Waterfront Area shall be governed by this section;

2. Public access at marinas, as defined at N.J.A.C. [7:7E-7.3(d)1] 7:7-15.3(d)1. Public access requirements at marinas shall be governed by (p) below;

3. – 8. (No change.)

(h) (No change.)

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(i) The Department shall review an application for approval of a Municipal Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. [7:7E]7:7-1.1(c), the goals for public access at (b) above and all other requirements of this section.

1. - 6. (No change.)

(j) – (l) (No change.)

(m) The Department shall revoke its approval of a Municipal Public Access Plan for good cause. Good cause includes failure to implement the Municipal Public Access Plan and/or noncompliance with the Municipal Public Access Plan such as, but not limited to, inappropriate expenditure of dedicated Public Access Fund monies for purposes other than public access, conversion of public access sites to other uses, and failure to maintain existing public access and signage.

1. (No change.)

2. If the above requirements are not met, the Department shall provide the Municipality with written notice, by certified mail, of intent to revoke the Department's approval of the Municipal Public Access Plan and of the Municipality's right to a hearing pursuant to the provisions of N.J.A.C. 7:7-[5]28. A request for a hearing shall be addressed to the Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, Mail Code 401-04L, PO Box 402, 401 East State St., [4th] 7th floor, Trenton, New Jersey 08625-

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0402. A copy shall also be submitted to the Office of Land Use Planning, Mail Code 401-07C, PO Box 402, 401 East State St., 7th floor, Trenton, New Jersey 08625.

3. (No change.)

(n) In municipalities that do not have an approved Municipal Public Access Plan, for sites which are located on or adjacent to tidal waterways and their shores, public access along and use of the beach and the shores shall be provided as specified in this subsection and, as applicable, in (p) below for marinas and (q) below for piers. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, the Department shall consider factors such as type of public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, square footage of access area, and environmental impact or benefit. The Department shall not approve public access that is contrary to any requirement contained in this chapter (for example, access that encroaches upon threatened or endangered species habitat or is in violation of the dunes rules):

1. Commercial development shall provide both visual and physical access as follows:

i. (No change.)

ii. Except as provided in (n)1ii(1) below, for new commercial development, access shall be provided onsite, at a minimum during normal operating hours. For the purposes of this subparagraph, "new commercial development" also includes the conversion of any existing non-commercial use to a commercial use and any change in an existing development that would result in either greater than a cumulative 50 percent increase in the area covered by buildings,

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asphalt, or concrete paving; or development outside the parcel containing the existing development;

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] **7:7-9.46(a)2** shall be provided in accordance with N.J.A.C. [7:7E-3.48(d)] **7:7-9.46(d)** and (e).

2. Residential development shall provide both visual and physical access as follows:

i. (No change.)

ii. For new residential development, where the development consists solely of the construction of one single-family home or duplex not in conjunction with a previous development as defined at N.J.A.C. 7:7-[2.1(b)8]**2.2(b)8**, no public access is required;

iii. Except as provided in (n)2iii(3) below, for new residential development consisting of more than one single-family home or duplex, or the conversion of any existing non-residential use to a residential use consisting of more than one single-family home or duplex, that has a total frontage of 500 linear feet or less on areas subject to N.J.A.C. [7:7E-3.50] **7:7-9.48**, public access shall be provided onsite.

(1) - (2) (No change.)

(3) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] **7:7-9.46(a)2** shall be provided in accordance with N.J.A.C. 7:7[E-3.48(d)] **7:7-9.46(d)** and (e).

iv. Except as provided in (n)2iv(1) below, for new residential development consisting of more than one single-family home or duplex or the conversion of any existing non-residential use to a residential use consisting of more than one single-family home or duplex, where the

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development has a total frontage of more than 500 linear feet on areas subject to N.J.A.C. [7:7E-3.50] **7:7-9.48**, public access shall be provided onsite.

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] **7:7-9.46(a)2** shall be provided in accordance with N.J.A.C. [7:7E-3.48(d)] **7:7-9.46(d)** and (e).

3. Except as provided at (n)4 and 5 below, industrial development and public development, except for public highways, shall provide both visual and physical access in accordance with (n)3i through iv below. Public highways shall meet the requirements at (o) below.

i. (No change.)

ii. Except as provided in (n)3ii(1) below, for new industrial or public development, including the conversion of any existing use to an industrial or public use, public access shall be provided onsite during normal operating hours, unless it can be demonstrated that continued public access is not practicable based on the risk of injury from proposed hazardous operations, or substantial permanent obstructions, or upon documentation of a threat to public safety due to unique circumstances concerning the subject property, and no measures can be taken to avert these risks. In cases where the Department concurs that the risk is too great for onsite public access, access shall be provided in accordance with (n)3iii below. For the purposes of this paragraph, “new industrial or public development” includes development of areas not within the parcel containing the existing development.

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] **7:7-9.46(a)2** shall be provided in accordance with N.J.A.C. [7:7E-3.48(d)] **7:7-9.46(d)** and (e).

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iii. – iv. (No change.)

4. Homeland security facilities shall provide both visual and physical access as follows:

i. (No change.)

ii. Except as provided in (n)4i(1) below, for new homeland security facilities, including the conversion of a non-homeland security facility to a homeland security facility, or the expansion of an existing homeland security facility onto areas not within the parcel containing the existing development, the applicant may provide either onsite public access or equivalent offsite public access on the same waterway and within the same municipality as the development. The Department shall consider factors such as type of public access available (for example, if swimming access is available onsite, then swimming access should be available at the offsite location), square footage of access area, and environmental impact/benefit when determining whether proposed offsite public access is equivalent to that which would have been required onsite;

(1) Public access along the Hudson River and on adjacent piers in the Hudson River Waterfront Area as defined at N.J.A.C. [7:7E-3.48(a)2] **7:7-9.46(a)2** shall be provided in accordance with N.J.A.C. [7:7E-3.48(d)] **7:7-9.46(d)** and (e).

5. Ports, as defined at N.J.A.C. [7:7E-3.11] **7:7-9.11**, shall provide both visual and physical access as follows:

i. – ii. (No change.)

(o) Public highways, including superhighways, shall provide both visual and physical access as follows. For purposes of this subsection, an example of visual and physical access is a

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sidewalk on or adjacent to a bridge. Public transportation agencies and counties are encouraged to submit to the Department an application for approval of a Transportation Public Access Plan in accordance with (o)3 below:

1. – 2. (No change.)

3. Transportation Public Access Plans shall satisfy the goals specified at N.J.A.C. [7:7E]7:7-1.1(c) and the public access goals at (b) above. Transportation Public Access Plans shall additionally meet the requirements at (o)3i through iii below:

i. (No change.)

ii. Transportation Public Access Plans shall require installation and maintenance of appropriate public access signage in accordance with N.J.A.C. [7:7E-8.11(u)] **7:7-16.9(u)**.

iii. (No change.)

4. (No change.)

5. The Department shall review an application for approval of a Transportation Public Access Plan to determine whether the plan is consistent with the broad coastal goals described at N.J.A.C. [7:7E]7:7-1.1(c), and the goals for public access at (b) above as follows:

i. - vi. (No change.)

6. – 7. (No change.)

(p) Marinas, as defined at N.J.A.C. [7:7E-7.3(d)1] **7:7-15.3(d)1**, shall provide both visual and physical public access in accordance with this subsection. Public access may include any one or a combination of the options listed at (b)3 above. When determining whether proposed public access is appropriate and/or sufficient, the Department shall consider factors such as type of

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public access available, the compatibility of the proposed public access with the applicant's proposed use of the site, square footage of access area, and environmental impact or benefit.

1. – 2. (No change.)

3. If the marina development includes a beach area, public access along and use of the beach shall be provided and activities that have the effect of discouraging or preventing the exercise of public trust rights, as described at N.J.A.C. [7:7E-3.50] **7:7-9.48**, are prohibited in accordance with (v) below;

4. - 5. (No change.)

(q) Except in accordance with the Hudson Waterfront Area at N.J.A.C. [7:7E-3.48] **7:7-9.46**, and Atlantic City at N.J.A.C. [7:7E-3.49] **7:7-9.47**, development which is proposed to be located on an existing pier shall provide public access in accordance with the type of development being proposed, that is, commercial, residential, industrial or public, homeland security, or ports (see (n) above).

(r) - (u) (No change.)

(v) Activities that have the effect of discouraging or preventing the exercise of public trust rights, as described at N.J.A.C. [7:7E-3.50] **7:7-9.48**, are prohibited. These activities include, but are not limited to, requiring photographic identification, requiring a liability waiver, requiring the purchase of drinks or food from a specific vendor, or prohibiting bringing beach equipment such as blankets or beach chairs.

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(w) – (y) (No change.)

(z) The areas set aside for public access to tidal waterways and their shores shall be permanently dedicated for public use through the recording of a Department approved conservation restriction under the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., maintaining the publicly dedicated areas in perpetuity.

**The conservation restriction shall comply with the requirements of N.J.A.C. 7:7-18,**

**Conservation Restrictions.** [A conservation restriction shall:

1. Be in the appropriate form and terms as specified and approved by the Department;
2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq.;
3. Run with the property and be binding upon the property owner and the successors in interest in the property or in any part thereof; and
4. Be recorded in the office of the clerk of the county or the registrar of deeds and mortgages of the county or the registrar of deeds and mortgages of the county in which the development project, or project site is located.
  - i. Proof of recording shall be submitted to the Department prior to the commencement of site preparation or construction, or permit effectiveness.]

(aa) (No change.)

[7:7E-8.12] **7:7-16.10** Scenic resources and design

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(a) - (d) (No change.)

(e) Coastal development that modifies a historic structure on or eligible for inclusion on the New Jersey or National Register of Historic Places, is adjacent to a bay, ocean, bayfront or oceanfront, beach, dune, or boardwalk, and is higher than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with (d) above provided the development meets the requirements at (e)1 and 2 below. This exception does not apply to new development proposed to be located outside of the historic structure's footprint of development [as defined at N.J.A.C.7:7E-1.8].

1. - 2. (No change.)

(f) Federal, State, county, or municipal development projects which are located adjacent to a bay or ocean or bayfront or oceanfront, beach, dune, or boardwalk, and are greater than 15 feet in height measured from the existing grade of the site or boardwalk need not comply with the setback requirements in (d)2 above provided that the development contains design elements that enhance physical or visual public access to the waterfront beyond that which would be afforded by strict compliance with (d)2 above and the development, as proposed, would remain in compliance with N.J.A.C. [7:7E-3.50] **7:7-9.48**.

(g) (No change.)

[7:7E-8.13] **7:7-16.11** Buffers and compatibility of uses

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(a) (No change.)

(b) Development shall be compatible with adjacent land uses to the maximum extent practicable.

1. Development that is likely to adversely affect adjacent areas, particularly [Special Areas] **special areas**, N.J.A.C. [7:7E-3] **7:7-9**, or residential or recreation uses, is prohibited unless the impact is mitigated by an adequate buffer. The purpose, width, and type of the required buffer shall vary depending upon the type and degree of impact and the type of adjacent area to be affected by the development, and shall be determined on a case-by-case basis.

2. The standards for wetland buffers are found at N.J.A.C. [7:7E-3.28] **7:7-9.28**.

3. (No change.)

(c) (No change.)

[7:7E-8.14] **7:7-16.12** Traffic

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

(c) When the level of service of traffic systems is disturbed by approved development, the necessary design modifications or funding contribution toward an area wide traffic improvement shall be prepared and implemented in conjunction with the coastal development, **to the** satisfaction of the New Jersey Department of Transportation and/or any regional agencies, **as applicable**.

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(d) (No change.)

(e) Coastal development located in municipalities which border the Atlantic Ocean, except as excluded under (e)1 and 3 below, shall satisfy the requirements for parking specified in this subsection. Coastal development subject to this subsection shall provide sufficient on-site and/or off-site parking for its own use. In general, on street parking spaces along public roads cannot be credited as part of off-site parking provided for a project. All off-site parking facilities must be located either in areas within reasonable walking distance to the development or areas identified by any local or regional transportation plans as suitable locations. All off-site parking facilities must also comply with N.J.A.C. [7:7E-7.5(d)] **7:7-15.5(d)**, the parking facility rule, where applicable.

1. (No change.)

2. Except as provided in (e)2i through iii below, residential development located within one-half mile of an oceanfront beach or dune shall provide on-site and/or off-site parking at a ratio of two parking spaces per unit for each dwelling unit.

i. - ii. (No change.)

(1) - (2) (No change)

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

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

(5) (No change.)

iii. (No change.)

3. (No change.)

(f) (No change.)

[7:7E-8.15 (Reserved)

7:7E-8.16 (Reserved)

7:7E-8.17 (Reserved)

7:7E-8.18 (Reserved)

7:7E-8.19 (Reserved)

7:7E-8.20 (Reserved)]

[7:7E-8.21] **7:7-16.13** Subsurface sewage disposal systems

(a) (No change.)

(b) Acceptability conditions for subsurface sewage disposal systems are as follows:

1. – 2. (No change.)

3. Construction of subsurface sewage disposal systems must comply with the requirements of the flood hazard areas rule at N.J.A.C. [7:7E-3.25] **7:7-9.25**.

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(c) Rationale: The subsurface sewage disposal system regulations provide standards for the proper location, design, construction, installation, alteration, operation, and maintenance of individual subsurface disposal systems. These regulations serve to protect public health and safety and environment, potable water supplies, and safeguard fish and aquatic life while preserving their ecological values. In areas subject to tidal flooding subsurface sewage disposal systems constructed below the 10-year flood elevation are susceptible to failure during flooding events. Furthermore, construction of subsurface sewage disposal systems within coastal high hazard areas ([V-zones] **V zones**) is prohibited in accordance with the National Flood Insurance Program Regulations.

[7:7E-8.22] **7:7-16.14** (No change in text.)

## **SUBCHAPTER 17. MITIGATION**

### **7:7-17.1 Definitions**

**In addition to the terms defined at N.J.A.C. 7:7-1.5, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.**

**“Creation” means the establishment of wetland or intertidal and subtidal shallows characteristics and functions in uplands.**

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**“Credit purchase” means the purchase of credits from a mitigation bank, as that term is defined at N.J.A.C. 7:7-1.5, as a substitute for performance of restoration, creation, enhancement, or preservation by a permittee. Each credit counts for a certain acreage amount of mitigation type. Once a credit is applied to satisfy a mitigation obligation under this subchapter, it is exhausted and may not be sold or used again.**

**“Degraded wetland” means a wetland in which there is impaired surface water flow or groundwater hydrology, or excessive drainage; a wetland that has been partially filled or excavated, contaminated with hazardous substances, or that has an ecological function substantially less than that of undisturbed wetlands in the region.**

**“Enhancement” means the improvement of the ability of an existing, degraded wetland or intertidal and subtidal shallow to support natural aquatic life through substantial alterations to the soils, vegetation, and/or hydrology. Improvement of a wetland or water that is not degraded does not constitute enhancement.**

**“Fee simple” means absolute ownership in land, unencumbered by any other interest or estate.**

**“In-kind mitigation” means mitigation that provides similar values and functions as the area disturbed, including similar wildlife habitat, similar vegetative species coverage and density, equivalent flood water storage capacity, and equivalency of other relevant values**

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**or functions. In the case of a mitigation bank, this is accomplished through the purchase of credits at which similar values and functions have been established.**

**“In-lieu fee program” means a program approved by the Department and the USACE that involves the restoration, creation, enhancement, and/or preservation of aquatic resources through funds paid to a government or non-profit entity to satisfy compensatory mitigation requirements for both State and USACE permits. An in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide mitigation is transferred to the in-lieu fee program. An in-lieu fee program does not refer to contributions to the Wetlands Mitigation Council or the Department’s dedicated account for shellfish habitat mitigation.**

**“In-lieu fee program instrument” means the legal document for the establishment, operation, and use of an in-lieu fee program.**

**“Mitigation” means activities carried out in accordance with this subchapter in order to compensate for the loss or disturbance of wetlands, intertidal and subtidal shallows, submerged aquatic vegetation, riparian zones, or shellfish habitat.**

**“Mitigation banking instrument” means documentation of Department approval of the objectives and administration of the bank including, as appropriate:**

- 1. Bank goals and objectives;**

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- 2. Ownership of bank lands;**
- 3. Bank size and classes of wetlands and/or other aquatic resources proposed for inclusion in the bank, including a site plan and specifications;**
- 4. Description of baseline conditions at the bank site;**
- 5. Geographic service area;**
- 6. Wetland classes or other aquatic resource impacts suitable for compensation;**
- 7. Methods for determining credits and debits;**
- 8. Accounting procedures;**
- 9. Performance standards for determining credit availability and bank success;**
- 10. Reporting protocols and monitoring plan;**
- 11. Contingency and corrective actions and responsibilities;**
- 12. Financial assurances;**
- 13. Compensation ratios; and**
- 14. Provisions for long-term management and maintenance.**

**“Mitigation bank site” means the portion of a site, or the piece of property, upon which a mitigation bank is proposed or developed.**

**“Monetary contribution” means giving money to the Department’s dedicated account for shellfish habitat mitigation or the Wetlands Mitigation Council.**

**“Out-of-kind mitigation” means mitigation that is not in-kind mitigation.**

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**“Restoration” means:**

**1. The reestablishment of wetland, submerged vegetation habitat, tidal water, and/or intertidal and subtidal shallows characteristics and functions in an area that was once a wetlands and/or intertidal and subtidal shallows but is no longer; or**

**2. The reversal of a temporary disturbance and the reestablishment of the functions and values of the wetlands and/or intertidal and subtidal shallows that was temporarily disturbed.**

**“Service area” means the geographic area within which impacts can be mitigated at a specific mitigation bank.**

**“Temporary disturbance” means a regulated activity that occupies, persists and/or occurs on a site for no more than six months. Where a disturbance associated with certain regulated activities, such as hazardous substance remediation or solid waste facility closure, is intended to be temporary but will exceed six months in duration because of the nature of the activity, the Department will consider the disturbance to be temporary for purposes of this subchapter provided the disturbed areas are restored to their original topography, and all necessary measures are implemented to ensure that the original vegetative cover onsite is restored to its previous (or an improved) condition.**

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**“Wetlands Mitigation Fund” means the repository for monetary contributions made for mitigation purposes, established at N.J.S.A. 13:9B-14.a as the “Wetlands Mitigation Bank”.**

#### **7:7-17.2 General mitigation requirements**

**(a) Mitigation shall be similar in type and location to the resource(s) lost or impacted and shall fully compensate for any ecological loss. The Department will consider proposals for out-of-kind mitigation provided the mitigation meets the goals and objective of this subchapter and would result in an increase in the ecological functions and values as compared to the ecological functions and values of the resource(s) prior to loss or impact.**

**(b) The Department shall not consider a mitigation proposal in determining whether to approve any application under this chapter.**

**(c) Mitigation is not required for certain types of development in intertidal or subtidal shallows, as provided at N.J.A.C. 7:7-9.15(i).**

**(d) Mitigation is not required for certain types of filling, as provided at N.J.A.C. 7:7-12.11(f).**

**(e) Mitigation under this subchapter is not required in cases where the Department determines that environmental impacts to the coastal resource(s) are de minimis and where the applicant demonstrates avoidance and minimization of impacts.**

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**(f) Mitigation shall not be required as part of a permit for the construction of catwalks, piers, docks, landings, footbridges, and observation decks, provided that the applicant shows, to the satisfaction of the Department, that vehicles and equipment will not be placed on the wetlands in order to construct the structure(s) and that the structure(s) will comply with the requirements for recreational docks and piers at N.J.A.C. 7:7-12.5.**

**(g) When mitigation is required in order to compensate for impacts to wetlands, intertidal and subtidal shallows, shellfish habitat, submerged aquatic vegetation, general water areas, or riparian zones resulting from regulated activities, the Department shall authorize any regulated activities required to undertake and complete the mitigation through:**

- 1. An authorization under a general permit;**
- 2. An individual permit;**
- 3. Approval of a mitigation proposal submitted to comply with a condition of an authorization under a general permit or an individual permit; or**
- 4. An enforcement document.**

**(h) To be approved under this subchapter, mitigation must have a high probability of long-term success, which, at a minimum, requires the following:**

- 1. Adequate financial and other resources dedicated to the project;**

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**2. A project design that takes advantage of and works within the existing conditions in the proposed mitigation area to the extent possible;**

**3. Hydrology in and around the mitigation area adequate to support wetland conditions year round and indefinitely into the future (where applicable). The hydrology for a proposed wetland mitigation site shall not include discharged stormwater;**

**4. Soils (and hydrology) in the mitigation area adequate to support wetland conditions (where applicable); and**

**5. Assignment of responsibility for long term maintenance of the mitigation area to an entity that has adequate resources to ensure maintenance as required by this subchapter.**

**(i) Mitigation shall not commence until the Department has approved a mitigation proposal through one of the approvals listed at (g) above.**

**(j) Mitigation approved under this subchapter may also require additional State or Federal permits or approvals, such as a flood hazard area permit or a freshwater wetlands permit from the Department or an approval from the USACE. Mitigation shall not commence until all necessary permits or approvals are obtained.**

**(k) If the Department requires mitigation as part of a remedy for a violation under this chapter, the Department shall determine the amount of mitigation necessary and the particular alternative required in consideration of the extent (area) and severity of the**

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**violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a remedy for a violation shall provide for mitigation that is at least as ecologically valuable as mitigation that would otherwise be required under this chapter under an individual permit. The Department may require a greater amount of mitigation than that required under an individual permit if necessary to compensate for the duration that the coastal resource(s) was impaired due to the particular regulated activities undertaken in violation of this chapter.**

**(l) A mitigation area shall be permanently protected from future development by a conservation restriction in accordance with N.J.A.C. 7:7-18.**

**(m) Mitigation may consist of one or more mitigation alternatives set forth under this subchapter.**

**(n) Mitigation for multiple disturbances by a single permittee may, upon Department approval, be aggregated into a single mitigation project. Such an aggregated mitigation project shall not be used as mitigation for disturbances by any person other than the permittee, unless the permittee obtains approval of the project as a mitigation bank under this subchapter.**

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**(o) Mitigation provided to satisfy a mitigation requirement of a Federal or local law or another State law shall not substitute for or preempt any mitigation requirement under this chapter. A mitigation project proposed for the purpose of satisfying another law shall be approved as mitigation under this chapter only if the mitigation project meets the requirements of this subchapter. For example, a mitigation project proposed to meet a mitigation requirement of the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A shall satisfy a mitigation requirement imposed under this chapter only if the proposed mitigation project meets the requirements of this subchapter.**

**(p) If the mitigator encounters a possible historic property that is or may be eligible for listing in the New Jersey or National Register, the mitigator shall preserve the resource, immediately notify the Department, and proceed as directed by the Department.**

#### **7:7-17.3 Timing of mitigation**

**(a) Mitigation shall be performed within the applicable time period below:**

- 1. Except for restoration of a temporary disturbance under (a)2 below, mitigation required under a general permit authorization or individual permit shall be performed prior to or concurrently with the regulated activity that causes the disturbance;**
- 2. Mitigation for any temporary disturbance shall commence immediately upon completion of the regulated activity that caused the disturbance and shall continue until**

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**completion, which shall not exceed six months after the cessation of the regulated activities that caused the disturbance; and**

**3. Mitigation required as part of an enforcement action shall be performed in accordance with the schedule set forth in the enforcement document.**

**(b) All mitigation shall be continued until completion according to the schedule in the approved mitigation proposal.**

#### **7:7-17.4 Amount of mitigation required**

**(a) This section sets forth the general requirements for determining the amount of mitigation required. Specific requirements for each type of mitigation project are located as follows:**

- 1. Requirements for shellfish habitat mitigation at N.J.A.C. 7:7-17.9;**
- 2. Requirements for submerged vegetation habitat mitigation at N.J.A.C. 7:7-17.10;**
- 3. Requirements for intertidal and subtidal shallows and tidal water mitigation at N.J.A.C. 7:7-17.11;**
- 4. Requirements for riparian zones mitigation at N.J.A.C. 7:7-17.12;**
- 5. Requirements for wetland mitigation at N.J.A.C. 7:7-17.13;**
- 6. Requirements for credit purchase at N.J.A.C. 7:7-17.15; and**
- 7. Requirements for in-lieu fee payment at N.J.A.C. 7:7-17.16.**

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**(b) If a proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless the applicant demonstrates that the encumbrance will not prohibit compliance with the mitigation requirements of this chapter.**

#### **7:7-17.5 Property suitable for mitigation**

**(a) Mitigation under this subchapter may be carried out on private or public property.**

**(b) The Department shall approve mitigation through creation, restoration, or enhancement only on property that is owned in fee simple and under the full legal control of the person responsible for performing the mitigation, unless the person responsible for performing the mitigation demonstrates that they have legal rights to the property sufficient to enable compliance with all requirements of this chapter.**

**(c) The Department shall approve mitigation on public property if:**

**1. The public entity gives written permission to allow the mitigation to be conducted on the property;**

**2. The public entity is willing to allow a conservation restriction to be placed on the area of the mitigation project, in accordance with N.J.A.C. 7:7-18, or can demonstrate that an existing conservation restriction will protect the mitigation project area in perpetuity;**

**and**

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**3. If the land was acquired using Green Acres funding as defined at N.J.A.C. 7:36-2.1, the use of the area for mitigation purposes is approved by the Green Acres Program.**

**(d) The following shall not constitute mitigation under this subchapter:**

**1. The installation of, or improvement to, an existing public facility intended for human use, such as a ball field, nature trail, or boardwalk; or**

**2. A stormwater management facility, such as a basin.**

**(e) The Department shall not approve creation, enhancement, or restoration of a wetland in an area that the Department has determined is currently of high ecological value.**

**(f) The Department shall not approve mitigation or a mitigation bank that would:**

**1. Destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; or**

**2. In any way jeopardize the continued existence of any local population of a threatened or endangered species.**

**(g) The Department shall not approve mitigation or a mitigation bank in an area where the proposed mitigation poses an ecological risk. For purposes of this section, ecological risk means that the mitigation or mitigation bank activities have the potential to result in the reintroduction of contamination to ecological communities, the exposure of humans to**

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**contamination, or the contamination of the mitigation site by subsequent exposure to new areas of contamination requiring remediation. The proposed mitigation site shall be properly characterized to determine ecological risk. The mitigator shall prepare this characterization and assessment in accordance with the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-1.16 and 4.9.**

**1. If the Department determines based on the characterization and assessment that the mitigation activities at the proposed site do not pose an ecological risk, the mitigator shall proceed with the mitigation project.**

**2. If the Department determines based on the characterization and assessment that the proposed mitigation activities at the proposed site do pose an ecological risk, the mitigator shall remediate the site pursuant to the Technical Requirements for Site Remediation at N.J.A.C. 7:26E-4.8, 5.1, and 5.2. The mitigator shall proceed with the mitigation project only after it demonstrates that the remediation and/or mitigation activities will fully address the ecological risk.**

**(h) Properties where a substantial amount of soil must be removed in order to achieve suitable wetland hydrology are not acceptable mitigation sites.**

**7:7-17.6 Conceptual review of a mitigation area**

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**(a) The Department encourages applicants to obtain the conceptual review of any land being considered as a potential mitigation area prior to purchase of land for mitigation purposes and/or prior to submittal of a mitigation proposal.**

**(b) To obtain the conceptual review of a mitigation area, the applicant shall submit a written request to the address set forth at N.J.A.C. 7:7-1.6, including:**

- 1. A brief description of the area and the mitigation project being considered;**
- 2. A map showing the location and extent of the prospective mitigation area, including topography if available; and**
- 3. Consent from the owner of the prospective mitigation area allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.**

**(c) The Department's guidance on a proposed mitigation area or mitigation proposal is not binding until and unless it is incorporated into an approval obtained in accordance with this subchapter. A conceptual review does not grant any property or other rights or in any way imply that mitigation activities have been or will be authorized.**

#### **7:7-17.7 Basic requirements for mitigation proposals**

**(a) A mitigation proposal required under this chapter shall be submitted at least 90 calendar days prior to the commencement of regulated activities authorized by a permit.**

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**(b) A mitigation proposal to remedy a violation under this chapter shall be submitted by the deadline set forth in the Department's enforcement document.**

**(c) A mitigation proposal shall include all information necessary for the Department to determine if the requirements of this subchapter are met.**

**(d) The information required to be submitted in a mitigation proposal for the restoration, creation, and/or enhancement of wetlands, intertidal and subtidal shallows, submerged vegetation habitat, and riparian zones is set forth in the appropriate mitigation proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:7-1.6, and described at (h) below.**

**(e) A mitigation proposal for a monetary contribution to the Department's dedicated account for shellfish habitat mitigation shall consist of a copy of the permit authorizing the impact(s) that is being mitigated and a demonstration that the contribution amount addresses the factors specified at N.J.A.C. 7:7-17.9(b)2.**

**(f) A mitigation proposal for the purchase of bank credits shall consist of a copy of the permit authorizing the impact(s) that is being mitigated and the identity of the mitigation bank from which appropriate credits will be purchased.**

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**(g) A mitigation proposal for the purchase of in-lieu fee credits shall consist of a copy of the permit authorizing the impact(s) that is being mitigated and the identity of the in-lieu fee program from which appropriate credits will be purchased.**

**(h) The mitigation proposal checklists identified at (d) above require the following information:**

**1. Basic information regarding the applicant, the impacts for which the mitigation is intended to compensate, and a copy of the permit (if issued) or enforcement document that is the source of the mitigation requirement;**

**2. The following material necessary to explain and illustrate the existing and proposed conditions at the mitigation site:**

**i. Visual materials such as maps, site plans, planting plans, surveys, topography, diagrams, delineations, and/or photographs;**

**ii. A narrative describing the existing conditions and proposed mitigation, as well as supporting soil or vegetation samples; and**

**iii. A preventive maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented;**

**3. A specific breakdown of each resource for which mitigation is being proposed (for example, forested wetlands, scrub shrub wetlands, riparian zones, intertidal and subtidal shallows, submerged vegetation habitat) and the type and quantity of proposed mitigation for each resource;**

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- 4. Information regarding relevant features of other properties in the vicinity of the mitigation area, such as whether nearby properties are publicly owned, or contain preserved open space, or significant natural resources;**
- 5. Schedules describing in detail the sequence of mitigation activities and estimated dates for completion for each mitigation activity;**
- 6. Cost estimates to perform the mitigation and maintain the mitigation area after construction and/or transfer is completed;**
- 7. A preliminary characterization and assessment of the site in accordance with N.J.A.C. 7:7-17.5(g) to enable the Department to determine if contamination is present and if the proposed mitigation activities pose an ecological risk;**
- 8. A description of post-construction activities, including schedules for monitoring, maintenance, and reporting;**
- 9. Contingency measures that will be followed if the mitigation project fails or shows indications of failing;**
- 10. A certification that the proposed mitigation will not adversely affect historic resources which are listed or are eligible for listing on the New Jersey or National Register of Historic Places;**
- 11. Information and/or certifications regarding the presence or absence of endangered and/or threatened species wildlife and plant species habitat or other features on the proposed mitigation area relevant to determining compliance with this chapter;**
- 12. Any letters, contracts, agreements, conservation restrictions, or other draft or executed documents necessary to ensure compliance with this chapter;**

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**13. A certification of truth and accuracy in accordance with N.J.A.C. 7:7-23.2(j); and**

**14. Consent from the owner of the proposed mitigation area allowing the Department to enter the property in a reasonable manner and at reasonable times to inspect the proposed mitigation area.**

**(i) In addition to the information required by the mitigation proposal checklist as set forth at (h) above, a proposal to create, restore, or enhance wetlands or intertidal and subtidal shallows shall also include a projected water budget for the proposed mitigation site. The water budget shall:**

**1. Detail the sources of water for the mitigation project as well as the water losses;**

**2. Document that an ample supply of water is available to create, enhance, or restore wetland conditions, as applicable;**

**3. Contain sufficient data to show that the mitigation project will, indefinitely into the future, have sustained wetland hydrology or, for intertidal and subtidal shallows, sustained tidal inundation; and**

**4. Include the following regional information for the proposed and existing site conditions:**

**i. The tidal range (low, high and spring high tide) over the course of a month;**

**ii. The elevation of the existing reference wetland system in the vicinity of the project site;**

**iii. The salinity range of adjacent waters; and**

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**iv. A detailed discussion relating to the created substrate of the proposed mitigation site.**

**(j) In addition to the information required by the mitigation proposal checklist as set forth at (h) above, the mitigation proposal for a submerged vegetation habitat mitigation project shall include information sufficient to document the following:**

- 1. That the area proposed for submerged vegetation habitat restoration previously supported submerged vegetation but no longer does;**
- 2. The specific cause(s) of the elimination of submerged vegetation; and**
- 3. That the specific condition(s) or action(s) that caused the elimination of submerged vegetation has since ceased.**

#### **7:7-17.8 Department review and approval of a mitigation proposal**

**(a) The Department shall, within 30 calendar days after receiving a mitigation proposal, review the proposal for completeness and:**

- 1. Request any necessary additional information; or**
- 2. Declare the mitigation proposal complete for further review.**

**(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.**

#### **7:7-17.9 Requirements for shellfish habitat mitigation**

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**(a) This section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.2 for impacts to shellfish habitat.**

**(b) Mitigation for impacts to shellfish habitat associated with the construction of a dock, pier, mooring, or marina shall include:**

**1. The recording of a conservation restriction in accordance with N.J.A.C. 7:7-18. In addition to the requirements at N.J.A.C. 7:7-18, the conservation restriction shall also meet the requirements at (b)1i or ii below:**

**i. If the dock, pier, mooring, or marina is associated with an unbulkheaded shoreline, the conservation restriction shall prohibit the construction of a shoreline protection structure other than stone rip-rap or other similar sloped revetment; or**

**ii. If the dock, pier, mooring, or marina is associated with a previously bulkheaded shoreline, the conservation restriction shall prohibit replacement, reconstruction, or rehabilitation of the bulkhead with anything other than a non-polluting material; and**

**2. A monetary contribution to the Department's dedicated account for shellfish habitat mitigation. The amount of each monetary contribution shall be based on the area of shellfish habitat condemned due to coverage by the structure and boat moorings, the documented shellfish density on the property, and the commercial value of the shellfish resource.**

**7:7-17.10 Requirements for submerged vegetation habitat mitigation**

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**(a) This section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.6 for impacts to submerged vegetation habitat.**

**(b) Mitigation for temporary disturbance to a submerged vegetation habitat shall consist of the restoration of the disturbed area to its preconstruction contours and conditions.**

**(c) An applicant proposing to mitigate for a temporary disturbance to a submerged vegetation habitat shall submit to the Department, at least 30 calendar days prior to the start of activities authorized by the permit, a schedule describing in detail the sequence of mitigation activities and estimated dates for completion of the restoration of the temporary disturbance, and a restoration plan that includes any proposed grading needed to return the disturbed area to its pre-disturbed elevation, and identifies all proposed plantings, including type, size, and number of plants.**

**(d) Mitigation for unavoidable, permanent, significant impacts to submerged vegetation habitats shall consist of the restoration of habitat for the appropriate species in accordance with scientifically documented transplanting methods. Monitoring and replanting shall be carried out biannually to demonstrate persistence of the compensatory habitat for a minimum of three years.**

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**(e) Priority shall be given to in-kind restoration of submerged vegetation habitat in as close proximity as possible to the site of the impacts to submerged vegetation.**

**(f) Mitigation for submerged vegetation habitat shall not consist of planting submerged vegetation within unvegetated interpatch areas of existing submerged vegetation habitat or of increasing bottom coverage within existing submerged vegetation beds. A vegetation bed is an area where submerged vegetation rhizomes overlap, or where submerged vegetation shoots intermingle within less than one square meter.**

**7:7-17.11 Requirements for intertidal and subtidal shallows and tidal water mitigation**

**(a) This section sets forth the requirements for mitigation required pursuant to N.J.A.C. 7:7-9.15 or 12.11(f) for the filling of intertidal and subtidal shallows or tidal waters, respectively.**

**(b) Mitigation for the filling of intertidal and subtidal shallows or tidal waters shall be performed through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters on the site where the filling occurred.**

**(c) If the onsite mitigation for the filling of intertidal and subtidal shallows described at (b) above is not feasible, mitigation shall be performed as follows:**

**1. At a single-family home or duplex property that is not part of a larger development, mitigation for the filling of intertidal and subtidal shallows shall be in the form of a**

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**monetary contribution to the Wetlands Mitigation Fund. The monetary contribution shall be in the amount of the value of the land filled and the cost of creation of intertidal and subtidal shallows of equal ecological value to those which are being lost; or**

**2. At a property other than a single-family home or duplex, mitigation for the filling of intertidal and subtidal shallows shall be performed in accordance with the hierarchy at (d) through (g) below.**

**(d) If mitigation for the filling of intertidal and subtidal shallows as described at (b) above at a property other than a single-family home or duplex is not feasible onsite, or if mitigation for the filling of tidal waters as described at (b) above is not feasible onsite, then mitigation shall be performed offsite through the creation, at a creation to loss ratio of 1:1, of intertidal and subtidal shallows or tidal waters within the same estuary as the site of the filling or through the purchase of in-kind credits from a mitigation bank with a service area that includes the site of the filling.**

**(e) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (d) above is not feasible, then mitigation shall be in the form of restoration, creation, or enhancement of a wetland within the same estuary as the site of the filling in accordance with N.J.A.C. 7:7-17.13 or through the purchase of out-of-kind credits from a mitigation bank with a service area that includes the site of the filling.**

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**(f) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (e) above is not feasible, then mitigation shall be in the form of one or both of the following, as determined in consultation with the Department:**

- 1. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.9; or**
- 2. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.**

**(g) If mitigation for the filling of intertidal and subtidal shallows or tidal waters as described at (f) above is not feasible, then mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.19.**

**(h) Within 60 calendar days after the construction of an intertidal and subtidal shallows or tidal waters mitigation site is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different time frame for the submittal of the construction completion report if it determines doing so would better facilitate assessing the progress and success of the mitigation. The construction completion report shall include:**

- 1. An as-built plan of the completed mitigation area, showing grading and any structures included in the approved mitigation proposal;**
- 2. Photographs of the completed mitigation; and**
- 3. An explanation for any deviation from the approved mitigation proposal.**

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**(i) In addition to the construction completion report required under (h) above, the mitigator shall submit a post construction monitoring report to the Department.**

**Compliance with the standards listed at (k)1 through 4 below shall be demonstrated for each intertidal and subtidal shallows or tidal waters mitigation site for one lunar month after completion of construction of the mitigation site. A lunar month is the period between two successive full moons. If one or more of the standards listed at (k)1 through 4 below are not met, the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards are met. Failure to meet the standards at (k)1 through 4 below for a given lunar month shall result in corrective action. Corrective action may include regrading or relocation of the mitigation site.**

**(j) The post-construction monitoring report, required under (i) above, shall be submitted by December 31 of each year and shall include:**

- 1. An executive summary;**
- 2. The requirements and goals of the approved mitigation proposal;**
- 3. A detailed explanation of the ways in which the mitigation has or has not achieved progress towards those goals. If the mitigation has not achieved progress, the report shall also include a list of corrective actions to be implemented as determined pursuant to (k) below and a timeline for completion;**
- 4. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;**

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**5. Photographs of the mitigation site, with a location map indicating the location and direction of each photograph;**

**6. An assessment of the hydrology of the mitigation site, including relevant tidal data, photographs, and field observation notes collected throughout the monitoring period; and**

**7. A field delineation and plan showing the extent and location (using global positioning system data points) of the intertidal and subtidal shallows or tidal waters at the site.**

**(k) The standards by which a mitigation site where intertidal and subtidal shallows or tidal waters were created shall be determined successful are set forth at (k)1 through 4 below. In accordance with (i) above, the mitigator shall submit a post-construction monitoring report demonstrating that these standards have been met. The standards are:**

**1. The goals of the approved mitigation proposal have been achieved;**

**2. The mitigation site is an intertidal and subtidal shallows as defined at N.J.A.C. 7:7-9.15 or a tidal water. The documentation shall include, tidal data, topography for the spring high tide, photographs, and field observation notes collected throughout the monitoring period;**

**3. The mitigation meets all applicable requirements of this subchapter; and**

**4. The mitigator has executed and recorded a conservation restriction that meets the requirements of N.J.A.C. 7:7-18.**

**(l) If the mitigation performed under (e) above is the restoration, creation, or enhancement of a wetland, the mitigator shall demonstrate that the post-construction**

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**monitoring standards for a wetland mitigation site at N.J.A.C. 7:7-17.13(d) through (g) are met.**

#### **7:7-17.12 Requirements for riparian zone mitigation**

**As provided at N.J.A.C. 7:7-9.26(e), any development regulated under this chapter in a riparian zone shall meet the requirements for a permit under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. Accordingly, mitigation for impacts to riparian zones shall be provided as required at N.J.A.C. 7:13-10.2(t) and (u) for a regulated activity in a riparian zone.**

#### **7:7-17.13 Requirements for wetlands mitigation**

**(a) This section sets forth the requirements that apply to a wetlands creation, restoration, or enhancement mitigation project.**

**(b) If creation or restoration is the mitigation alternative, wetlands shall be created or restored at a creation or restoration to lost or disturbed ratio of 2:1, unless the applicant demonstrates in accordance with (b)1 below that creation or restoration at a ratio of less than 2:1 will provide equal ecological functions and values. The mitigation project shall be designed to include a wetlands buffer pursuant to N.J.A.C. 7:7-9.28. The wetlands buffer shall not be counted in the acreage of mitigation provided by the wetlands creation or restoration.**

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**1. A mitigator may create or restore wetlands at a ratio of less than 2:1 if the mitigator demonstrates through the use of productivity models or other similar studies that restoring or creating a lesser area of wetlands will result in replacement wetlands of equal ecological value to those lost or disturbed. However, in no case shall the Department approve a ratio of less than 1:1. In order to demonstrate equal ecological value, the mitigator shall survey and provide written documentation regarding, at a minimum, existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat conditions and detail how the mitigation proposal will replace the ecological values of the wetlands lost or disturbed.**

**(c) If enhancement is the mitigation alternative, the Department shall determine on a case-by-case basis the amount of enhancement required to ensure that the mitigation results in wetlands of equal functions and values to those lost.**

**(d) Within 60 calendar days after the construction of a creation, restoration, or enhancement wetlands mitigation project is completed, the mitigator shall submit a construction completion report to the Department. The Department may establish a different time frame for the submittal of the construction completion report if it determines doing so would better facilitate assessing the progress and success of the mitigation. The construction completion report shall include:**

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**1. An as-built plan of the completed mitigation area, showing grading, plantings (including species, size and densities), and any structures included in the approved mitigation proposal;**

**2. Photographs of the completed mitigation; and**

**3. An explanation for any deviation from the approved mitigation proposal.**

**(e) In addition to the construction completion report required under (d) above, the mitigator shall submit a post-construction monitoring report to the Department each year for five years after completion of the construction of a creation, restoration, or enhancement wetlands mitigation project, unless a different time frame for submittal is specified in the approved mitigation proposal. The Department may modify the frequency and/or duration of required reporting if it determines that such modification is necessary to ensure the success of the mitigation. Post-construction monitoring shall begin the first full growing season after the mitigation project is completed.**

**(f) The post-construction monitoring reports required under (e) above shall be submitted to the Department by December 31 of each reporting year, and shall include:**

**1. An executive summary;**

**2. The requirements and goals of the approved mitigation proposal;**

**3. A detailed explanation of the ways in which the mitigation has or has not achieved progress toward the goals of the approved mitigation proposal. If mitigation has not**

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achieved anticipated progress, the report shall also include a list of corrective actions to be implemented and a timeframe for completion;

4. Information required by the coastal wetlands mitigation monitoring checklist available from the Department at the address set forth at N.J.A.C. 7:7-1.6. For a wetlands mitigation project, the checklist requires the following information:

i. A USGS quad map and an aerial photograph on which the limits of the mitigation site and all proposed access points are clearly indicated;

ii. Photographs of the mitigation site with a location map indicating the location and direction of each photograph;

iii. An assessment of the planted vegetation and the species that are naturally colonizing the mitigation site, including documentation concerning invasive or noxious plant species and the percent coverage of these species on the site;

iv. An assessment of the hydrology of the mitigation site including, where appropriate, monitoring well data, stream gauge data, relevant tidal data, photographs, and field observation notes collected throughout the monitoring period.

v. A field delineation of the wetlands at the wetlands mitigation project site, based on techniques specified in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands, published in 1989 by the USEPA, USACE, USFWS, and U.S. Department of Agriculture's Conservation Services, incorporated herein by reference, available at [www.digitalmedia.fws.gov/cdm/ref/collection/document/id/1341](http://www.digitalmedia.fws.gov/cdm/ref/collection/document/id/1341); and

vi. A plan showing the flagged wetlands delineation and global positioning system data points.

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**(g) The standards by which the wetlands mitigation project shall be determined to be successful are set forth at (g)1 through 5 below. The mitigator shall submit a post-construction monitoring report as required at (e) above demonstrating that these standards have been met. The standards are:**

- 1. The goals of the approved wetlands mitigation proposal (including the required buffer area) have been achieved;**
- 2. The mitigation site is a wetland, based on the water budget in the approved mitigation proposal, as documented through, when appropriate, monitoring well data, stream gauge data, relevant tidal data, photographs, and field observation notes collected throughout the monitoring period;**
- 3. The percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation proposal has been achieved;**
- 4. The mitigation provided meets all applicable requirements of this subchapter; and**
- 5. The permittee has executed and recorded a conservation restriction for the mitigation area that meets the requirements of N.J.A.C. 7:7-18.**

**(h) The Department shall determine, after consultation with the permittee, the appropriate corrective action(s) that the mitigator must implement so that the standards at (g) above can be met. Corrective action may include regrading or replanting the mitigation site, relocation of the mitigation project to another, more suitable site, and/or extending the monitoring period as necessary to ensure success of the mitigation.**

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#### **7:7-17.14 Wetlands mitigation hierarchy**

**(a) This section applies to wetlands mitigation projects and governs the mitigation alternative required and the location of mitigation in relation to the impacts to wetlands.**

**(b) Mitigation shall be performed through restoration, creation, or enhancement of wetlands onsite in the same drainage area or estuary as the impacts or, if that is not feasible, then offsite in the same drainage area or estuary as the impacts, or if that is not feasible, then through the purchase of credits from a mitigation bank with a service area that includes the area of impacts. In determining the feasibility of onsite or offsite mitigation or credit purchase, the Department shall consider the following factors regarding the proposed mitigation area:**

**1. Size. Generally, the larger a mitigation area is, the greater is its potential environmental benefit. A mitigation area that is associated with a large existing wetland complex is more likely to be environmentally beneficial;**

**2. Location in relation to other preserved open space. A mitigation area adjacent to public land or other preserved areas is more likely to be environmentally beneficial;**

**3. Habitat value. A mitigation area that will provide valuable habitat for critical wildlife species or threatened or endangered species is more likely to be environmentally beneficial;**

**4. Interaction with nearby resources. A mitigation project is more likely to be environmentally beneficial if it complements existing nearby resources. For example, a**

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**mitigation project that adds riparian wetlands habitat adjacent to an existing stream enhances the environmental value of both the riparian area and the stream; and**

**5. Availability of parcels for offsite mitigation that meet the requirements of (e) below.**

**(c) If mitigation as described at (b) above is not feasible, then mitigation shall be required in the form of one or more of the following, as determined in consultation with the Department:**

**1. Monetary contribution in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.18;**

**2. Upland preservation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.9; or**

**3. In-lieu fee payment in accordance with N.J.A.C. 7:7-17.16.**

**(d) If mitigation as described at (c) above is not feasible, mitigation shall be in the form of a land donation in accordance with the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A-15.19.**

**(e) In order to demonstrate that offsite mitigation under (b) above is not feasible, an applicant shall provide to the Department a list of at least six sites within the same drainage area or estuary to accommodate the required mitigation. With respect to each site on the list, the applicant shall explain why:**

**1. The site is not located at a practical elevation suitable for wetlands;**

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- 2. The site lacks an adequate water supply;**
- 3. The site is not available for purchase; and**
- 4. The site does not meet the requirements of N.J.A.C. 7:7-17.5(g) regarding ecological risk.**

#### **7:7-17.15 Requirements for credit purchase from an approved mitigation bank**

**(a) If the Department determines that credit purchase is the appropriate mitigation alternative, the Department shall evaluate the values and functions lost as a result of the impacts and determine the number of credits required to ensure that the mitigation results in wetlands or intertidal and subtidal shallows of equal functions and values to those lost.**

**(b) The mitigator shall prepare and execute all documents necessary to ensure that the credits have been purchased from a Department approved mitigation bank with available credits.**

**(c) The Department shall determine mitigation through credit purchase successful upon:**

- 1. Demonstration by the mitigator that the completed mitigation satisfies all applicable permit conditions, requirements of this subchapter, and requirements of the approved mitigation proposal; and**

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**2. Documentation from the mitigator that the credit purchase was made as required.**

**Documentation shall include a written certification from the mitigation bank operator, indicating the number of credits purchased and the Department permit number.**

**7:7-17.16 Requirements for in-lieu fee payment**

**(a) If the Department determines that in-lieu fee payment is the appropriate mitigation alternative, the mitigator shall follow the terms of the State-approved in-lieu fee program instrument.**

**(b) The Department shall determine mitigation through in-lieu fee payment successful upon receipt of documentation from the in-lieu fee program administrator that payment has been received in full.**

**7:7-17.17 Financial assurance for mitigation projects; general provisions**

**(a) Financial assurance in accordance with this section is required for mitigation projects involving restoration, creation, or enhancement activities as mitigation for impacts to intertidal and subtidal shallows, tidal waters, and wetlands. Financial assurance is not required for a mitigation proposal or mitigation bank proposal submitted by a government agency or an entity that is exempt from the requirement to provide financial assurance under Federal law.**

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**(b) The person responsible for conducting mitigation identified at (b)1 or 2 below shall establish and maintain financial assurance in accordance with this section:**

**1. Where mitigation is required pursuant to a permit, the permittee or mitigation bank sponsor of a wetlands mitigation project or mitigation bank; or**

**2. Where mitigation is required as part of the remedy for a violation, the person designated to provide mitigation in the enforcement document.**

**(c) The person identified at (b) above shall establish and maintain financial assurance in the amount specified at (f) below, until the Department determines that the mitigation site or mitigation bank has satisfied the applicable performance standards, permit conditions, enforcement document, or settlement agreement.**

**(d) Financial assurance shall comprise one or more of the instruments identified at (d)1 through 5 below. A template for each of the types of financial assurance identified at (d)1 through 4 below is available from the Department at the address set forth at N.J.A.C. 7:7-1.6.**

**1. A fully funded trust fund, in accordance with N.J.A.C. 7:7-17.18;**

**2. A line of credit, in accordance with N.J.A.C. 7:7-17.19;**

**3. A letter of credit, in accordance with N.J.A.C. 7:7-17.20;**

**4. A surety bond, in accordance with N.J.A.C. 7:7-17.21; and/or**

**5. Other forms of financial assurance, other than self-insurance or self-guarantee, as determined by the Department to meet the requirements of this section.**

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**(e) Financial assurance that meets the requirements of this section shall be provided at least 30 calendar days prior to undertaking mitigation activities approved under a permit or mitigation banking instrument, or as required under an enforcement document or settlement.**

**(f) The amount of financial assurance shall be based on an itemized estimate provided by an independent contractor and shall include the following:**

**1. Construction costs, equal to 115 percent of the estimated cost of completing the creation, restoration, or enhancement of intertidal and subtidal shallows, tidal waters, or wetlands; and**

**2. Maintenance costs, equal to 115 percent of the estimated cost of monitoring and maintaining the site, including the cost to replant the wetlands mitigation area.**

**(g) The Department shall review the financial assurance annually and adjust the amount as necessary to reflect current economic factors.**

**(h) The Department shall require additional financial assurance if additional construction and/or monitoring is required to ensure success of the mitigation project.**

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**(i) The portion of financial assurance required under (f)1 above shall be released upon the Department's determination that construction (including grading and planting) of the mitigation project or bank has been successfully completed in accordance with the approved mitigation proposal.**

**(j) The portion of financial assurance required under (f)2 above shall be released when the Department determines that the mitigation project or bank is successful pursuant to N.J.A.C. 7:7-17.11(k) (for an intertidal and subtidal shallows or tidal waters mitigation project), 17.13(g) (for a wetlands mitigation project), or 17.22(j) (for a mitigation bank), as applicable.**

**(k) If the Department determines that the person responsible for conducting mitigation and providing financial assurance as specified at (b) above has failed to perform a mitigation project or bank as required by a permit, mitigation banking instrument, enforcement document, or settlement agreement, the Department shall:**

- 1. Provide written notice of this determination to the person; and**
- 2. Require that the mitigation project or bank be brought into conformance with the permit, mitigation banking instrument, enforcement document, or settlement agreement within 30 calendar days after receipt of the notice, unless the time frame for compliance is extended in writing by the Department.**

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**(l) No sooner than 30 days from the date the person required to establish the financial assurance receives the notice under (k) above, the Department may, at its discretion, perform the mitigation project or bank by drawing on the funds available in the financial assurance.**

#### **7:7-17.18 Financial assurance; fully funded trust fund requirements**

**(a) A person who chooses to establish a fully funded trust fund as financial assurance pursuant to this subchapter shall submit to the Department the original fully funded trust fund agreement. The trust fund agreement shall:**

- 1. Be executed by an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a New Jersey or Federal agency;**
- 2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;**
- 3. Specify that the fully funded trust fund cannot be revoked or terminated without the prior written approval of the Department;**
- 4. Specify that the trustee may only disburse funds with the Department's written approval;**
- 5. Specify that funds shall be utilized solely for the purposes of conducting the mitigation project or mitigation bank as approved by the Department;**
- 6. Specify that the Department may access the fully funded trust fund to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:7-17.17(l); and**
- 7. Identify the Department as the sole beneficiary of the fully funded trust fund.**

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**(b) Any person responsible for conducting a mitigation project or bank that uses a fully funded trust fund to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the trustee confirming the value of the trust in the amount that the Department has approved, and confirming that the trust shall continue for the next consecutive 12-month period.**

**7:7-17.19 Financial assurance; line of credit requirements**

**(a) A person who chooses to establish a line of credit agreement as financial assurance pursuant to this subchapter shall submit to the Department the original line of credit. The line of credit shall:**

- 1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;**
- 2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;**
- 3. Specify that the line of credit shall be issued for a period of one year, and shall be automatically extended thereafter for a period of at least one year;**
- 4. Specify that, if the issuer of the line of credit decides not to extend the line of credit beyond the then current expiration date, the issuer shall notify the person using the line of credit and the Department by certified mail of that decision at least 120 calendar days**

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**before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt;**

**5. Specify that the lender shall disburse only those funds that the Department approves in writing;**

**6. Specify that the funds in the line of credit shall be utilized solely for the purposes of conducting the mitigation project or bank; and**

**7. Specify that the Department may access the line of credit to pay for the cost of the mitigation project or bank, pursuant to N.J.A.C. 7:7-17.17(l).**

**(b) A person responsible for conducting a mitigation project or bank who uses a line of credit to satisfy the requirements of this subchapter shall annually, at least 30 calendar days prior to the anniversary date of when that person was obligated to establish a financial assurance, submit to the Department a written statement from the lender confirming the value of the line of credit in an amount that the Department has approved and confirming that the lender has renewed the line of credit for the next consecutive 12-month period.**

**7:7-17.20 Financial assurance; letter of credit requirements**

**(a) A person who chooses to provide a letter of credit as financial assurance to guarantee the availability of funds pursuant to this subchapter shall submit to the Department the original letter of credit. The letter of credit shall:**

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**1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or by a Federally regulated bank;**

**2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;**

**3. Specify that the letter of credit is irrevocable and issued for a period of at least one year, and that it will be automatically extended thereafter for a period of at least one year;**

**4. Specify that, if the issuer of the letter of credit decides not to extend the letter of credit beyond the then current expiration date, the issuer shall notify the person providing the letter of credit and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and**

**5. Specify that the Department may access the letter of credit to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:7-17.17(l).**

#### **7:7-17.21 Financial assurance; surety bond requirements**

**(a) A person who chooses to provide a surety bond as a financial assurance to guarantee the availability of funds pursuant to this subchapter shall complete and submit to the Department the original surety bond. The surety bond shall:**

**1. Be issued by an entity that is licensed by the New Jersey Department of Banking and Insurance to transact business in the State of New Jersey, or is listed as acceptable surety on Federal bonds in Circular 570 of the U.S. Department of the Treasury;**

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**2. Include any applicable Department file number, and the name, street address, lot, block, municipality, and county of the mitigation site;**

**3. Specify that, if the issuer of the surety bond decides not to extend the surety bond beyond the then current expiration date, the issuer shall notify the person using the surety bond and the Department by certified mail of that decision at least 120 calendar days before the current expiration date, beginning from the date of receipt by the Department as shown on the signed return receipt; and**

**4. Specify that the Department may access the surety bond to pay for the cost of the mitigation project or mitigation bank, pursuant to N.J.A.C. 7:7-17.17(l).**

#### **7:7-17.22 Mitigation banks**

**(a) A mitigation bank requires approval by the Department prior to the sale of any mitigation credits. “Approval” for the purposes of this section means approval in accordance with N.J.A.C. 7:7-17.23.**

**(b) If the establishment of a mitigation bank involves regulated activities as described at N.J.A.C. 7:7-2, the bank operator shall obtain all necessary approvals from the Department prior to undertaking the regulated activities.**

**(c) Once the Department has approved a mitigation bank, the bank operator shall carry out all requirements of the banking instrument approving the bank, regardless of whether or when credits are sold.**

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**(d) The Department shall determine how many mitigation credits each mitigation bank operator may receive or sell, based on the increase in values and functions created as a result of the proposed mitigation bank, as well as how the increase in functions and values will interact with the regional aquatic and non-aquatic resources. The Department shall evaluate each mitigation bank to determine its functions and values considering the following:**

- 1. The functions and values provided by the bank site at the time the mitigation bank proposal is submitted, such as existing soil, vegetation, water quality functions, flood storage capacity, soil erosion and sediment control functions, and wildlife habitat functions;**
- 2. Whether the proposed mitigation activities will result in an increase in functions and values over the existing value of the mitigation bank site;**
- 3. The likelihood of long-term success of the proposed mitigation activities in creating functions and values similar to undisturbed wetlands, intertidal and subtidal shallows, submerged vegetation habitat, tidal water, and riparian zones;**
- 4. The amount of wetlands, intertidal and subtidal shallows, submerged vegetation habitat, tidal water, and/or riparian zones located on the proposed bank site;**
- 5. The potential for the completed mitigation site to be a valuable component of the ecosystem;**
- 6. The size and scope of the bank;**
- 7. The types of resource losses that have occurred in the area;**

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**8. The similarity or dissimilarity of the bank to other existing aquatic and wetlands resources in the area;**

**9. Available scientific literature regarding credit ratios; and**

**10. The Department's and other government agencies' experience with mitigation and mitigation banks.**

**(e) The Department shall include in the banking instrument approving a mitigation bank, a schedule, as set forth in (e)1 through 8 below, under which a bank operator may sell credits. The Department shall adjust the amount of credits that can be released under (e)2 through 8 below to reflect the degree of progress the bank has shown toward meeting the goals and performance standards in the approved mitigation proposal:**

**1. Ten percent of the credits shall be released upon completion of both of the following:**

**i. Signing of the banking instrument approving the bank; and**

**ii. Compliance with all pre-release credit sale conditions in the banking instrument approving the bank, including securing all construction permits, posting adequate and effective financial assurance in accordance with N.J.A.C. 7:7-17.17, and filing of the conservation restriction;**

**2. Up to 10 percent of the credits shall be released upon successful establishment of the approved hydrologic regime, such that this regime will persist over time under normal hydrologic conditions;**

**3. Up to 10 percent of the credits shall be released upon completion of planting as required in the banking instrument approving the bank;**

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**4. Up to 10 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for an entire one-year period;**

**5. Up to 10 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for a two year period;**

**6. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for three consecutive years;**

**7. Up to 15 percent of the credits shall be released when monitoring indicates that the performance standards in the banking instrument approving the bank have been met for four consecutive years; and**

**8. Up to 20 percent of the credits shall be released when monitoring in accordance with the banking instrument approving the bank indicates that the performance standards in the banking instrument have been met for five consecutive years.**

**(f) Preservation credits may be released in their entirety when the conditions set forth at (e)1 above have been met.**

**(g) The mitigation bank operator shall execute and record a conservation restriction on the mitigation bank site prior to the sale of any credits. The conservation restriction shall**

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**meet the requirements for protecting mitigation sites from future disturbance set forth at N.J.A.C. 7:7-18.**

**(h) The mitigation bank operator shall monitor the bank during and after construction until such time that the last credit is sold, the final inspection is conducted, or the bank is transferred to a charitable conservancy, whichever occurs last, in order to ensure its success. The bank operator shall submit progress reports to the Department at least annually during and after construction, and more frequently if required by the banking instrument approving the bank.**

**(i) If the mitigation bank falls more than one year behind the schedule for completion specified in the banking instrument approving the bank, the Department may amend the banking instrument approving the bank, and may require corrective action to ensure the successful completion of the bank. The Department may reduce the number of credits that may be sold based on the approved corrective action, in order to reflect the change in values and functions that will result from the changes to the bank.**

**(j) Upon completion of the monitoring period and all other requirements in the banking instrument approving the bank, the Department shall determine the mitigation bank is successful, provided the mitigation bank operator:**

**1. Demonstrates that the bank is successful, as set forth within the banking instrument and the permit;**

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- 2. Transfers the mitigation bank site in fee simple to a government agency or Department-approved charitable conservancy;**
- 3. Provides the government agency or charitable conservancy to which the mitigation bank site is transferred with a maintenance fund. The maintenance fund shall support maintenance activities such as trash removal, maintenance of natural features, monitoring of the site to ensure proper upkeep, maintenance of water control structures, fences, or safety features, and any other activities necessary to ensure that the site complies with this chapter and all applicable law. The amount of the maintenance fund shall be determined between the bank operator and the agency or conservancy to which the mitigation bank site is transferred; and**
- 4. Ensures that the transfer, and the conservation restriction or easement required under (g) above, are recorded with the county or other appropriate agency.**

**(k) Upon expiration of the banking instrument that authorizes the creation of a mitigation bank, the Department shall determine whether the amount of mitigation completed at the bank site is commensurate with the number of credits already sold. If the Department determines that the amount of mitigation completed is less than the number of credits already sold, the mitigation bank operator shall be considered in default and the Department may assert its rights to the financial assurance provided under this subchapter.**

#### **7:7-17.23 Application for a mitigation bank**

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**(a) A prospective mitigation bank operator may obtain conceptual review of a proposed mitigation bank before buying land or preparing a detailed mitigation bank proposal. In a conceptual review, Department staff will discuss the apparent strengths and weaknesses of the proposed mitigation bank. Guidance provided through a conceptual review is not binding on the Department until and unless it is incorporated into an approval obtained in accordance with this subchapter. A conceptual review does not grant any property or other rights, or in any way imply that mitigation activities or the sale of credits have been or will be authorized. The findings provided by the Department as part of the conceptual review shall be valid for a period of three years or until the rules governing mitigation banks are amended in a way that would render the conceptual review inconsistent with the new requirements, whichever occurs first. Once expired, a new conceptual review shall be required if a prospective mitigation bank operator chooses to continue pursuing a proposal.**

**(b) To obtain conceptual review of a proposed mitigation bank, an applicant shall submit the following to the Department:**

- 1. Information on the location, size, and environmental characteristics of the proposed mitigation bank site;**
- 2. Information on previous uses of the site, including possible contamination and/or historic or archaeological resources;**
- 3. The proposed mitigation alternatives being considered, such as creation, restoration, and/or enhancement;**

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**4. Whether the credits generated by the bank will be used solely by the mitigation bank operator, or will be available for use by others;**

**5. Maps, photographs, diagrams, delineations, and/or other visual materials necessary for the Department to generally evaluate the proposed mitigation bank;**

**6. The names and addresses of all current owners of the mitigation bank site, and any prospective owners, as of the date the request for conceptual review is submitted; and**

**7. Consent from the owner of the proposed mitigation bank site, allowing Department representatives to enter the property in a reasonable manner and at reasonable times to inspect the site.**

**(c) To obtain Department approval of a proposed mitigation bank, an applicant shall submit the information required by the wetlands mitigation bank proposal checklist, available from the Department at the address set forth at N.J.A.C. 7:7-1.6. The checklist shall require the following:**

**1. A functional assessment of the bank site prior to construction and proposed site conditions after construction;**

**2. The goals and objectives of the bank;**

**3. The ownership of the bank site including disclosure of any leases, easements, or other encumbrances;**

**4. The size of the bank site as well as type and amount of the coastal resources for which credits from the bank could serve as suitable compensation;**

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**5. A description of baseline conditions on the bank site, including all relevant natural features and parameters, as well as pollutants, contamination, and other factors which could affect the bank's ability to provide mitigation credits;**

**6. The service area within which the mitigation bank credits can be used to compensate for a disturbance. The service area shall be designated to give priority to mitigation for impacts in close proximity to the site;**

**7. The method for determining credits and debits;**

**8. Accounting procedures;**

**9. Performance standards to enable the Department to determine when credits may be released under N.J.A.C. 7:7-17.22(e);**

**10. Performance standards to enable the Department to determine if and when the mitigation bank is successful;**

**11. Reporting protocols and a monitoring plan;**

**12. Contingency and corrective actions that will be taken by the mitigation bank operator in case the bank fails;**

**13. Financial assurance meeting the requirements of N.J.A.C. 7:7-17.17;**

**14. Provisions for long-term management and maintenance of the mitigation bank site;**

**15. Site plans, cost estimates, and schedules for construction, completion, and transfer of the mitigation bank;**

**16. Draft legal instruments necessary to meet the requirements of this chapter, including a conservation restriction, financial assurance, property transfer, and/or agreement with a charitable conservancy to maintain the site;**

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**17. Identification of the persons who will construct, operate and maintain the mitigation bank and mitigation bank site; and**

**18. Documentation that public notice of the proposed mitigation bank was provided in accordance with N.J.A.C. 7:7-24.**

**(d) The Department's approval of a mitigation bank shall incorporate conditions necessary to ensure that the requirements of this subchapter are met.**

## **SUBCHAPTER 18. CONSERVATION RESTRICTIONS**

### **7:7-18.1 Conservation restriction form and recording requirements**

**(a) Any conservation restriction required under this chapter shall conform with the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq., and shall:**

**1. Run with the land and be binding, in perpetuity, upon:**

**i. For mitigation areas, the land owner and successors in interest to any interest in the land or any part of the land covered by the mitigation area; and**

**ii. For conservation restrictions required under this chapter that do not include a mitigation area, the land owner and successors in interest to any interest in the land or in any part thereof;**

**2. Be recorded in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq., in the chain of title for all properties affected by the restriction; and**

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**3. Be in the form and include such terms as specified and approved by the Department.**

**The applicant shall not alter the form except in consultation with the Department and only when the Department agrees that an alteration is necessary to address site-specific conditions. Form conservation restrictions are available from the Department's website at the address set forth at N.J.A.C. 7:7-1.6.**

**(b) The conservation restriction shall be recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the development, project, project site, or mitigation area is located, and proof that the conservation restriction has been recorded shall be provided to the Department as follows:**

**1. For a permit that authorizes the establishment of a mitigation bank, prior to the release of any credits; and**

**2. For any other permit for which a conservation restriction is required, prior to the sooner of either the start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project), or the date that is 90 calendar days after the issuance of the permit.**

**(c) Proof that the conservation restriction has been recorded under (b) above shall be in the form of either a copy of the complete recorded document or a receipt from the clerk or other proof of recordation provided by the recording office. However, if the initial proof provided to the Department is not a copy of the complete recorded document, a copy of the**

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**complete recorded document shall be provided to the Department within 180 days of the issuance of the permit.**

**(d) In addition to meeting the requirements of this section, a conservation restriction for a mitigation area shall also meet the requirements of N.J.A.C. 7:7-18.2.**

**7:7-18.2 Additional requirements applicable to a conservation restriction for mitigation areas**

**(a) The conservation restriction shall include a requirement that each owner of any interest in the land subject to the conservation restriction (that is, the mitigation area) shall:**

**1. Notify the county and/or municipality of the conservation restriction whenever any application for a local approval involving the land subject to the conservation restriction is submitted; and**

**2. Insert notice of the conservation restriction into any subsequent deed or other legal instrument by which the owner divests either the fee simple title or any possessory interest in the land subject to the conservation restriction.**

**(b) Any conservation restriction shall be enforceable by the Department. The Department may also direct that the conservation restriction be made enforceable by a government agency or by a charitable conservancy whose trustees have no other ownership interest in the land.**

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**(c) If the mitigation area is donated land or a freshwater wetlands mitigation bank that requires approval by the Wetlands Mitigation Council in accordance with N.J.A.C. 7:7A, the conservation restriction shall be approved by both the Department and the Wetlands Mitigation Council.**

#### **7:7-18.3 Reservation of rights**

**(a) The property owner or grantor may request approval from the Department to undertake a de minimis modification of the area subject to a conservation restriction recorded in accordance with this subchapter. The Department shall approve the modification if it determines that the modification will result in an equivalent level of protection of the regulated resource; or the modification will result in an equivalent area of resource protection and will not compromise the original protected resource.**

**(b) The property owner or grantor may reserve the right to abandon the project. At any time prior to the start of any site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project, the property owner or grantor may inform the Department in writing that it is abandoning the project and request that the Department void the permit. Upon confirmation that no site disturbance, including pre-construction earth movement, removal of vegetation or structures, or construction of the project has occurred, the Department shall provide to the**

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**permittee or grantor an executed release of the conservation restriction, which the permittee or grantor may then record.**

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

7:7-[1.10]**19.1** [Construction; relaxation] **Relaxation** of procedures [or reconsideration of application of substantive standards] **in this chapter**

[(a) This chapter shall be liberally construed to effectuate the purpose of the Acts under which it was adopted.]

[(b)] The Department may, in its discretion and if consistent with statutory requirements, relax the application of any of the procedures in this chapter when necessary and in the public interest.

### **7:7-19.2 Reconsideration of the application of a rule(s) in this chapter**

[(c)] **(a)** The Department may reconsider the application of one or more of the [substantive standards in the] rules [on Coastal Zone Management at N.J.A.C. 7:7E] **in this chapter**, provided:

1. The Department has rendered a decision on a permit application under the [substantive standards at N.J.A.C. 7:7E] **rules in this chapter** as strictly applied;
2. (No change.)
3. [Either] **Any** of the following requirements is met:

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i. A court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the property owner thereupon submits a request for a reconsideration of the application of a [substantive standard of N.J.A.C. 7:7E] **rule(s) in this chapter**; [or]

ii. A takings complaint has been filed with the court or the court has determined that the issuance, modification, or denial of a coastal permit would constitute a taking of property, and the Department initiates the reconsideration; **or**

**iii. The issuance, modification, or denial of a coastal permit is for a single-family home or duplex and the Department initiates the reconsideration prior to the filing of a takings complaint.**

[(d)] **(b)** In making the determination to reconsider an application of a [substantive standard of N.J.A.C. 7:7E] **rule in this chapter** under [(c)] **(a)** above, the Department shall prepare a written analysis that evaluates three factors:

1. The investments the property owner made in the property that is the subject of the coastal permit application and whether the investments were reasonable and reflected reasonable expectations, in accordance with [(e)] **(c)** below;

2. The minimum beneficial economically viable use of the property, in accordance with [(f)] **(d)** below; and

3. The environmental impacts of the minimum beneficial economically viable use for the property, and their consistency with the goals of CAFRA, [N.J.S.A. 13:19-1 et seq.,] the Waterfront Development Law, N.J.S.A 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with [(g)] **(e)** below.

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[(e)] (c) (No change in text.)

[(f)] (d) In determining the minimum beneficial economically viable use of the property, the Department shall consider existing legal precedent at the time of the determination. A use shall not be excluded from consideration as a minimum beneficial economically viable use merely because it diminishes the value of the property as a whole, does not result in a profit, reduces the marketability of the property as a whole, or does not allow the property owner to recoup all reasonable investments identified under [(e)] (c) above.

[(g)] (e) In determining the environmental impacts of any minimum beneficial economically viable uses of the property and the consistency of those impacts with the goals of CAFRA, [N.J.S.A. 13:19-1 et seq.,] the Waterfront Development Law, N.J.S.A. 12:5-1 et seq., and the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., in accordance with [(d)] (b) above, the Department shall evaluate whether the minimum beneficial economically viable use would:

1. Adversely affect the [Special Areas] **special areas** described at N.J.A.C. [7:7E-3] **7:7-9**;
2. – 3. (No change.)

[(h)] (f) The Department shall not approve a minimum beneficial economically viable use as a result of the reconsideration of the application of a [substantive standard of N.J.A.C. 7:7E] **rule(s) in this chapter** under this section if that use would cause any one of the following:

1. – 3. (No change.)

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[(i)] **(g)** A property owner may request a reconsideration of **the** application of a [substantive standard(s) of N.J.A.C. 7:7E] **rule(s) in this chapter** only after:

1. - 2. (No change.)

[(j)] **(h)** A complete request for the reconsideration of [N.J.A.C. 7:7E standards] **a rule(s) in this chapter** under [(c) above] **this section** shall include the following items:

1. A completed [LURP] application form, **as described at N.J.A.C. 7:7-23.4 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6**, indicating a request for reconsideration and the type of permit being requested;

2. [Documentation that the following public notice requirements have been met:

i. Verification as required under N.J.A.C. 7:7-4.2(a)3 that public notice has been provided to the clerk of the municipality, and as applicable under that paragraph, to the Pinelands Commission; and

ii. Verification that a certified mail notice and an 8 ½ by 11 inch copy of the site plan and completed LURP application form have been forwarded to the construction official of the municipality in which the proposed development that is the subject of the reconsideration would occur, to the planning board and environmental commissions of the county in which the proposed development would occur, and to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of the property or properties on which the proposed development would occur, along with a certified list of all owners of real property, including easements as shown on the tax duplicate, within 200 feet. The list of property owners certified

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by the municipality shall be no more than one year old.] **Documentation in accordance with N.J.A.C. 7:7-24.6 that public notice of the request was provided in accordance with the requirements at N.J.A.C. 7:7-24.3.** The public notice shall follow the form provided by the Department, and shall state that a request for reconsideration has been submitted to the Department, that the request can be reviewed at the municipal clerk's office or at the Department, and that comments may be submitted to the Department within 15 **calendar** days of receipt of the notice. This notice may be combined with the offer to sell the property required under [(j)8] **(h)8** below[:];

3. An environmental impact statement or compliance statement, providing the information necessary for the Department to evaluate the environmental impacts of the proposed minimum beneficial economically viable use in accordance with [(g) and (h)] **(e) and (f)** above;

4. [Development] **Site** plans showing the project that is proposed in order to provide a minimum beneficial economically viable use;

5. Document(s) showing when the property as a whole[, as defined at N.J.A.C. 7:7-1.3,] was acquired, the purchase price of the property as a whole, and the instrument which documents the applicant's real property interest;

6. (No change.)

7. The language of a proposed conservation restriction that meets the requirements of [(n)2] **(l)2** below;

8. Documentation that the property has been offered for sale, in a letter following the form provided by the Department, to all owners of property, including easements as shown on the tax duplicate within 200 feet of the property as a whole, and to the land conservancies,

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environmental organizations, and governmental agencies on a list supplied by the Department.

This documentation shall include the following:

i. (No change.)

ii. All responses the property owner receives to the letters sent under this subsection. Each response shall be submitted to the Department within 15 **calendar** days after the property owner's receipt of the response; and

iii. (No change.)

9. The written offer of sale required under [(j)](h)8 above shall be sent by certified mail and shall:

i. – ii. (No change.)

iii. Include full disclosure of the location on the property and of any of the [Special Areas] **special areas** described at N.J.A.C. [7:7E-3] **7:7-9**; and

iv. Indicate that a reconsideration of [N.J.A.C. 7:7E standards] **a rule(s) in this chapter** to allow development of the property has been requested under this section;

10. (No change.)

11. Documents showing that the property owner has concluded all administrative and judicial appeals of the Department's decision on the application for a coastal permit. Such documentation shall include the last of the following (submitted after the appeal period for the applicable decision has expired):

i. (No change.)

ii. A final decision issued by the Commissioner regarding the Department's decision on the coastal permit application **if the property owner contested the permit decision**; or

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iii. Documentation that all appeals of any final decision issued by the Commissioner under [(j)11ii] **(h)11ii** above have been concluded.

[(k)] **(i)** In the case where the Department initiates the reconsideration of **the** application of [the substantive standards of N.J.A.C. 7:7E] **a rule(s) in this chapter** under [(c)] **(a)** above, the Department shall, upon initiation of the reconsideration process follow all steps described in [(k)1] **(i)1** through 3 below. In the case where the property owner is requesting a reconsideration of **the** application of [the substantive standards] **a rule(s)**, the Department shall, upon initiation of the reconsideration process, follow the steps described in [(k)1i] **(i)1i**, 1iii, 2, and 3 below:

1. Provide the following notifications:

i. (No change.)

ii. In accordance with the requirements at N.J.A.C. 7:7-[4.2(a)3]**24.2 and 24.3**; and

iii. (No change.)

2. – 3. (No change.)

[(l)] **(j)** If the Department determines to approve a development upon reconsideration of the application of [the substantive standards of N.J.A.C. 7:7E] **a rule(s) in this chapter**, the Department shall provide notice of the development that the Department proposes to allow under the reconsideration following the same procedure as described in [(k)1i] **(i)1i** above except that the Department shall provide a 30-day comment period, commencing from the date of publication of the notice in the DEP Bulletin.

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[(m)] **(k)** The Department shall complete the written analysis required under [(d)] **(b)** above, which shall incorporate its decision on the request for reconsideration of the application of [N.J.A.C. 7:7E standards] **a rule(s) in this chapter** as follows:

1. For a request for reconsideration under [(c) and (i)] **(a) and (g)** above, no later than 180 **calendar** days after receiving a complete request that meets all requirements at [(j)] **(h)** above; or
2. For a reconsideration initiated by the Department under [(c)] **(a)** above, no later than 180 **calendar** days from the publication of notice in the DEP Bulletin under [(k)] **(h)** above.

[(n)] **(l)** If the Department approves a development upon reconsideration of the application of [the substantive standards of N.J.A.C. 7:7E] **a rule(s) in this chapter** under [(c) above] **this section**, the approval shall, at a minimum:

1. (No change.)
2. Ensure that any part of the property as a whole that the Department does not allow to be developed upon reconsideration of [the substantive standards of N.J.A.C. 7:7E] **the application of a rule(s) in this chapter** under [(c) above] **this section** will be protected from future development by a recorded conservation restriction.

**(m) The property owner or any other person with a particularized property interest who is aggrieved by the Department's determination on a reconsideration of the application of a rule(s) in this chapter may request an adjudicatory hearing on the reconsideration determination pursuant to the procedures set forth at N.J.A.C. 7:7-28.1.**

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## **SUBCHAPTER 20. PROVISIONAL PERMITS**

7:7-[1.6]20.1 (No change in text.)

## **SUBCHAPTER 21. EMERGENCY AUTHORIZATIONS**

### **7:7-21.1 Standard for issuance of an emergency authorization**

(a) **The Department shall issue an emergency authorization only if the person seeking such authorization demonstrates that a threat to life, severe loss of property, or environmental degradation exists or is imminent, and the threat, severe loss, or degradation:**

- 1. Can only be prevented or ameliorated through undertaking a regulated activity; and**
- 2. Is likely to occur, persist, or be exacerbated before the Department can issue an authorization under a general permit or an individual permit for the preventive or ameliorative activity.**

### **7:7-21.2 Procedure to request an emergency authorization**

(a) **A person requesting an emergency authorization shall provide the Department with the following information by telephone and, in addition, by fax, electronic mail, or letter, unless the nature of the emergency is so immediate that only telephone notice is feasible:**

- 1. The name, address, and contact information for the owner(s) of the property upon which the regulated activity will be conducted and for the owner(s) of any other properties affected by the proposed regulated activity;**

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**2. A demonstration that the property owner(s) has given permission for the proposed regulated activity or, in the case of a public entity proposing activities on private property through power of eminent domain, a written statement of the public entity's intention to conduct the regulated activity;**

**3. The street address, lot, block, municipality, and county of the property upon which the regulated activity is proposed;**

**4. The nature and cause of the threat to life, severe loss of property, or environmental degradation, including the condition of existing structures, the vulnerability of people and/or property, and the threat to the environment;**

**5. The date and time at which the person requesting the emergency authorization learned of the threat to life, severe loss of property, or environmental degradation;**

**6. The nature and extent of the proposed regulated activity;**

**7. The proposed start and completion dates for the proposed regulated activity;**

**8. Photographs of the area where the regulated activity will be conducted;**

**9. If possible, a site plan showing the proposed regulated activity and anticipated impacts of the proposed activity to special areas; and**

**10. Any other information necessary for the Department to ensure compliance with the requirements of this chapter.**

**(b) A person requesting an emergency authorization need not comply with the public notice requirements at N.J.A.C. 7:7-24 or submit an application fee. However, public notice and an application fee are required for the application for the general permit**

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**authorization or the individual permit, as applicable, that, as required at N.J.A.C. 7:7-**

**21.3(e), must be submitted for the activities conducted under the emergency authorization.**

**7:7-21.3 Issuance of emergency authorization; conditions**

**(a) The Department shall issue or deny an emergency authorization within 15 calendar days after receiving a request that meets the requirements of N.J.A.C. 7:7-21.2. The Director of the Division of Land Use Regulation, or the Director's designee, shall provide this decision to the person who requested the emergency authorization verbally and, if the decision is to issue the emergency authorization, shall provide written confirmation within five working days thereafter.**

**(b) Within 20 calendar days after the verbal decision to issue an emergency authorization, the Department shall publish notice of the emergency authorization in the DEP Bulletin.**

**(c) The Department's written confirmation of its decision to issue the emergency authorization shall include:**

**1. A full description of the activities authorized under the emergency authorization;**

**2. The time frames within which the regulated activities authorized under the emergency authorization must be commenced and conducted as set forth in (d) below;**

**3. A requirement that the person conducting the regulated activities authorized under the emergency authorization provide regular updates of progress at the site;**

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**4. Any limits or other criteria necessary to ensure compliance to the maximum extent practicable with all requirements of this chapter; and**

**5. A requirement to provide mitigation for impacts to special areas in accordance with N.J.A.C. 7:7-9 and 17, as appropriate.**

**(d) The regulated activities authorized under the emergency authorization shall be commenced and conducted within the following timeframes:**

**1. Activities authorized under the emergency authorization shall be commenced within 30 calendar days after the Department's verbal decision is provided pursuant to (a) above, unless the Department establishes a different timeframe in accordance with (f) below. If the emergency activities are not commenced within 30 calendar days or by the date established under (f) below, as applicable, the emergency authorization is automatically void as of the 30th calendar day after the verbal approval or as of the date established in accordance with (f) below, as applicable;**

**2. Activities authorized under the emergency authorization, including any required restoration, shall be completed within 60 calendar days after the Department's verbal decision is provided in accordance with (a) above, unless the Department establishes a different timeframe in accordance with (f) below. If the regulated activities authorized under the emergency authorization are not completed within 60 calendar days or by the date established in accordance with (f) below, as applicable, the regulated activities shall cease until either a general permit authorization or individual permit is obtained, or another emergency authorization is obtained.**

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**(e) The person to whom the emergency authorization is provided shall submit a complete application in accordance with N.J.A.C. 7:7-23 for an authorization under a general permit or for an individual permit for the activities conducted under the emergency authorization within 90 calendar days after the Department's verbal decision is provided in accordance with (a) above, or by a different date established in accordance with (f) below, as applicable.**

**(f) The Department shall establish a time frame different from those set forth at (d) or (e) above where the applicant demonstrates that the time frame set forth at (d) or (e) cannot feasibly be met for all or a portion of the authorized activities or where the Department determines that a different time frame is necessary to facilitate the regulated activities.**

**(g) The person to whom the emergency authorization is provided shall conduct all activities authorized under the emergency authorization in accordance with all requirements that apply to that activity under this chapter to the maximum extent practicable.**

**(h) The general permit authorization or individual permit application submitted under (e) above shall, in addition to meeting the application requirements for the specific general permit authorization or individual permit, include:**

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**1. A demonstration that the regulated activities conducted under the emergency authorization meet the requirements of this chapter, or an explanation as to why full compliance could not be achieved; and**

**2. “As-built” site plans, signed and sealed by an engineer, land surveyor, or architect, as appropriate, showing the regulated activities that were or are being conducted under the emergency authorization.**

**(i) Upon review of the application submitted under (e) above, the Department shall require design changes, restoration, and/or stabilization measures as necessary to ensure the requirements of this chapter are met to the maximum extent practicable.**

**(j) The Department may modify or terminate an emergency authorization at any time without prior notice if the Department determines that modification or termination is necessary to protect public health, safety, and welfare, and/or the environment.**

**(k) If the person to whom the emergency authorization was provided conducts any regulated activity not authorized under the emergency authorization and/or the general permit or individual permit obtained thereafter for the activities governed by the emergency authorization, such shall constitute a violation of this chapter subject to enforcement action under N.J.A.C. 7:7-29.**

## **SUBCHAPTER 22. PRE-APPLICATION CONFERENCES**

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**7:7-22.1 Purpose and scope**

(a) A pre-application conference is a meeting between the Department and a prospective applicant to discuss the applicant's project and the application procedures and standards that will apply to the project. A prospective applicant may request a pre-application conference for any project. In the appropriate case, the Department may determine that the questions raised by a prospective applicant can be adequately addressed by telephone or in writing.

(b) A pre-application conference is not mandatory, except when the prospective applicant's project will involve the installation of submarine cables in the Atlantic Ocean. In this case, the prospective applicant shall comply with the requirements at N.J.A.C. 7:7-22.2(d).

(c) A pre-application conference is recommended for large and/or complicated projects, as well as for dredging and dredged material management projects.

(d) Discussion or guidance offered by the Department at a pre-application conference shall not constitute a commitment by the Department to approve or deny an application.

(e) There is no fee for a pre-application conference.

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**(f) Where the prospective applicant's project will require approvals from several Department programs, the applicant is encouraged to contact the Department's Office of Permit Coordination and Environmental Review at (609) 292-3600 for assistance in coordinating the various applications.**

**7:7-22.2 Request for a pre-application conference; scheduling; information required**

**(a) Except as provided at (b) and (d) below, a request for a pre-application conference shall be directed by electronic mail to LURTechSupport@dep.state.nj.us, or by writing to the address set forth at N.J.A.C. 7:7-1.6 to the attention of "Supervisor, (county in which the proposed project is located)."**

**(b) A request for a pre-application conference for a dredging or dredged material management project shall be directed to Supervisor, Office of Dredging and Sediment Technology, Site Remediation Program, NJ Department of Environmental Protection, P.O. Box 420, Mail Code 401-06C, 401 East State Street, 6th Floor, Trenton, NJ 08625 (Telephone: (609) 633-6801).**

**(c) A request for a pre-application conference for any project shall include the following:**

- 1. A written description of the site and the proposed development including the dimensions, number, and uses of proposed structures;**
- 2. Site plans or conceptual designs depicting the proposed development, if available;**

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**3. The street address, lot, block, municipality, and county of the property upon which the regulated activity is proposed; and**

**4. A copy of any letter of interpretation pursuant to the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, or any flood hazard area verification pursuant to the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, which the Department has issued for the site. If neither a letter of interpretation nor a flood hazard area verification has been issued, the prospective applicant shall provide the general location of freshwater wetlands, freshwater wetland transition areas, State open waters, and special areas, as described at N.J.A.C. 7:7-9.**

**(d) A pre-application conference for a project that involves the installation of submarine cables in the Atlantic Ocean shall be requested early in the design process and shall be directed to Manager, NJDEP Bureau of Coastal Regulation, Mail Code 501-02A, PO Box 420, Trenton, New Jersey, 08625-0420. In addition to information required to be submitted under (c) above, the prospective applicant shall provide:**

**1. A written description of the proposed project, along with a NOAA nautical chart depicting potential cable routes in relationship to existing cable routes; and**

**2. Documentation that written notice of the pre-application conference was provided at least 15 calendar days prior to date of the pre-application conference to the entities at (d)2i through vi below. The notice shall state the date, time and location of the pre-application conference, and shall include a copy of the applicable NOAA nautical chart depicting the proposed cable route.**

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- i. Garden State Seafood Association;**
- ii. National Fisheries Institute;**
- iii. North Atlantic Clam Association;**
- iv. Rutgers Cooperative Extension;**
- v. New Jersey Shellfisheries Council; and**
- vi. New Jersey Marine Fisheries Council.**

**(e) Within 10 calendar days of receipt of the material submitted in accordance with (c) above, the Department shall:**

- 1. Determine that a pre-application conference is necessary and contact the prospective applicant to schedule a pre-application conference; or**
- 2. Determine that a pre-application conference is not necessary and that the prospective applicant's questions can be addressed in writing or by telephone. Where the Department makes such a determination, the Department shall address the questions within 20 calendar days of receipt of the material submitted in accordance with (c) above.**

## **SUBCHAPTER 23. APPLICATION REQUIREMENTS**

### **7:7-23.1 Purpose and scope**

- (a) This subchapter sets forth the application requirements for:**
  - 1. An authorization under a general permit-by-certification;**
  - 2. An authorization under a general permit; and**
  - 3. An individual permit.**

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**(b) The application requirements for the following are set forth elsewhere in this chapter:**

- 1. For a written determination of exemption from CAFRA or the Waterfront Development Law, see N.J.A.C. 7:7-2.2(f) or 2.4(f), respectively;**
- 2. For an applicability determination, see N.J.A.C. 7:7-2.5;**
- 3. For approval of a mitigation proposal, see N.J.A.C. 7:7-17;**
- 4. For an emergency authorization, see N.J.A.C. 7:7-21; and**
- 5. For an extension, transfer, or modification of a permit, see N.J.A.C. 7:7-27.3, 27.4, or 27.5, respectively.**

#### **7:7-23.2 General application requirements**

**(a) The Department provides a checklist for each type of application submitted under this subchapter. The checklist identifies all of the submissions required under the rules to be part of an application, and also the appropriate level of detail and the format of the information to be submitted for each type of application. For example, where the rules require, as part of an application, the submittal of a site plan or photographs showing certain types of information, the corresponding checklist will indicate, based on the type of development the particular permit covers, the number of copies of the plan to be submitted, the scale and details of the information to be illustrated on the plan, and the number and orientation of photographs of the location of the proposed development. The checklist will also indicate that the plan should be folded or prepared in a certain manner**

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to facilitate processing. Checklists can be downloaded from the Department's website at [www.state.nj.us/dep/landuse](http://www.state.nj.us/dep/landuse) or obtained by contacting the Department at the address set forth at N.J.A.C. 7:7-1.6.

(b) The level of detail and documentation required for an application shall be commensurate with the size and impact of the proposed activity, its proximity to any of the special areas described at N.J.A.C. 7:7-9, and its potential for environmental impacts. The Department shall, upon request, provide an applicant with guidance regarding the appropriate level of detail for an application based on the activity the applicant proposes to undertake.

(c) The following persons may submit an application under this subchapter:

1. The owner(s) of a site on which an activity is proposed or conducted;
2. An agent designated by the owner(s) of a site to obtain or operate under a permit on behalf of the owner(s); or
3. A public entity proposing an activity within a right-of-way or easement that is held or controlled by that entity or that will be appropriated by that entity under the power of eminent domain.

(d) An application shall be certified as set forth in (j) below by the following individual(s), or by a duly authorized representative, as described at (e) below:

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**1. If the applicant is a corporation, a principal executive officer of at least the level of vice president;**

**2. If the applicant is a partnership or sole proprietorship, a general partner or the proprietor, respectively;**

**3. If the applicant is a municipality, or a State, Federal, or other public entity, either a principal executive officer or ranking elected official; or**

**4. If the applicant is an entity not covered at (d)1 through 3 above, all individual owners of record of the property upon which the activities will occur.**

**(e) An individual is a duly authorized representative of the applicant under (d) above only if the authorization is:**

**1. Made in writing by an individual required to certify under (d) above and is provided to the Department as part of the application; and**

**2. Specifies that the authorized representative is either:**

**i. The individual who has overall responsibility to operate, construct or complete the activity, such as a contractor, construction site supervisor, or other individual of equivalent responsibility; or**

**ii. A position of responsibility equivalent to that of the individual in (e)2i above. In this case, the individual holding the specified position is the duly authorized representative for purposes of (d) above.**

**(f) If the written authorization provided to the Department under (e) above is no longer**

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**accurate because a different individual or position has overall responsibility to operate, construct, or complete the activity, a new authorization satisfying the requirements of (e) above shall be submitted to the Department prior to or concurrent with any reports, information, or applications requiring the applicant's certification.**

**(g) If an application includes activities within a right-of-way or easement, the application shall include written consent for the activity from the holder(s) of the right-of-way or easement.**

**(h) Any site plan submitted as part of an application shall be signed and sealed by a New Jersey licensed professional engineer, surveyor, or architect, as appropriate, unless both (h)1 and 2 below apply, in which case the applicant may elect to prepare his or her own site plan:**

**1. The applicant proposes an activity in a man-made lagoon, or the applicant proposes the construction of a single-family home or duplex or an accessory development located landward of the mean high water line, such as a patio, garage, or shed on his or her own property for his or her own use; and**

**2. The proposed activity or construction is one for which no survey, topography, or calculations are necessary to demonstrate the requirements of this chapter are met.**

**(i) Any professional report, survey, calculation, environmental impact statement, or other document prepared by a consultant, engineer, architect, surveyor, attorney, scientist,**

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**or other professional and submitted as part of an application shall be certified in accordance with (j) below. This certification is separate from the certification of the application by the applicant.**

**(j) The certification required by (d) and (i) above is as follows:**

**“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining and preparing the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.”**

**(k) Failure to provide complete and accurate information of which the applicant or its agents are aware, or reasonably should have been aware, may result in denial of an application or termination of the authorization under the general permit-by-certification or general permit, or the individual permit under N.J.A.C. 7:7-27.8, and may subject the applicant or its agents to enforcement action under N.J.A.C. 7:7-29.**

**(l) When a proposed development or project requires more than one coastal permit under this subchapter, or requires, in addition, an approval under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and/or the Freshwater Wetlands Protection Act Rules**

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at N.J.A.C. 7:7A, an applicant may submit a single application for all of the approvals, except for an authorization under a general permit-by-certification, provided that the application meets all application requirements of each such approval included.

**7:7-23.3 Additional application requirements for an authorization under a general permit-by-certification**

(a) An application for authorization under a general permit-by-certification shall be submitted electronically through the Department's online permitting system at <http://nj.gov/dep/online>.

(b) The online application for a general permit-by-certification requires an applicant to provide the following:

1. The number (and subject matter) of the general permit-by-certification under which the application for authorization is being submitted;
2. The name of or other identifier for the proposed development or project;
3. The location of the proposed development or project, including address, city, state, zip code, municipality, State plane coordinates, lot, and block;
4. Information specific to the proposed project related to the requirements of the general permit-by-certification under which the application is being submitted, such as, for example, the length in linear feet of bulkhead that is being replaced under general permit-by-certification 10 (see N.J.A.C. 7:7-5.1);

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**5. Contact information for both the applicant and the property owner, including: name, address, telephone number, email address, municipality, county, organization, and organization type;**

**6. A certification, as set forth in N.J.A.C. 7:7-23.2(j), as to each of the following:**

**i. That the site identified in the application is the actual location of the project site;**

**ii. That public notice of the application has been provided in accordance with N.J.A.C. 7:7-24;**

**iii. That the applicant has obtained written consent from the property owner that the application can be made on the property owner's behalf. This certification is required regardless of whether the applicant and property owner are the same person; and**

**iv. That conditions specific to the general permit-by-certification under which the application for authorization is being submitted are or will be met. For example, an applicant for authorization under general permit-by-certification 10 must certify that the proposed bulkhead will be constructed of non-polluting materials, and an applicant for authorization under general permit-by-certification 15 must certify that the property is located on a man-made lagoon;**

**7. To accomplish the certification under (b)6 above, the PIN that was issued to the applicant upon registering with the Department's online permitting system; and**

**8. The application fee for a general permit-by-certification set forth at N.J.A.C. 7:7-25.**

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(c) **Once the online application process is successfully completed, the authorization will be accessible to the applicant through the Department's online permitting system at <http://nj.gov.dep/online>.**

**7:7-23.4 Additional application requirements for an authorization under a general permit or for an individual permit**

(a) **In addition to meeting the requirements at N.J.A.C. 7:7-23.2, an application for an authorization under a general permit authorization or for an individual permit shall include the following material, in the number and format specified in the appropriate application checklist:**

**1. A completed application form, available from the Department at the address set forth at N.J.A.C. 7:7-1.6. This form requires basic information regarding the proposed development, including the name and address of the applicant and any designated agents, the specific location of the project, the types of permits or authorizations being sought, a brief description of the proposed activities and certifications to the truth and accuracy of the information provided and ownership of the property;**

**2. Documentation that public notice has been provided in accordance with N.J.A.C. 7:7-24;**

**3. The appropriate application fee as set forth at N.J.A.C. 7:7-25;**

**4. Site plans, certified in accordance with N.J.A.C. 7:7-23.2(i) which includes the following, both on and adjacent to the site:**

**i. Existing features, such as lot lines, structures, land coverage, vegetation, and**

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**bathymetry, which are necessary to demonstrate that the proposed development meets the requirements of this chapter;**

**ii. All proposed regulated activities, such as changes in lot lines; the size, location, and details of any proposed structures, roads, or utilities; details of any clearing, grading, filling, excavation, or dredging; changes in bathymetry; and the anticipated limits of disturbance;**

**iii. Existing and proposed topography where necessary to demonstrate that the proposed development meets the requirements of this chapter. All topography shall reference the National Geodetic Vertical Datum of 1929 (NGVD), or include the appropriate conversion factor to NGVD;**

**iv. The limits of any existing or proposed tidelands instrument;**

**v. Details of any proposed soil erosion and sediment control measures;**

**vi. The mean high, mean low, and spring high water lines of any tidal waters, water depths, and location of navigation channels;**

**vii. The upper and lower limits of all special areas, as described at N.J.A.C. 7:7-9; and**

**viii. The location of any existing or proposed public access to lands and waters subject to public trust rights as set forth at N.J.A.C. 7:7-9.48;**

**5. State plane coordinates for a point at the approximate center of the site, except for linear developments as provided at (a)5i below. The accuracy of the State plane coordinates shall be within 50 feet of the actual center point for the site.**

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**i. State plane coordinates shall be provided for linear developments or shore protection developments including beach nourishment, beach and dune maintenance, or dune creation as follows:**

**(1) For a linear development of one-half mile or more in length, the State plane coordinates shall include the coordinates for the end points of the development and the coordinates for points located at 1,000 foot intervals along the entire length of the development; and**

**(2) For a linear development of less than one-half mile in length, the State plane coordinates shall include the coordinates for the end points of the development;**

**6. In addition to the site plan specified at (a)4 above, other visual representations, such as photographs, graphs, and tables, that illustrate existing site conditions and the proposed development;**

**7. Calculations, analyses, data, and supporting materials necessary to demonstrate that the proposed development meets the requirements of this chapter, and the requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8, if applicable;**

**8. Information about the anticipated impacts of the proposed development, including any monitoring or reporting methods that will be used;**

**9. Any information necessary to ensure compliance with State and/or Federal law, and/or to determine whether an application for authorization under a general permit or for an individual permit meets State and/or Federal standards; and**

**10. Consent from the owner of the site allowing the Department to enter the site in a reasonable manner and at reasonable times to inspect the site. This consent shall continue**

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**in effect for the duration of the permit application review and decision process, including for the duration of any appeal made from the permit decision.**

**7:7-23.5 Compliance statement requirement for an application for authorization under a general permit**

**(a) In addition to the requirements at N.J.A.C. 7:7-23.2 and 23.4, an application for authorization under a general permit shall include a compliance statement. The compliance statement is a narrative which shall:**

- 1. Demonstrate that the proposed development satisfies the requirements of the applicable general permit;**
- 2. Demonstrate, for an application for authorization under a CAFRA general permit, that the findings set forth in CAFRA at N.J.S.A. 13:19-10, and at N.J.A.C. 7:7-1.4, which must be addressed in order for the Department to issue the approval, can be made for the proposed development; and**
- 3. Describe the characteristics of the site and the location of all proposed regulated activities, potential impacts from the construction process, and, as applicable, the operation of the development after completion.**

**7:7-23.6 Additional requirements specific to an application for an individual permit**

**(a) In addition to meeting the requirements at N.J.A.C. 7:7-23.2 and 23.4, an application for an individual permit shall meet the requirements of this section.**

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**(b) An application for an individual permit shall include an Environmental Impact Statement (EIS). The EIS shall:**

**1. Describe in a narrative form:**

**i. The proposed development or activity;**

**ii. The characteristics of the site and the surrounding region; and**

**iii. The location of all proposed regulated activities, potential impacts from the construction process, and, as applicable, the operation of the development after completion;**

**2. Discuss the applicability of this chapter to the proposed development, including a detailed statement of compliance with each rule applicable to the type of development proposed;**

**i. Where the applicant believes a rule otherwise applicable to the type of development proposed does not apply, the applicant shall explain the reasons why the rule does not apply to the applicant's development;**

**3. Demonstrate, for an application for a CAFRA individual permit, that the findings set forth in CAFRA at N.J.S.A. 13:19-10, and at N.J.A.C. 7:7-1.4, which must be addressed in order for the Department to issue the approval, can be made for the proposed development; and**

**4. As necessary based on project-specific and site-specific circumstances, provide support by relevant experts for the assessments, discussions, and statements made in the EIS; include the qualifications of the persons who prepared each part of the EIS; and**

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**provide references and citations to all information, reports, or treatises that are mentioned in the EIS but not contained in the EIS.**

**(c) An application for an individual permit for development in an area under the jurisdiction of the Pinelands Commission shall also include a Certificate of Filing, a Notice of Filing, a Certificate of Completeness, or a resolution approving an application for public development, issued by the Pinelands Commission.**

**(d) If an activity for which an individual permit is sought requires mitigation in accordance with this chapter, the applicant may submit a mitigation proposal as part of the application for the individual permit. If the applicant does not submit a mitigation proposal with the application, the applicant shall submit the mitigation proposal at least 90 calendar days before the start of activities authorized by the permit, in accordance with N.J.A.C. 7:7-17.**

**(e) An application for an individual permit for the construction of wind turbines for which, in accordance with the energy facility use rule at N.J.A.C. 7:7-15.4, pre- and/or post-construction monitoring is required, shall include the proposed monitoring methodology.**

**(f) An application for an individual permit under the Waterfront Development Law or the Wetlands Act of 1970 that proposes the discharge of dredged or fill material into waters**

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**of the United States shall also constitute an application for a water quality certificate.**

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

### **7:7-24.1 Purpose and scope**

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

- 1. An application for an authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7-3 and 5;**
- 2. An application for an authorization under a general permit pursuant to N.J.A.C. 7:7-3 and 6;**
- 3. An application for an individual permit pursuant to N.J.A.C. 7:7-8;**
- 4. A mitigation proposal pursuant to N.J.A.C. 7:7-17, which is not submitted as part of an application for an individual permit; and**
- 5. An application for a major technical modification pursuant to N.J.A.C. 7:7-27.5(e).**

**(b) A person who requests a reconsideration of the application of any of the rules in this chapter under N.J.A.C. 7:7-19 shall provide public notice in accordance with N.J.A.C. 7:7-19.2(i)1ii.**

**(c) An applicant is not required to provide public notice for the following:**

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- 1. A request for an exemption letter pursuant to N.J.A.C. 7:7-2.2(f) and 2.4(f);**
- 2. A request for an applicability determination pursuant to N.J.A.C. 7:7-2.5;**
- 3. Conducting an activity under a permit-by-rule pursuant to N.J.A.C. 7:7-3 and 4;**
- 4. An application for an emergency authorization pursuant to N.J.A.C. 7:7-21;**
- 5. An application for an extension of the term of a permit pursuant to N.J.A.C. 7:7-27.3;**
- 6. The transfer of a permit pursuant to N.J.A.C. 7:7-27.4; and**
- 7. An application for an administrative or minor technical modification pursuant to N.J.A.C. 7:7-27.5(c) or (d), respectively.**

**(d) When a proposed development or project requires more than one coastal permit under this chapter, or requires, in addition, an approval under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and/or the Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A, an applicant may provide combined public notice for all applications submitted, provided the combined notice meets all of the notice requirements applicable to each application.**

**(e) Failure to provide public notice as required under this subchapter shall be cause for the Department to cancel an application under N.J.A.C. 7:7-26.7.**

#### **7:7-24.2 Timing of public notice of an application**

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**(a) For any of the applications listed in N.J.A.C. 7:7-24.1(a) other than an application for a CAFRA individual permit, the applicant shall provide public notice in accordance with this subchapter no more than 30 calendar days prior to submitting the application, and no later than the date the application is submitted to the Department.**

**(b) An applicant for a CAFRA individual permit shall provide public notice of the application in accordance with the time frames at (b)1 and 2 below. The applicant shall in addition provide public notice of a comment period or public hearing on the application for a CAFRA individual permit in accordance with N.J.A.C. 7:7-24.4.**

**1. Notice shall be provided pursuant to N.J.A.C. 7:7-24.3(a), (b)1 through 5, and (e) no more than 30 calendar days prior to submitting the application, and no later than the date the application is submitted to the Department. This time frame does not apply for notice to the recipients in N.J.A.C. 7:7-24.3(b)6, to whom notice shall be provided in accordance with N.J.A.C. 7:7-24.4; and**

**2. Notice shall be provided in the newspaper pursuant to N.J.A.C. 7:7-24.4(a) no more than 10 calendar days after the application is submitted to the Department.**

### **7:7-24.3 Contents and recipients of public notice of an application**

**(a) For any of the applications listed in N.J.A.C. 7:7-24.1(a), the applicant shall provide a copy of the entire application, as submitted to the Department, to the municipal clerk in each municipality in which the site is located.**

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**(b) For any of the applications listed in N.J.A.C. 7:7-24.1(a), the applicant shall provide notice of the application to all of the persons or entities at (b)1 through 6 below, in accordance with the time frames specified in N.J.A.C. 7:7-24.2. The notice shall include the information specified at (d) below.**

- 1. The construction official of each municipality in which the site is located;**
- 2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the site is located;**
- 3. The planning board of each municipality in which the site is located;**
- 4. The planning board of each county in which the site is located;**
- 5. The local Soil Conservation District if the project will disturb 5,000 square feet or more of land; and**
- 6. All owners of real property, including easements, located within 200 feet of the property boundary of the site in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12b, unless the proposed development is one of those listed at (c)1 through 4 below, in which case the notice shall be provided as set forth in (c) below. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department.**

**(c) If the permit application is for a development listed at (c)1 through 4 below, the applicant shall provide the notice required at (b)6 above by publishing newspaper notice and, in addition, sending the notice at (d) below, in the manner set forth in the Municipal**

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**Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development, such as a pumping station, treatment plant, groin, bulkhead, revetment or gabion, or dune walkover:**

**1. A linear project of one-half mile or longer;**

**2. A shore protection development, including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or longer;**

**3. A public development on a site of 50 acres or more; or**

**4. An industrial or commercial development on a site of 100 acres or more.**

**(d) The public notice required at (b) and (c) above, other than newspaper notice, shall:**

**1. Include all of the following:**

**i. A brief description of the proposed project;**

**ii. A site plan, showing the location and boundaries of the project site and depicting the proposed development in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the project in relation to the property boundary is clearly shown;**  
**and**

**iii. A copy of the form notice letter, available from the Department's website as set forth at N.J.A.C. 7:7-1.6. The form notice letter explains that: an application will be submitted to the Department for the specific development depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's**

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**office or by appointment at the Department's Trenton Office; and comments or information on the proposed development and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6 within 15 calendar days of receipt of the letter; and**

**2. Be sent by certified mail or by delivery whereby the signature of the person to whom the notice is delivered is obtained, except that an applicant may obtain written permission from the specific municipal or county entity to submit notice to it electronically.**

**(e) An applicant for an authorization under a general permit, individual permit, or major technical modification for a project in the Pinelands Preservation Area, the Pinelands Protection Area, or the Pinelands National Reserve shall provide a copy of the entire application, as submitted to the Department, to the New Jersey Pinelands Commission.**

**(f) In addition to the public notice required at (a) and (b) above, an applicant for a waterfront development individual permit to install a submarine cable, or to perform sand mining in the ocean, shall provide to all of the entities listed below a copy of the completed application form and a copy of the NOAA nautical chart showing the proposed cable route or the limits of the proposed sand mining area that were submitted to the Department as part of the permit application:**

- 1. Garden State Seafood Association;**
- 2. National Fisheries Institute;**
- 3. North Atlantic Clam Association;**

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- 4. Rutgers Cooperative Extension;**
- 5. New Jersey Shellfisheries Council; and**
- 6. New Jersey Marine Fisheries Council.**

**7:7-24.4 Additional requirements for public notice of an application for a CAFRA individual permit**

**(a) An applicant for a CAFRA individual permit shall publish newspaper notice, pursuant to N.J.A.C. 7:7-24.5, of the application in the time frame set forth at N.J.A.C. 7:7-24.2(b).**

**(b) An applicant for a CAFRA individual permit shall provide notice of the public comment period on the application when the Department schedules the public comment period in accordance with N.J.A.C. 7:7-26.4. The notice shall include the information listed in (d)1 below and shall be sent to all of the following:**

- 1. The municipal clerk in each municipality in which the project is located;**
- 2. The environmental commission, or other government agency with similar responsibilities, of each municipality in which the project is located;**
- 3. The planning board of each municipality in which the project is located; and**
- 4. All owners of real property, including easements, located within 200 feet of the property boundary of the site in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, unless the proposed development is one of those listed at (c)1 through**

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**4 below, in which case the notice shall be provided as set forth in (d) below. The owners of real property, including easements, shall be those on a list that was certified by the municipality. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department.**

**(c) An applicant for a CAFRA individual permit for a development listed at (c)1 through 4 below shall provide the notice required at (b)4 above by publishing newspaper notice and, in addition, sending the notice described at (d) below, in the manner set forth in the Municipal Land Use Law at N.J.S.A. 40:55D-12.b, to all owners of real property, including easements, within 200 feet of any proposed above ground structure that is part of the proposed development, such as a pumping station, treatment plant, groin, bulkhead, revetment or gabion, or dune walkover:**

- 1. A linear project of one-half mile or longer;**
- 2. A shore protection development, including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or longer;**
- 3. A public development on a site of 50 acres or more; or**
- 4. An industrial or commercial development on a site of 100 acres or more.**

**(d) The public notice required at (b) and (c) above, other than newspaper notice, shall include all of the following:**

- 1. A brief description of the proposed project;**
- 2. The DEP file number;**

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**3. A site plan, showing the location and boundaries of the project site and depicting the proposed development in relationship to existing site conditions. This need not be a full set of plans and may be shown on one 8½ inch by 11 inch sheet of paper provided the scale is legible and the location of the project in relation to the property boundary is clearly shown; and**

**4. A copy of the form notice letter, available from the Department's website as set forth at N.J.A.C. 7:7-1.6. The form notice letter explains that: an application will be submitted to the Department for the specific development depicted on the enclosed site plan; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; and comments or information on the proposed development and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6 within 15 calendar days of receipt of the letter.**

**(e) An applicant for a CAFRA individual permit shall provide notice of the public hearing on the application when the Department determines, in accordance with N.J.A.C. 7:7-26.5, that a public hearing is necessary. The notice shall be provided in the same manner as the notice of a public comment period under (b) through (d) above, and shall include the date, place, and time of the hearing as set by the Department pursuant to N.J.A.C. 7:7-26.5(b).**

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**7:7-24.5 Content and format of newspaper notice**

(a) The newspaper notice pursuant to N.J.A.C. 7:7-24.3 and 24.4 shall be either a legal notice or a display advertisement in the official newspaper of the municipality in which the site is located, or if there is no official newspaper, a newspaper of general circulation in the municipality.

(b) The newspaper notice pursuant to N.J.A.C. 7:7-24.3(c) and 24.4(a) shall include all of the following:

1. The mailing address and telephone number of the Department, as set forth at N.J.A.C. 7:7-1.6;

2. The name and mailing address of the applicant;

3. The approval being sought;

4. A description of the proposed activities;

5. The street address of the site;

6. A list of each lot, block, municipality, and county within which proposed activities will occur; and

7. The standard language of the form notice letter available from the Department website as set forth at N.J.A.C. 7:7-1.6.

i. For newspaper notice required under N.J.A.C. 7:7-24.3(c), the form notice letter explains that: an application will be submitted to the Department for the specific development as identified pursuant to (b)4 through 6 above; a complete copy of the application is available to be reviewed at either the municipal clerk's office or by

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**appointment at the Department's Trenton Office; and comments or information on the proposed development and site may be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6 within 15 calendar days of the date of the notice.**

**ii. For newspaper notice required under N.J.A.C. 7:7-24.4(a), the form notice letter explains that: an application has been submitted to the Department for the specific development described at (b)1 through 6 above; a complete copy of the CAFRA individual permit application is available to be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton Office; either a 30-day public comment period or public hearing will be held on the application in the future; individuals may request a public hearing on the application within 15 calendar days of the date of the notice; and requests for a public hearing shall be sent to the Department at the address set forth at N.J.A.C. 7:7-1.6 and shall state the specific nature of the issues to be raised at the hearing.**

**(c) The newspaper notice pursuant to N.J.A.C. 7:7-24.4(c) shall include all of the following:**

- 1. A description of the proposed development;**
- 2. The DEP file number;**
- 3. The date the comment period will begin; and**
- 4. A statement that comments on the application must be submitted to the Department at the address set forth at N.J.A.C. 7:7-1.6, within 30 calendar days after the start of the comment period.**

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**(d) The newspaper notice pursuant to N.J.A.C. 7:7-24.4(e) shall include all of the following:**

- 1. A description of the proposed development;**
- 2. The DEP file number; and**
- 3. The date, place, and time of the public hearing.**

**7:7-24.6 Documenting public notice of an application; documenting public notice of public comment period or public hearing on CAFRA individual permit application**

**(a) An applicant submitting an application other than an application for a CAFRA individual permit shall include as part of the application documentation that the required public notice of the application has been provided, as follows:**

- 1. For public notice other than newspaper notice, the documentation shall consist of:**
  - i. A copy of the certified United States Postal Service white mailing receipt for each public notice that was mailed, or other written receipt; and**
  - ii. A certified list of all owners of real property, including easements, located within 200 feet of the property boundary of the site (including name, mailing address, lot, and block) prepared by the municipality for each municipality in which the project is located. The date of certification of the list shall be no earlier than one year prior to the date the application is submitted to the Department; and**
- 2. For newspaper notice, the documentation shall consist of:**
  - i. A copy of the published newspaper notice; and**

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**ii. The date and name of the newspaper in which notice was published.**

**(b) An applicant submitting an application for a CAFRA individual permit shall provide documentation that the required public notice of the application has been provided, as follows:**

**1. For public notice other than newspaper notice, the documentation required under (a)1 above shall be included as part of the application.**

**2. For newspaper notice, the documentation required under (a)2 above shall be submitted within 10 calendar days of the date the application is submitted.**

**(c) In addition to the documentation required under (b) above, an applicant for a CAFRA individual permit shall submit documentation that the required public notice of a public comment period or a public hearing has been provided, as follows:**

**1. For notice of a public comment period, the documentation required under (a)1 and 2 above shall be submitted to the Department at least 10 calendar days prior to the start of the public comment period.**

**2. For notice of a public hearing, the documentation required under (a)1 and 2 above shall be submitted to the Department at least three calendar days prior to the date of the public hearing.**

SUBCHAPTER [10.] **25. [COASTAL PERMIT] APPLICATION FEES**

7:7-[10.1]**25.1 Purpose and scope**

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(a) This subchapter sets forth the fees for all coastal permit applications.

1. The application fees for [Waterfront Development] **waterfront development** permits [is] **are** found at N.J.A.C. 7:7-[10.2]**25.2**;

2. The application fees for [Coastal Wetland] **coastal wetlands** permits [is] **are** found at N.J.A.C. 7:7-[10.3]**25.3**;

3. The application fees for CAFRA permits [is] **are** found at N.J.A.C. 7:7-[10.4]**25.4**;

4. The standards for assessing a single permit fee for a single project requiring multiple permits including [Waterfront Development] **waterfront development**, [Coastal Wetlands] **coastal wetlands**, CAFRA, [Freshwater Wetlands] **freshwater wetlands**, or [Stream Encroachment] **flood hazard area** permits are found at N.J.A.C. 7:7-[10.5]**25.5**;

5. The fees for requesting a modification of a coastal permit are found at N.J.A.C. 7:7-[10.6]**25.6**; and

6. The additional fees for [Waterfront Development] **waterfront development**, [Coastal Wetlands] **coastal wetlands**, and CAFRA permits for major developments requiring stormwater review pursuant to N.J.A.C. 7:8 are found at N.J.A.C. 7:7-[10.7]**25.7**.

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

7:7-[10.2]**25.2** Application fees for waterfront development permits

(a) The application fee for each of the following shall be \$600.00:

1. [Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7, excluding the Coastal general permit for habitat creation and enhancement activities at N.J.A.C. 7:7-7.29,

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for which there is no fee; or] **An authorization under a general permit pursuant to N.J.A.C.**

**7:7-6, except for general permit 24 – habitat creation, restoration, enhancement and living shoreline activities at N.J.A.C. 7:7-6.24, for which there is no application fee;**

2. [Any] **For any** development consisting solely of capital repairs or reconstruction with all work taking place [above] **landward of** the mean high water elevation on piles or other support structures or taking place landward of the mean high water line or the identical structural replacement of piles or other supports in the same location[.]; **and**

**3. An authorization under a general permit-by-certification pursuant to N.J.A.C. 7:7-5.**

(b) The application fee for any waterfront development taking place landward of the mean high water line shall be calculated as follows:

1. The fee for a residential development consisting of one or two dwelling units[, as defined at N.J.A.C. 7:7-1.3,] shall be \$1,200 per unit. The fee for a residential development consisting of a single duplex shall be \$1,200.

2. The fee for all other residential developments shall be \$7,200 plus \$120.00 per dwelling unit[, as defined at N.J.A.C. 7:7-1.3], plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]**25.7**.

3. The fee for non-residential developments shall be calculated based on the following schedule, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]**25.7**:

Construction Cost

Fees

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|                        |  |
|------------------------|--|
| \$0 to \$50,000        | \$3,500 + 1.2 percent of construction costs                          |
| \$50,001 to \$100,000  | \$4,100 + 2.4 percent of construction costs above<br>\$50,000        |
| \$100,001 to \$200,000 | \$5,300 + [three] 3 percent of construction costs<br>above \$100,000 |
| \$200,001 to \$350,000 | \$8,300 + 3.6 percent of construction costs above<br>\$200,000       |
| Greater than \$350,000 | \$13,700 + 2.4 percent of construction costs above<br>\$350,000      |

4. (No change.)

(c) The application fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

1. (No change.)

2. The fee for all other activities requiring a waterfront development permit shall be based on the following schedule, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]**25.7**:

| <u>Construction Cost</u> | <u>Fees</u>                                       |
|--------------------------|---|
| \$0 to \$50,000          | \$3,500 + 1.2 percent of construction costs       |
| \$50,001 to \$100,000    | \$4,100 + 2.4 percent of construction costs above |

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|                        |   |
|------------------------|---|
|                        | \$50,000  |
| \$100,001 to \$200,000 | \$5,300 + [three] 3 percent of construction costs above \$100,000 |
| \$200,001 to \$350,000 | \$8,300 + 3.6 percent of construction costs above \$200,000       |
| Greater than \$350,000 | \$13,700 + 2.4 percent of construction costs above \$350,000      |

(d) (No change.)

(e) The fee for the review and processing of a request for a written determination of exemption from the Waterfront Development Law permitting requirements pursuant to N.J.A.C. 7:7-[2.3(f)]2.4(g) is \$300.00.

**(f) The fee for the review and processing of a request to extend a general permit authorization or an individual permit for activities located waterward the mean high water line pursuant to N.J.A.C. 7:7-27.3 shall be as follows:**

- 1. For a general permit authorization, the fee is \$240.00; and**
- 2. For an individual permit for activities located waterward of the mean high water line, the fee is 25 percent of the total original permit application fee, up to a maximum of \$3,000.**

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7:7-[10.3]25.3 Application fees for [Coastal Wetland] **coastal wetlands** permits

(a) The application fee for a [Wetlands Act of 1970 permit (“Coastal Wetlands] **coastal wetlands individual** permit[”)] shall be one percent of the construction costs, or a minimum of \$600.00 for residential dock construction associated with a single-family or duplex dwelling unit, and, a minimum of \$600.00, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]25.7 for all other regulated developments.

(b) The application fee for [review of a] **an authorization under a coastal wetlands** general permit [application] pursuant to N.J.A.C. 7:7-6 shall be \$600.00, **except for general permit 24 – habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-6.24, for which there is no fee.**

(c) **The fee for a request to extend a coastal wetlands general permit authorization pursuant to N.J.A.C. 7:7-27.3 shall be \$240.00.**

(d) **The application fee for an authorization under a coastal wetlands general permit-by-certification shall be \$600.00.**

7:7-[10.4]25.4 Application fees for CAFRA permits

(a) The application fee for residential developments requiring a CAFRA **individual** permit shall be calculated as follows:

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1. The fee for a residential development consisting of one or two dwelling units[, as defined at N.J.A.C. 7:7-1.3,] shall be \$1,200 per unit. The fee for a residential development consisting of a single duplex shall be \$1,200.

2. The fee for all other residential developments shall be \$7,200 plus \$120.00 per dwelling unit[, as defined at N.J.A.C. 7:7-1.3], plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]25.7.

(b) The fee for non-residential developments requiring a CAFRA **individual** permit shall be calculated as follows:

1. The fee for commercial, public, or industrial development located on a beach or dune or located between the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, and a point 150 feet landward of the mean high water line of any tidal waters, or the landward limit of a beach or dune, whichever is most landward, shall be calculated based on the following schedule, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]25.7:

| <u>Construction Cost</u> | <u>Fee[s]</u>  |
|--------------------------|--|
| \$0 to \$50,000          | \$3,500 + 1.2 percent of construction costs                              |
| \$50,001 to \$100,000    | \$4,100 + 2.4 percent of construction costs above \$50,000               |
| \$100,001 to \$200,000   | \$5,300 + [three] <b>3</b> percent of construction costs above \$100,000 |

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|                        |   |
|------------------------|---|
| \$200,001 to \$350,000 | \$8,300 + 3.6 percent of construction costs above<br>\$200,000  |
| Greater than \$350,000 | \$13,700 + 2.4 percent of construction costs above<br>\$350,000 |

2. The fee for commercial, public, or industrial developments located beyond 150 feet landward of the mean high water line of any tidal waters or the landward limit of a beach or dune, whichever is most landward, shall be \$8,500 plus \$1,200 per acre included in the site plan, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]**25.7**, except as provided at (b)2i through iv below.

i. (No change.)

ii. For a proposed mining operation, as [defined]**described** at N.J.A.C. [7:7E-7.8] **7:7-15.8**, the fee shall be \$8,500 plus \$250.00 per acre disturbed;

iii. – iv. (No change.)

3. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet **of the** review zone and the remainder of the CAFRA area and does not trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-[2.1(a)5]**2.2(a)5**, the fee shall be calculated considering the entire development using the formula found at (b)1 above.

4. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet **of the** review zone and the remainder of the CAFRA area and does trigger the higher regulatory threshold set forth at N.J.A.C. 7:7-[2.1(a)5]**2.2(a)5**, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

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5. For public or industrial development that straddles the regulatory zone between the first 150 feet **of the** review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (b)2 above.

(c) – (d) (No change.)

(e) The application fee for [the review of a coastal] **an authorization under a CAFRA general permit [application] pursuant to N.J.A.C. 7:7-[7]6 shall be \$600.00, except for general permit 24 – habitat creation, restoration, enhancement, and living shoreline activities, N.J.A.C. 7:7-6.24, for which there is no fee.**

(f) (No change.)

(g) **The fee for a request to extend a CAFRA general permit authorization pursuant to N.J.A.C. 7:7-27.3 shall be \$240.00.**

(h) **The application fee for an authorization under a CAFRA general permit-by-certification shall be \$600.00.**

7:7-[10.5]**25.5** Standards for assessing a single permit application fee **when more than one permit is sought**

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(a) The Department shall assess a single [permit] application fee for a development which requires more than one of the following permits[,], if the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetlands permits; [stream encroachment] **flood hazard area** permits **issued under N.J.A.C. 7:13**; or freshwater wetlands permits (including individual permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The application fee for the project is equal to the sum of the following:

1. – 2. (No change.)

#### 7:7-[10.6]25.6 Application fees for requests for modifications of coastal permits

(a) The fees for requests to modify coastal permits in accordance with N.J.A.C. 7:7-[4.10 and 7.3(a)]27 are as follows:

1. The fee for a minor **technical** modification to a [Waterfront Development, Coastal Wetlands, or CAFRA] **coastal individual** permit is \$250.00;
2. The fee for a major **technical** modification to [an Upland Waterfront Development or CAFRA] **a coastal individual** permit is 20 percent of the total original permit application fee, with a minimum fee of \$600.00 and a maximum fee of \$12,000, plus, as applicable, the additional fee for major development set forth at N.J.A.C. 7:7-[10.7]25.7; and
3. The fee for a **minor or major technical** modification of [a] **an authorization under a** coastal general permit is \$250.00.

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7:7-[10.7]25.7 Additional fees for major development requiring stormwater review pursuant to N.J.A.C. 7:8

(a) The additional fees for **an application for a [Waterfront Development] waterfront development, [Coastal Wetlands] coastal wetlands, or CAFRA permit, or for a permit modification, that, in accordance with N.J.A.C. [7:7E-8.7] 7:7-16.6, Stormwater management, requires review pursuant to the Stormwater Management [Rules] rules, N.J.A.C. 7:8, are as follows:**

1. – 5. (No change.)

## **SUBCHAPTER 26. APPLICATION REVIEW**

### **7:7-26.1 General application review provisions**

(a) **This subchapter sets forth the review procedures for applications for authorization under a general permit and for applications for an individual permit. These procedures also apply to applications for a water quality certificate.**

(b) **The review procedures for the following are set forth elsewhere in this chapter:**

- 1. For a request for a written determination of exemption from CAFRA or the Waterfront Development Law, see N.J.A.C. 7:7-2.2(f) or 2.4(f), respectively;**
- 2. For a request for an applicability determination, see N.J.A.C. 7:7-2.5;**
- 3. For a mitigation proposal, see N.J.A.C. 7:7-17;**
- 4. For a request for an emergency authorization, see N.J.A.C. 7:7-21; and**
- 5. For a request to extend, transfer, or modify a permit, see N.J.A.C. 7:7-27.3, 27.4, or**

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**27.5, respectively.**

**(c) Any application reviewed in accordance with this subchapter, other than an application for a water quality certificate, is subject to the application review requirements of the Construction Permits Law, N.J.S.A. 13:1D-29 et seq. This subchapter incorporates those requirements and is consistent with N.J.S.A. 13:1D-29 et seq.**

**(d) An applicant may submit a revised application at any time during the application review process. The applicant shall send a copy of the revised portions of the application to the municipal clerk of each municipality in which the site is located and shall provide notice explaining the revisions to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the revised application. The applicant shall provide documentation in accordance with N.J.A.C. 7:7-24.6 that the notice was provided.**

**1. If an applicant submits a revised application less than 30 calendar days prior to the deadline for Department decision established pursuant to N.J.A.C. 7:7-26.6, the revised application shall state that the applicant consents to a 30-calendar-day extension of the decision deadline in accordance with N.J.A.C. 7:7-26.6(e).**

**(e) In reviewing an application, the Department shall apply the requirements of this chapter in effect at the time the application is declared complete for review.**

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**(f) Notwithstanding any other provision of this subchapter, an application shall not be declared complete for review unless the applicant has obtained all tidelands instruments required for occupation of State-owned tidelands or has submitted a complete application for a tidelands instrument, available from the Department's website at <http://www.nj.gov/dep/landuse/tideland.html> or from the Bureau of Tidelands Management at P.O. Box 420, Mail Code 501-02B, Trenton, NJ 08625-0420. An application for a tidelands instrument requires the name and address of the applicant/title holder and any agent, site location and description, a property survey, and title or deed information.**

**(g) The Department shall publish notice in the DEP Bulletin of the receipt of each new application, the status of the application during review, and the Department's decision to approve or deny the application. Publication in the DEP Bulletin constitutes constructive notice to interested persons of Department actions on coastal permit applications. Actual notice of the Department's decision to approve or deny an application will be provided, in accordance with N.J.A.C. 7:7-26.6, to the applicant and to persons who specifically request such notice.**

**7:7-26.2 Applications for all coastal general permit authorizations and applications for waterfront development and coastal wetlands individual permits – completeness review**

**(a) Within 20 working days after receiving an application for authorization under a general permit or an application for a waterfront development or coastal wetlands**

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**individual permit, where day one of the 20-working-day period is the date the application is received, the Department shall take one of the following actions:**

**1. Determine the application is both administratively and technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the application;**

**2. Determine the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or**

**3. Determine the application is administratively incomplete and return the application.**

**(b) Within 15 calendar days after receiving the additional information submitted pursuant to (a)2 above for a technically incomplete application, the Department shall take one of the following actions:**

**1. Determine the application is technically complete and issue notification to the applicant in writing that the application is complete for review, effective as of the date the Department received the additional information; or**

**2. Determine the additional information is not sufficient and issue notification to the applicant in writing that the application remains technically incomplete. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested**

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**pursuant to this notification, the Department shall declare the application complete for review, effective as of the date the Department received the additional information.**

**(c) The applicant shall send the additional information submitted to the Department pursuant to (a)2 and (b)2 above to the municipal clerk of each municipality in which the project is located and shall provide notice explaining that additional information has been submitted to the Department to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the additional information. The applicant shall provide documentation in accordance with N.J.A.C. 7:7-24.6 that the additional information and notice were provided.**

**(d) An applicant shall submit all additional information pursuant to (a)2 or (b)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7-26.7, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.**

**(e) If the Department does not take one of the actions in (a) above within 20 working days after receiving an application, the application shall be declared complete for review, effective as of the date the application was received by the Department, and the**

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**Department shall make a decision to approve or deny the application by the applicable deadline set forth at N.J.A.C. 7:7-26.6.**

**(f) If the Department does not take one of the actions in (b) above within 15 calendar days after receiving additional information submitted for a technically incomplete application, the application shall be declared complete for review, effective as of the date the additional information was received by the Department, and the Department shall make a decision to approve or deny the application by the applicable deadline set forth at N.J.A.C. 7:7-26.6.**

**(g) The Department shall hold a fact-finding meeting on a waterfront development or coastal wetland individual permit application if the Department determines that, based on public comment received and/or a review of the scope and/or environmental impact of the proposed project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a fact-finding meeting.**

**(h) Once an application for authorization under a general permit or an application for a waterfront development or coastal wetland individual permit is complete for review, the Department shall make a decision to approve or deny the application by the applicable deadline established under N.J.A.C. 7:7-26.6.**

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**7:7-26.3 CAFRA individual permit application – initial completeness review**

(a) As required by N.J.A.C. 7:7-24.4(a), an applicant for a CAFRA individual permit shall, upon submittal of the application to the Department, publish newspaper notice, pursuant to N.J.A.C. 7:7-24.5, of the application. If the documentation of publication of the newspaper notice required under N.J.A.C. 7:7-24.6 is not received by the Department within 10 calendar days of submittal of the application to the Department, the application shall not be declared complete for public comment or public hearing until a minimum of 20 calendar days after publication of the newspaper notice and until the documentation is received by the Department.

(b) Within 20 working days after receiving an application for a CAFRA individual permit, where day one of the 20-working-day period is the date the application is received, the Department shall take one of the following actions:

1. Determine the application is both administratively and technically complete and issue notification to the applicant in writing that the application is complete for public comment or complete for public hearing, effective as of the date the Department received the application;

2. Determine the application is administratively complete but technically incomplete and issue notification to the applicant in writing that the application is technically incomplete. This notification shall specify the additional information required and the deadline by which the information must be submitted; or

3. Determine the application is administratively incomplete and return the application.

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**(c) Within 15 calendar days after receiving the additional information submitted pursuant to (b)2 above for a technically incomplete application, the Department shall take one of the following actions:**

**1. Determine the application is technically complete and issue notification to the applicant in writing that the application is complete for public comment or complete for public hearing, effective as of the date the Department received the additional information;**  
**or**

**2. Determine the additional information is not sufficient and issue notification to the applicant in writing that the application remains technically incomplete. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall determine the application complete for public comment or complete for public hearing, effective as of the date the Department received the additional information.**

**(d) The applicant shall send the additional information submitted to the Department pursuant to (b)2 and (c)2 above to the municipal clerk of each municipality in which the project is located and shall provide notice explaining that additional information has been submitted to the Department to any person listed at N.J.A.C. 7:7-24.3(b) whom the Department determines would likely be affected by the additional information. The**

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**applicant shall provide documentation in accordance with N.J.A.C. 7:7-24.6 that the additional information and notice were provided.**

**(e) An applicant shall submit all additional information pursuant to (b)2 or (c)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7-26.7, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.**

**(f) If the Department does not take one of the actions in (b) above within 20 working days after receiving an application, the application shall be declared complete for public comment or complete for public hearing, effective as of the date the application was received by the Department.**

**(g) If the Department does not take one of the actions in (c) above within 15 calendar days after receiving additional information submitted for a technically incomplete application, the application shall be declared complete for public comment or complete for public hearing, effective as of the date the additional information was received by the Department.**

**(h) In the event the Department does not hold a public hearing on a CAFRA permit**

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**application in accordance with N.J.A.C. 7:7-26.5, the Department shall provide for a 30-calendar-day comment period on the application in accordance with N.J.A.C. 7:7-26.4.**

**7:7-26.4 CAFRA individual permit application – public comment period**

**(a) Within 15 calendar days after the date that the Department declares a CAFRA individual permit application complete for public comment, the Department shall schedule a public comment period on the application, and shall so notify the applicant.**

**1. The public comment period shall begin no later than 60 calendar days after the date that the Department declares the application complete for public comment.**

**2. The Department shall accept written comments for 30 calendar days.**

**3. The Department shall publish notice of the comment period in the DEP Bulletin.**

**4. The applicant shall provide notice of the public comment period as required by N.J.A.C. 7:7-24.4(b).**

**(b) Within 15 calendar days after the end of the public comment period on a CAFRA individual permit application, the Department shall take one of the following actions:**

**1. Determine the application is complete for review and issue notification to the applicant in writing that the application is complete for review, effective as of the date the comment period ended; or**

**2. Determine the application is not complete for review because, based on issues raised during the public comment period, additional information is required and issue notification to the applicant in writing that the application is not complete for review, and**

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**that additional information is required. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall determine the application complete for review, effective as of the date that the Department received the additional information.**

**(c) An applicant shall submit all additional information pursuant to (b)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7-26.7, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.**

**(d) Once an application for a CAFRA individual permit for which a public comment period was held is complete for review, the Department shall make a decision to approve or deny the application by the applicable deadline established under N.J.A.C. 7:7-26.6.**

#### **7:7-26.5 CAFRA individual permit application – public hearing**

**(a) The Department shall hold a fact-finding public hearing on a CAFRA individual permit application if the Department determines that, based on public comment received in response to the newspaper notice that the applicant must provide pursuant to N.J.A.C. 7:7-24.4(a) and/or a review of the project's scope and/or environmental impact of the proposed**

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**project, additional information is necessary to assist the Department in its evaluation of the potential impacts, and that this information can only be obtained through a public hearing.**

**(b) The Department shall set the date, place, and time of a public hearing within 15 calendar days after the date that the Department declares a CAFRA individual permit application is complete for public hearing under N.J.A.C. 7:7-26.3(b) or (c), and shall so notify the applicant.**

- 1. The date of the public hearing shall be no more than 60 calendar days after the application is declared complete for public hearing.**
- 2. The public hearing shall be held in the municipality in which the development is proposed, if possible.**
- 3. The Department shall accept written comments for 15 calendar days after the public hearing.**
- 4. The Department shall publish notice of the public hearing in the DEP bulletin.**
- 5. The applicant shall give notice of the public hearing as required by N.J.A.C. 7:7-24.4(e).**
- 6. The applicant shall provide a court reporter and bear all costs of the public hearing, including, but not limited to, court reporter fees, transcript costs, and hearing room rental, and shall provide the Department with an electronic copy of the transcript.**
- 7. The presiding official at the public hearing shall have broad discretion to place reasonable limits on oral and written presentations to allow every person the opportunity to speak and insure the maintenance of an orderly forum. At the conclusion of the**

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**statements of interested persons, the applicant shall be afforded the opportunity to respond to the statements offered by interested persons.**

**(c) Within 15 calendar days after a public hearing is held on a CAFRA individual permit application, the Department shall take one of the following actions:**

**1. Determine the application is complete for review and issue notification to the applicant in writing that the application is complete for review, effective as of the date the public hearing was held; or**

**2. Determine the application is not complete for review because, based on issues raised during the public hearing and/or comment period, additional information is required and issue notification to the applicant in writing that the application is not complete for review and that additional information is required. The notification shall specify the additional information required and the deadline by which the additional information must be submitted. If the applicant submits all of the information requested pursuant to this notification, the Department shall determine the application complete for review, effective as of the date that the Department received the additional information.**

**(d) An applicant shall submit all additional information requested under (c)2 above within 90 calendar days after the date of the Department request, unless the Department specifies a different deadline in the request. If the applicant does not submit the additional information by the deadline, the Department shall, in accordance with N.J.A.C. 7:7-26.7, cancel the application or, if the applicant demonstrates good cause for the delay in providing the requested information, extend the time to submit the information.**

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**(e) Once an application for a CAFRA individual permit for which a public hearing was held is complete for review, the Department shall make a decision to approve or deny the application by the applicable deadline established under N.J.A.C. 7:7-26.6.**

**7:7-26.6 Department decision on an application that is complete for review**

**(a) Within 90 calendar days after an application for a general permit authorization or an application for a waterfront development or coastal wetlands individual permit is declared complete for review in accordance with N.J.A.C. 7:7-26.2, the Department shall:**

**1. Determine the application meets the requirements of this chapter and issue an authorization or permit approving the application in writing. The authorization or permit shall include any conditions necessary to ensure compliance with this chapter; or**

**2. Determine the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.**

**(b) Except as provided at (d) below, within 60 calendar days after an application for a CAFRA individual permit is declared complete for review after the close of the public comment period in accordance with N.J.A.C. 7:7-26.4, the Department shall:**

**1. Determine the application meets the requirements of this chapter and issue a permit approving the application in writing. The permit shall include any conditions necessary to ensure compliance with this chapter; or**

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**2. Determine the application does not meet the requirements of this chapter and deny the application in writing. The decision to deny the application shall include the reasons for the denial.**

**(c) Except as provided at (d) below, within 60 calendar days after an application for a CAFRA individual permit is declared complete for review after the public hearing in accordance with N.J.A.C. 7:7-26.5, the Department shall:**

**1. Determine the application meets the requirements of this chapter and issue a permit approving the application in writing. The permit shall include any conditions necessary to ensure compliance with this chapter; or**

**2. Determine the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.**

**(d) Where additional information was required to be submitted after a public comment period or a public hearing on an application for a CAFRA individual permit, within 90 calendar days after the date the application is declared complete for review in accordance with N.J.A.C. 7:7-26.4 or N.J.A.C. 7:7-26.5, the Department shall:**

**1. Determine the application meets the requirements of this chapter and issue a permit approving the application in writing. The permit shall include any conditions necessary to ensure compliance with this chapter; or**

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**2. Determine the application does not meet the requirements of this chapter and deny the application in writing. The decision denying the application shall include the reasons for the denial.**

**(e) Any deadline set forth in (a) through (d) above may be extended for 30 calendar days by mutual agreement between the applicant and the Department. An applicant consenting to an extension shall do so in writing. A deadline shall not be extended by less than or greater than 30 calendar days.**

**(f) If the Department does not make a decision to approve or deny an application for authorization under a general permit, or to approve or deny an application for a waterfront development, coastal wetlands, or CAFRA individual permit, by the applicable deadline set forth in this section, the application shall be deemed to have been approved as of that deadline. Regulated activities shall not commence unless and until all required tidelands instrument(s) to use and occupy State-owned tidelands are obtained.**

**1. An authorization or permit issued under this subsection shall include the standard conditions set forth in N.J.A.C. 7:7-27.2.**

**2. An authorization or permit issued under this subsection shall not prevent the Department from taking enforcement action pursuant to N.J.A.C. 7:7-29 for any activity undertaken in violation of this chapter.**

**(g) The Department shall provide notice of the decision on an application for**

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**authorization under a general permit or an application for a waterfront development, coastal wetlands, or CAFRA individual permit in the DEP Bulletin and to any person who specifically requested notice of the decision on a particular application.**

**(h) The Department shall not waive the time frames for review and decision on an application established by the Construction Permits Law, N.J.S.A. 13:1D-29 et seq., and CAFRA.**

#### **7:7-26.7 Cancellation of an application**

**(a) The Department shall cancel an application for any of the following reasons:**

- 1. An applicant does not submit additional information within the time frame prescribed by the Department under this subchapter for an application that has been determined to be technically incomplete;**
- 2. The applicant does not submit a fee required under N.J.A.C. 7:7-25, or the Department cannot collect the fee for any reason (for example, if a check is returned for insufficient funds); or**
- 3. The applicant does not comply with the applicable public notice requirements at N.J.A.C. 7:7-24.**

**(b) To cancel an application, the Department shall:**

- 1. Send the applicant a written notice of its intent to cancel the application, and notifying the applicant that the fee and/or additional information identified pursuant to (a)**

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above must be provided to the Department within 15 calendar days.

2. If, by the 15-calendar-day deadline, the applicant submits a written statement providing good cause for the delay in providing the fee and/or additional information, the Department shall extend the time required for submittal.

3. If the applicant does not submit the fee and/or additional information, or a statement of good cause for delay under (c)2 above, the Department shall cancel the application and send the applicant a written notice of the cancellation.

#### **7:7-26.8 Withdrawal of an application**

An applicant may withdraw an application in writing at any time during the Department's review of the application. The Department shall promptly acknowledge the withdrawal in writing.

#### **7:7-26.9 Re-submittal of an application after denial, cancellation, or withdrawal**

If an application for an authorization under a general permit or an application for an individual permit is denied or cancelled by the Department, or is withdrawn by the applicant, the applicant may re-submit the application in accordance with N.J.A.C. 7:7-23. The Department shall treat a re-submitted application as a new application and shall review it in accordance with N.J.A.C. 7:7-26.

#### **7:7-26.10 Fee refund or credit when an application is returned, withdrawn, or cancelled**

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**(a) Except as provided in (b) below, the Department shall, upon written request of an applicant, fully refund the submitted application fee in the following circumstances:**

- 1. The application is returned because it is not administratively complete;**
- 2. The application is withdrawn within 60 calendar days of its submittal to the**

**Department and is not technically complete; or**

- 3. The application is withdrawn within 20 working days of its submittal to the Department, whether or not the application is administratively or technically complete.**

**(b) The Department shall not refund a fee for an application that has been approved or denied or a fee that has been previously credited under (c) below.**

**(c) If an application is withdrawn by the applicant under circumstances other than those identified at (a)2 and 3 above, or is cancelled under N.J.A.C. 7:7-26.7, any application fee that was paid to the Department shall be credited toward the application fee for one new application, provided the new application is submitted:**

- 1. Within one year of cancellation or withdrawal;**
- 2. By the same applicant;**
- 3. For the same site; and**
- 4. For the same project.**

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

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#### **7:7-27.1 Purpose and scope**

**(a) This subchapter sets forth the conditions that apply to all coastal permits.**

**(b) This subchapter sets forth the procedures for:**

**1. Extending the term of an authorization under a general permit the duration of which is governed by N.J.A.C. 7:7-3.7 or of a waterfront development individual permit the duration of which is governed by N.J.A.C. 7:7-8.2(a);**

**2. Transferring an emergency authorization, an authorization under a general permit, or an individual permit to a new owner of the site where the project authorized under the authorization or permit is taking place;**

**3. Modifying an authorization under a general permit or an individual permit;**

**4. Suspending an authorization under a general permit or an individual permit; and**

**5. Terminating an authorization under a general permit, an individual permit, or an emergency authorization.**

#### **7:7-27.2 Conditions that apply to all coastal permits**

**(a) The Department places conditions on a coastal permit to ensure that the approved project complies with this chapter. The conditions that apply to all coastal permits are set forth in (c) below, and the additional conditions that apply to all coastal permits except permits-by-rule are set forth in (d) below.**

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**(b) If a permittee undertakes any regulated activity authorized under a coastal permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the permit and all conditions therein.**

**(c) The following conditions apply to all coastal permits:**

**1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or development conducted as authorized under a permit;**

**2. The issuance of a permit does not convey any property rights or any exclusive privilege;**

**3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a coastal permit;**

**4. A permittee proposing soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site;**

**5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit;**

**6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of**

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**the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit, pursuant to N.J.A.C. 7:7-27.7;**

**7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (Warn DEP Hotline) of any noncompliance that may endanger the public health, safety, and welfare, or the environment. The permittee shall inform the Division of Land Use Regulation by telephone at (609) 292-0060 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:**

- i. A description of the noncompliance and its cause;**
- ii. The period of noncompliance, including exact dates and times;**
- iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and**
- iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance;**

**8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action under N.J.A.C. 7:7-29, as well as, in the appropriate case, suspension and/or termination of the permit;**

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**9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit;**

**10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29;**

**11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties;**

**12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores; and**

**13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:**

**i. Enter upon the permittee's premises where a regulated activity is located or conducted, or where records must be kept under the conditions of the permit;**

**ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit; and**

**iii. Inspect at reasonable times any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action under N.J.A.C. 7:7-29.**

**(d) In addition to the conditions at (c) above, the following conditions apply to all coastal permits except permits-by-rule:**

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- 1. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit;**
- 2. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless the permit is modified pursuant to N.J.A.C. 7:7-27.5;**
- 3. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6;**
- 4. The permittee shall notify the Department in writing within five working days prior to commencement of operation of a CAFRA individual permit. At this time, the permittee shall certify that all conditions of the permit that must be met prior to operation of the development have been met;**
- 5. The permittee shall perform any mitigation required under the permit prior to or concurrently with regulated activities in accordance with N.J.A.C. 7:7-17;**
- 6. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment;**

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**7. Any permit condition that does not establish a specific time frame within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit;**

**8. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request;**

**9. The permittee shall provide monitoring results to the Department at the intervals specified in the permit;**

**10. A permit shall be transferred to another person only in accordance with N.J.A.C. 7:7-27.4;**

**11. A permit can be suspended or terminated by the Department for cause;**

**12. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit;**

**13. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information; and**

**14. The permittee shall submit written notification to the Bureau of Coastal and Land Use Compliance and Enforcement, 401 East State Street, 4th Floor, P.O. Box 420, Mail Code 401-04C, Trenton, NJ 08625, at least three working days prior to the commencement of site preparation or of regulated activities, whichever comes first.**

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**7:7-27.3 Extension of an authorization under a general permit or of a waterfront development individual permit for activities waterward of the mean high water line**

(a) A permittee may request one five-year extension of an authorization under a general permit the duration of which is governed by N.J.A.C. 7:7-3.7, or one five-year extension of an individual permit the duration of which is governed by N.J.A.C. 7:7-8.2(a).

(b) The Department shall issue an extension only if:

1. The permittee submits a request for extension that meets the requirements of (c) below and that is received by the Department prior to the expiration of the authorization or individual permit. The Department shall not accept a request for extension received more than one year prior to the expiration of an authorization or individual permit;

2. The permittee demonstrates that there has been no significant change in the overall condition of the site, including special areas;

3. The regulated activities approved under the authorization or individual permit for which an extension is sought have not been revised or amended, unless the permittee has obtained a modification of the authorization or individual permit under N.J.A.C. 7:7-27.5; and

4. For an individual permit, the rules in this chapter governing the regulated activities authorized under the permit for which an extension is sought have not been amended such that the activities do not meet the rules as amended. In this instance, the individual permit shall expire on the date set forth therein, and the permittee shall comply with the requirements of N.J.A.C. 7:7-8.2(g).

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**(c) A request for an extension of an authorization under a general permit or of an individual permit shall include:**

- 1. A completed application form as described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**
- 2. The appropriate application fee as set forth at N.J.A.C. 7:7-25; and**
- 3. A narrative demonstrating that the requirements of (b) above are met.**

**(d) Within 15 calendar days after receiving a request for an extension of an authorization under a general permit subject to this section for which the application was deemed complete for review on or after (the effective date of these amendments) or within 30 calendar days after a request for an extension of a waterfront development individual permit for activities waterward of the mean high water line has been received by the Department, the Department shall take one of the actions identified below. During the Department's review of the extension request, regulated activities subject to the authorization or individual permit may continue.**

- 1. Determine the request meets the requirements of this section and issue an extension in accordance with (g) below; or**
- 2. Determine the request meets the criteria for denial at (e) below and deny the extension request.**

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**(e) The Department shall deny a request for an extension for any of the following reasons:**

**1. The authorization or individual permit for which the extension is sought is not one specified in (a) above;**

**2. The Department receives the request more than one year prior to the expiration date of the authorization or individual permit for which the extension is sought;**

**3. The Department receives the request after the expiration date of the authorization or individual permit for which the extension is sought;**

**4. The term of the authorization or individual permit for which the extension is sought has been extended before;**

**5. The applicant does not demonstrate that all of the requirements at (b) above are met;**

**6. The request does not include all of the information required to be submitted under (c) above; or**

**7. The authorization or individual permit for which the extension is sought has been terminated in accordance with N.J.A.C. 7:7-27.8.**

**(f) If the Department denies a request for an extension under (e) above:**

**1. The authorization or individual permit shall expire on its original expiration date or on the date of receipt of the denial by the permittee, whichever is later, unless already terminated in accordance with N.J.A.C. 7:7-27.8; and**

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**2. All regulated activities authorized under the authorization or individual permit shall cease on the expiration date of the authorization or individual permit specified in (f)1 above, and shall not commence again unless and until a new permit is obtained in accordance with N.J.A.C. 7:7-23.**

**(g) If the Department determines that the requirements of this section have been met, the Department shall issue an extension of the authorization or individual permit for one five-year period, beginning on the original expiration date of the authorization or individual permit. The extension shall be in writing, and shall include any conditions the Department determines are necessary to ensure the requirements of this chapter are met.**

**7:7-27.4 Transfer of an emergency authorization, an authorization under a general permit or an individual permit**

**(a) If the site on which regulated activities are authorized pursuant to an emergency authorization, an authorization under a general permit, or an individual permit is transferred to a new owner, the authorization or individual permit, including all conditions, shall be automatically transferred to the new owner, provided the authorization or individual permit is valid on the date that the site is transferred to the new owner.**

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**(b) The authorization or individual permit transferred under (a) above shall continue in effect, provided that, within 30 calendar days after the transfer of ownership of the site, the new owner submits the following information to the Department:**

- 1. The name, address, and contact information of the new owner; and**
- 2. Documentation that the transfer will not alter any condition on which the original authorization or individual permit was based and will not otherwise circumvent any requirement of this chapter.**

#### **7:7-27.5 Modification of an authorization under a general permit or an individual permit**

**(a) An authorization under a general permit that is valid as described in the provisions regarding duration of general permit authorizations at N.J.A.C. 7:7-3.6 or 3.7, as applicable, or an individual permit that is valid as described in the provisions regarding duration of individual permits at N.J.A.C. 7:7-8.2, may be modified in accordance with this section through an administrative modification, a minor technical modification, or a major technical modification. An authorization under a general permit-by-certification shall not be modified.**

**(b) The term of an authorization under a general permit or of an individual permit shall not be extended by a modification.**

**(c) An administrative modification of an authorization under a general permit or an individual permit applies to a change to a site plan or other document on which the original**

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**authorization under a general permit or individual permit was based but which does not alter the design or layout of the project. An administrative modification may include:**

- 1. Correcting a drafting or typographical error on a plan or report;**
- 2. Improving topographical or other data in order to make the authorization or individual permit more accurately reflect the site and/or the permitted activities; or**
- 3. Adding notes, labels, or other clarifying information to the approved site plan, if required to do so by the Department or another government entity.**

**(d) A minor technical modification of an authorization under a general permit or an individual permit applies to a change in the design or layout of a project, including any associated change to an approved site plan or other document, which does not result in new or additional impacts to any special area other than a special urban area (see N.J.A.C. 7:7-9.41), the Hudson River waterfront area (see N.J.A.C. 7:7-9.46), or Atlantic City (see N.J.A.C. 7:7-9.47). A minor technical modification may include:**

- 1. A change in materials or construction techniques;**
- 2. A reduction in the intensity of development on the site, such as deletion of a permitted structure or activity, or a reduction in the footprint of a project; or**
- 3. For a dredging or dredged material management project:**
  - i. A change in the method of dredging;**
  - ii. A change in the processing facility or the disposal or beneficial use location for dredged material, provided:**

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**(1) The proposed processing facility or proposed disposal or beneficial use site has received all necessary local, State and Federal approvals; and**

**(2) A letter of acceptance is received from the proposed processing facility or the proposed disposal or beneficial use site as required in the maintenance dredging and new dredging rules at N.J.A.C. 7:7-12.6 and 12.7, respectively; or**

**iii. A change in the volume of material to be dredged without a change in the area to be dredged as depicted on the site plan approved as part of the authorization or permit that authorizes the dredging.**

**(e) A major technical modification of an authorization under a general permit or an individual permit applies to any change in a project authorized pursuant to the authorization or individual permit, including any associated change to an approved site plan or other document, which is not addressed under (b) or (c) above and that does not require a new permit in accordance with (f) below.**

**(f) Notwithstanding any other provision in this section, the Department shall not issue a modification of an authorization under a general permit or an individual permit if the Department determines that the permittee proposes changes that constitute a substantial redesign of the project or that will significantly increase the environmental impact of the project. In such a case, the applicant shall submit a new application for an authorization or an individual permit in accordance with N.J.A.C. 7:7-23 and the Department shall**

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**review the application in accordance with N.J.A.C. 7:7-26. Changes for which a new application shall be submitted include:**

- 1. A change to the basic purpose or use of a project, such as a change from the construction of a hospital to the construction of an apartment complex;**
- 2. An expansion of a project beyond that which was described in the public notice of the application provided in accordance with N.J.A.C. 7:7-24;**
- 3. A substantial redesign of the project or its stormwater management system such that the Department determines a new engineering analysis of the site and/or project is necessary;**
- 4. A significant change in the size or scale of the project, including the addition of structures;**
- 5. A significant change in the project's impact on any of the special areas governed by N.J.A.C. 7:7-9.2 through 9.40 and 9.42 through 9.45;**
- 6. An excavation or filling of water areas or wetlands significantly beyond that which is approved under the authorization or individual permit; or**
- 7. A change that would result in impacts to a site not owned or controlled by the permittee.**

**(g) The permittee shall record the modified permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The modified permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes**

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**activities within two or more counties, in which case the modified permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to the Division of Land Use Regulation at the address set forth at N.J.A.C. 7:7-1.6.**

#### **7:7-27.6 Application for a modification**

**(a) This section sets forth requirements for an application to modify an authorization under a general permit or an individual permit. The general application requirements at N.J.A.C. 7:7-23.2 apply to applications for modifications in addition to the application requirements in this section.**

**(b) To apply for an administrative modification to an authorization under a general permit or an individual permit under N.J.A.C. 7:7-27.5(c), the permittee shall submit:**

- 1. A description of the proposed change to the site plan or other document on which the original authorization or permit was based;**
- 2. The site plans approved as part of the authorization or individual permit with revisions illustrating the proposed change;**
- 3. A copy of the authorization or individual permit for which the modification is requested; and**
- 4. Any information necessary to ensure compliance with State and/or Federal law.**

**(c) To apply for a minor technical modification of an authorization under a general**

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**permit or an individual permit under N.J.A.C. 7:7-27.5(d), the permittee shall submit:**

- 1. A completed application form as described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**
- 2. The appropriate application fee set forth at N.J.A.C. 7:7-25;**
- 3. A description of the scope and purpose of the proposed change to the project authorized under the authorization or individual permit;**
- 4. The site plans approved as part of the authorization or individual permit with revisions illustrating the proposed change in the project;**
- 5. A copy of the authorization or individual permit for which the modification is requested;**
- 6. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the project, as applicable;**
- 7. A revised environmental impact statement if the proposed modification is of an individual permit, or a revised compliance statement if the proposed modification is of an authorization under a general permit. The revised environmental impact statement or compliance statement shall address the aspects of the project that are proposed to be changed and demonstrate that the project for which the modification is requested continues to comply with all requirements of this chapter; and**
- 8. Any information necessary to ensure compliance with State and/or Federal law.**

**(d) To apply for a major technical modification of an authorization under a general permit or an individual permit under N.J.A.C. 7:7-27.5(e), the permittee shall submit:**

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- 1. A completed application form as described at N.J.A.C. 7:7-23.4(a)1 and available from the Department at the address set forth at N.J.A.C. 7:7-1.6;**
- 2. Documentation that public notice of the application for the major technical modification was provided in accordance with N.J.A.C. 7:7-24;**
- 3. The appropriate application fee set forth at N.J.A.C. 7:7-25;**
- 4. A description of the scope and purpose of the proposed change to the project authorized under the authorization or individual permit;**
- 5. The site plans approved as part of the authorization or individual permit with revisions illustrating the proposed change to the project;**
- 6. A copy of the authorization or individual permit for which the modification is requested;**
- 7. Other visual representations, such as photographs, graphs, and tables, that illustrate the proposed change to the project, as applicable;**
- 8. Calculations, analyses, data, and supporting materials necessary to demonstrate that the project as proposed to be changed meets the requirements of this chapter, and the requirements of the Department's Stormwater Management rules at N.J.A.C. 7:8, if applicable;**
- 9. A revised environmental impact statement if the proposed modification is of an individual permit, or a revised compliance statement if the proposed modification is of an authorization under a general permit. The revised environmental impact statement or compliance statement shall address the aspects of the project that are proposed to be**

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**changed and demonstrate that the project for which the modification is requested continues to comply with all requirements of this chapter; and**

**10. Any information necessary to ensure compliance with State and/or Federal law.**

**7:7-27.7 Suspension of an authorization under a general permit, an individual permit, or an emergency authorization**

**(a) The Department shall suspend an authorization under a general permit, an individual permit, or an emergency authorization for good cause, including, but not limited to, the following:**

**1. The authorization under a general permit, individual permit, or emergency authorization was based on false or inaccurate information;**

**2. The permittee has not complied with a condition of the authorization under a general permit, individual permit, or emergency authorization;**

**3. The permittee has undertaken activities onsite that violate this chapter;**

**4. The permittee has misrepresented or failed to fully disclose all relevant facts pertaining to the authorization under a general permit, individual permit, or emergency authorization;**

**5. The permittee has failed to fully and correctly identify project impacts in the application for the authorization under a general permit, individual permit, or emergency authorization;**

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**6. The regulated activities conducted pursuant to the authorization under a general permit, individual permit, or emergency authorization have caused unanticipated environmental impacts;**

**7. The permittee has made a change in the project that, under N.J.A.C. 7:7-27.5, would require a modification to the permittee's general permit authorization or individual permit but the permittee did not first obtain the required modification; or**

**8. The Department determines that suspension of the authorization under a general permit, individual permit, or emergency authorization is necessary for emergency reasons or to protect public health, safety, and welfare or the environment.**

**(b) The Department shall provide written notice of a suspension by certified mail to the permittee in accordance with (c) below, except if the authorization under a general permit, individual permit, or emergency authorization is suspended for emergency reasons, in which case the Department shall contact the permittee by telephone or by any practical method, and will follow up with written notice.**

**(c) A notice of suspension shall:**

**1. State that the authorization under a general permit, individual permit, or emergency authorization is suspended upon the permittee's receipt of the notice;**

**2. Include the reasons for the suspension;**

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**3. State that all regulated activities authorized under the suspended authorization under a general permit, individual permit, or emergency authorization shall cease immediately upon the permittee's receipt of the notice; and**

**4. Notify the permittee of the right to, within 10 calendar days after the permittee receives the notice, request:**

- i. A meeting with the Department to discuss the suspension; and/or**
- ii. An adjudicatory hearing in accordance with N.J.A.C. 7:7-28.**

**(d) Within 30 calendar days after receiving a notice of suspension under (b) above, the permittee shall provide the Department with a written strategy to remedy the cause(s) of the suspension. The written strategy shall include:**

- 1. A description of how the strategy will remedy the cause(s) of the suspension;**
- 2. A demonstration that the strategy will bring the project into compliance with this chapter; and**
- 3. A proposed time frame within which the permittee will execute the strategy.**

**(e) Within 30 calendar days after the Department receives the written strategy required under (d) above, the Department shall take one of the following actions:**

- 1. Accept the strategy, reinstate the authorization under a general permit, individual permit, or emergency authorization, and require the permittee to implement the strategy within a prescribed time frame. The Department may add conditions or revisions as necessary to ensure that the strategy achieves compliance with this chapter;**

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**2. Determine that the strategy is insufficient and request additional detail, information, and/or changes to the strategy, in order to remedy the non-compliance. Within 15 calendar days after the Department receives the requested information, the Department shall take either the action described at (e)1 above or the action described at (e)3 below; or**

**3. Determine that the strategy is unacceptable to achieve compliance with this chapter, and notify the permittee of its intent to terminate the authorization under a general permit, an individual permit, or an emergency authorization pursuant to N.J.A.C. 7:7-27.8.**

**(f) Noncompliance with any of the requirements of this section shall constitute cause for the Department to terminate the authorization under a general permit, an individual permit, or an emergency authorization under N.J.A.C. 7:7-27.8.**

**7:7-27.8 Termination of an authorization under a general permit, an individual permit, or an emergency authorization**

**(a) The Department shall terminate for good cause an authorization under a general permit, an individual permit, or an emergency authorization that has been suspended pursuant to N.J.A.C. 7:7-27.7. Good cause for termination includes, but is not limited to, the following:**

**1. The permittee has not ceased all regulated activities as required in the notice of suspension pursuant to N.J.A.C. 7:7-27.7(c)3;**

**2. The permittee has not complied with the requirement at N.J.A.C. 7:7-27.7(d) to submit a strategy to remedy the causes of the suspension; or**

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**3. The Department has determined that the strategy submitted is unacceptable to achieve compliance with this chapter.**

**(b) The Department shall provide written notice of its intent to terminate an authorization under a general permit, individual permit, or emergency authorization by certified mail to the permittee.**

**(c) The permittee may request an adjudicatory hearing on the notice of intent to terminate in accordance with N.J.A.C. 7:7-28. The hearing request shall be submitted within 10 calendar days after receipt of the notice of intent to terminate.**

**(d) If the permittee does not request an adjudicatory hearing under (c) above, or if the adjudicatory hearing request is denied, the authorization under a general permit, individual permit, or emergency authorization shall automatically terminate, effective 10 calendar days after the permittee received the notice of intent to terminate under (b) above.**

**(e) If the Department terminates an authorization under a general permit, individual permit, or emergency authorization, the permittee shall take all of the actions at (e)1 through 3 below. Failure to do so shall constitute a violation of this chapter and shall subject the permittee to enforcement action pursuant to N.J.A.C. 7:7-29:**

**1. Remedy any changes to the site made in violation of this chapter;**

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**2. Remedy any adverse impacts to special areas and the environment caused by the regulated activities on the site; and**

**3. Restore, to the maximum extent practicable, the site to its condition prior to the start of the activities authorized under the authorization under a general permit, individual permit, or emergency authorization.**

## **SUBCHAPTER 28. REQUESTS FOR ADJUDICATORY HEARINGS**

### **7:7-28.1 Procedure to request an adjudicatory hearing; decision on the request**

**(a) This subchapter sets forth the process by which a person may request an adjudicatory hearing to contest a Department decision to approve or deny a coastal permit under this chapter. A person seeking to contest an administrative order and/or a civil administrative penalty assessment shall do so in accordance with the adjudicatory hearing request provisions applicable to Department enforcement actions under this chapter at N.J.A.C. 7:7-29.**

**(b) To contest a Department decision on a coastal permit, a person shall submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin. If a person submits the adjudicatory hearing request after this time, the Department shall deny the request.**

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**(c) A person requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:7-1.6:**

- 1. The name, address, and daytime telephone number, fax number, and e-mail address of the person requesting the hearing, and of the person's authorized representative.**
- 2. A copy of the Department decision on which a hearing is being requested;**
- 3. The date that the Department decision on which a hearing is being requested was received by the person requesting the hearing;**
- 4. A specific admission, denial, or explanation of each fact appearing in the Department decision, or a statement that the person is without knowledge thereof;**
- 5. A concise statement of the facts or principles of law asserted to constitute any factual or legal defense; and**
- 6. Where the person submitting the hearing request is not the person to whom the decision that is being contested was issued, evidence that a copy of the hearing request has been mailed or delivered to the person to whom the decision was issued.**

**(d) A person requesting an adjudicatory hearing shall:**

- 1. Submit the original hearing request to:**

**New Jersey Department of Environmental Protection**

**Office of Legal Affairs**

**Attention: Adjudicatory Hearing Requests**

**Mail Code 401-04L, P.O. Box 402**

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**401 East State Street, 7th Floor**

**Trenton, NJ 08625-0402; and**

**2. Submit a copy of the hearing request to the Director of the Division of Land Use Regulation, at the address set forth at N.J.A.C. 7:7-1.6.**

**(e) Nothing in this subchapter shall be construed to provide a right to an adjudicatory hearing in contravention of the Administrative Procedure Act, N.J.S.A. 52:14B-3.1 through 3.3.**

**(f) The Department shall notify the requester that the request for hearing is granted or denied. If the hearing request is denied, the denial shall provide the reason(s) for the denial. If the hearing request is granted, the Department shall refer the matter to the Office of Administrative Law for a contested case hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

**(g) A final decision issued by the Commissioner after the hearing in the Office of Administrative Law shall be considered final agency action for purposes of the Administrative Procedure Act, and shall be subject to judicial review in the Appellate Division of the Superior Court, as provided in the Rules of Court.**

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#### **7:7-28.2 Procedure to request dispute resolution**

As part of a request for an adjudicatory hearing, a person may request that the Department determine whether the matter is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the requester of its determination. If the Department determines that the matter is suitable for mediation, the Department shall also notify the requester of the procedures and schedule for mediation.

#### **7:7-28.3 Effect of request for hearing on operation of permit or authorization**

(a) When a permittee requests an adjudicatory hearing to appeal any portion of a permit or an authorization, the operation of the permit or authorization shall be automatically stayed in its entirety, unless the permittee shows good cause in writing why the permit or authorization should continue in effect while being contested. All permitted activities shall stop as of the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

(b) When a person other than the permittee requests an adjudicatory hearing on a permit or authorization, the operation of the permit or authorization is not automatically stayed. The Department shall stay operation of the permit or authorization only if it determines that good cause to do so exists. If a stay is imposed, all permitted activities shall stop as of the date the stay is imposed, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing.

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**7:7-28.4 Notice of certain settlement discussions on a coastal permit decision; notice of settlement agreement**

(a) If the Department enters into settlement discussions regarding a project in a municipality in the CAFRA area that will impact a dune or other environmentally sensitive area, the Department shall provide notice, in writing, to the governing body of that municipality. The notice shall state the address, lot, and block of the property on which the project is proposed, shall include a description of the nature of the settlement discussions, and shall offer the governing body of the municipality the opportunity to participate in the settlement discussions. For the purposes of this subsection, environmentally sensitive area is a special water's edge area (see N.J.A.C. 7:7-9.6 through 9.30), an endangered or threatened wildlife or plant species habitat (see N.J.A.C. 7:7-9.36), a critical wildlife habitat (see N.J.A.C. 7:7-9.37), or the Pinelands National Reserve and Pinelands Protection Area (see N.J.A.C. 7:7-9.42).

(b) If the Department and the person requesting an adjudicatory hearing agree to a settlement that may result in the issuance of a coastal permit for a regulated activity, notice of the opportunity to comment on the settlement shall be provided as follows:

1. The person who requested the adjudicatory hearing shall send by certified mail a "notice of intent to settle" the matter, using the notice form available from the Department at the address set forth at N.J.A.C. 7:7-1.6, to the following:

i. Each person who was provided specific notice of the application which resulted in the decision that is the subject of the adjudicatory hearing request; and

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**ii. Each person who commented on the application;**

**2. The Department shall publish in the DEP Bulletin the notice of intent to settle, and shall accept comments on the notice for at least 30 calendar days; and**

**3. If, after the 30-day comment period under (b)2 above, the settlement is finalized, the Department shall publish a notice of the final settlement in the DEP Bulletin.**

**SUBCHAPTER [8.] 29. ENFORCEMENT**

7:7-[8.1]**29.1** [Authority for N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)] **General provisions**

(a) Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., N.J.S.A. 13:9A-1 et seq.**, or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, the Department may, singly or in combination, and in accordance with the grace period requirements set forth at N.J.A.C. 7:7-[8.14]**29.10**, pursue the remedies specified in (a)1 through [4] **5** below. Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

1. Issue an order requiring the person found to be in violation to comply in accordance with N.J.A.C. 7:7-[8.2]**29.2**;

2. Bring a civil action for injunctive and other relief in accordance with N.J.A.C. 7:7-[8.13]**29.8**;

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3. Levy a civil administrative penalty in accordance with N.J.A.C. 7:7-[8.5]**29.5** or [7:7-8.6]**29.6**; [and/or]
4. Bring an action for a civil penalty in accordance with N.J.A.C. 7:7-[8.7]**29.7**; **and/or**
- 5. Petition the Attorney General to bring a criminal action in accordance with N.J.A.C. 7:7-29.9.**

[(b) Any development or improvement enumerated in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in N.J.S.A. 12:5-3 and in N.J.S.A. 13:1D-29 et seq., shall be deemed to be a purpresture, a public nuisance and a violation of N.J.S.A. 12:5-1 et seq. and shall be abated in the name of the State by one or more of the following actions:

1. The issuance of an administrative order in accordance with N.J.A.C. 7:7-8.2;
2. The commencement of a civil action by the Department in Superior Court for injunctive or other appropriate relief in accordance with N.J.A.C. 7:7- 8.13; and/or
3. The levying of an administrative penalty by the Department in accordance with N.J.A.C. 7:7-8.10 and 8.11.]

[(c)] **(b)** The Department has the power, as enumerated in N.J.S.A. 13:1D-9, and consistent with constitutional requirements, to enter and inspect any [building or place for the purposes of ascertaining compliance or noncompliance with any codes, rules and regulations of the Department] **property, facility, building, premises, site, or place for the purpose of**

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**investigating an actual or suspected source of pollution of the environment and conducting inspections, collecting samples, copying or photocopying documents or records, and for otherwise ascertaining compliance or noncompliance with any laws, permits, orders, codes, rules, and regulations of the Department.**

**(c) Each applicant or permittee shall provide, upon request of the Department, any information required to determine compliance with the provisions of N.J.S.A. 13:19-1 et seq., N.J.S.A. 12:5-1 et seq., N.J.S.A. 13:9A-1 et seq., or any rule or regulation adopted, or permit or order issued pursuant thereto.**

7:7-[8.2]**29.2** [Procedures for issuing an administrative order pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA) and N.J.S.A. 12:5-1 et seq. (Waterfront Development)] **Issuance of an administrative order**

[(a)] Whenever the Department finds that a person has violated any provision of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., N.J.S.A. 13:9A-1 et seq.,** or any regulation, rule, permit, or order adopted or issued by the Department pursuant [to N.J.S.A. 13:19-1 et seq.] **thereto**, the Department may issue an order specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation citing the action which constituted the violation, ordering abatement of the violation, and giving notice to the person of his or her right to a hearing on the matters contained in the order. The ordered party shall have [20] **35 calendar** days from receipt of the order within which to deliver to the Department a written request for a hearing in accordance with N.J.A.C. 7:7-[8.4]**29.4**. After the hearing and

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upon finding that a violation has occurred, the Department may issue a final order. If [no] a hearing is **not** requested **within 35 days of receipt of the order**, then the order shall become final [after the expiration of the 20-day period] **on the 36th calendar day following receipt**. A request for hearing shall not automatically stay the effect of the order.

[ (b) Any development or improvement commenced or executed in violation of the Waterfront Development Act, N.J.S.A. 12:5-1 et seq., may be abated by the State by the issuance of an administrative order by the Commissioner specifying that there has been a violation of the provisions of this section, or any applicable rule, regulation or permit; setting forth the facts forming the basis for the issuance of the order; and specifying the course of action necessary to correct the violation. Procedures to request a hearing on an administrative order issued pursuant to this subsection are contained in N.J.A.C. 7:7-8.11.]

7:7-[8.3] **29.3** [Procedures for assessment] **Assessment**, settlement, and payment of a civil administrative **penalty** [penalties for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)]

(a) To assess a civil administrative penalty under N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., or N.J.S.A. 13:9A-1 et seq.**, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment (NOCAPA) shall:

1. – 3. (No change.)
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:7-[8.4]**29.4**.

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(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's final order in a contested case, or when a notice of civil administrative penalty assessment becomes a final order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:7-[8.4]**29.4**, a notice of civil administrative penalty assessment becomes a final order and is deemed received on the [21st] **36th calendar** day following receipt of the notice of civil administrative penalty assessment by the violator;

2. If the Department denies [the] **an untimely submitted** hearing request pursuant to N.J.A.C. 7:7-[8.4(b)]**29.4(a)**, a notice of civil administrative penalty assessment becomes a final order on the [21st] **36th** day following receipt of the notice of civil administrative penalty assessment by the violator;

3. If the Department denies [the] **a** hearing request pursuant to N.J.A.C. 7:7-[8.4(c)]**29.4(d)** **because it does not include all the required information**, a notice of civil administrative penalty assessment becomes a final order upon receipt of notice of such denial; or

4. (No change.)

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey. Interest shall accrue on the amount of the civil administrative penalty due and owing from the date the

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payment is due and continuing until the civil administrative penalty is paid in full with interest if:

1. A violator does not pay a civil administrative penalty imposed pursuant to a final order within [30] **90 calendar** days of the date that payment is due; or
2. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department within [30] **90 calendar** days of the date that payment is due.

(d) The Department may, in its discretion, settle any civil administrative penalty assessed pursuant to N.J.A.C. 7:7-[8.5 or 8.6]**29.5 or 29.6** according to the following factors:

1. Mitigating or extenuating circumstances not previously considered in the notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:7-[8.5(g)4, 8.6(g)5 or 8.8(h)6]**29.5(h)4 or 29.6;**
2. The timely implementation by the violator of measures leading to compliance not previously considered in the assessment of penalties pursuant to N.J.A.C. 7:7-[8.5)f)1i or 8.6(g)3]**29.5(g)1i or 29.6(h)**, including measures to clean up, reverse, or repair environmental damage caused by the violation, or to remove the violation;
3. - 4. (No change.)

7:7-[8.4]**29.4** Procedures to request **and conduct** an adjudicatory hearing to contest an administrative order and/or a notice of civil administrative penalty assessment[; procedures for conducting adjudicatory hearings for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)]

- (a) To request an adjudicatory hearing to contest an administrative order and/or a notice of

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civil administrative penalty assessment issued pursuant to N.J.S.A. 13:19-1 et seq., **12:5-1 et seq., or 13:9A-1 et seq.,** the violator shall submit [the following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:] **a hearing request in writing within 35 calendar days after receipt by the violator of the administrative order and/or the notice of a civil administrative penalty assessment being contested. If a violator submits the hearing request after this time, the Department shall deny the request.**

**(b) A violator requesting an adjudicatory hearing shall provide the following information on an adjudicatory hearing request form, available from the Department at the address set forth at N.J.A.C. 7:7-1.6:**

1. The name, address, [and] **daytime** telephone number, **fax number, and e-mail address** of the violator **requesting the hearing and** [and its] **the violator's** authorized representative;

[2. The violator's defenses to each of the findings of fact stated in short and plain terms;]

**2. A copy of the Department's administrative order and/or notice of a civil administrative penalty assessment for which a hearing is being requested;**

**3. The date that the administrative order and/or notice of a civil administrative penalty assessment was received by the violator;**

[3. An] **4. A specific admission or denial of each of the [findings of] facts appearing in the Department's administrative order and/or notice of civil administrative penalty assessment or a statement that the person is without knowledge thereof.** If the violator is without

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knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

**5. A statement as to whether the violator agrees to allow the Department to delay the transfer of a granted hearing request to the Office of Administrative Law for the purposes of engaging in settlement negotiations as provided by the Uniform Administrative Procedure Rules at N.J.A.C. 1:1-8.1(b);**

Recodify existing 4. - 6. as **6. - 8.** (No change in text.)

[(b) If the Department does not receive the written request for a hearing within 20 days after receipt by the violator of the notice of a civil administrative penalty assessment and/or an administrative order being contested, the Department shall deny the hearing request.]

**(c) A person requesting an adjudicatory hearing shall:**

**1. Submit the original hearing request to:**

**New Jersey Department of Environmental Protection**

**Office of Legal Affairs**

**Attention: Adjudicatory Hearing Requests**

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**Mail Code 401-04L, P.O. Box 402**

**401 East State Street, 7th Floor**

**Trenton, NJ 08625-0402; and**

**2. Submit a copy of the hearing request to:**

**New Jersey Department of Environmental Protection**

**Bureau of Coastal and Land Use Compliance and Enforcement**

**1510 Hooper Avenue**

**Toms River, NJ 08753**

[(c)] (d) If the violator fails to include all the information required by [(a)] (b) above, the Department may deny the hearing request.

[(d)] (e) (No change in text.)

7:7-[8.5]29.5 Civil administrative penalties for failure to obtain a permit [for] **prior to conducting** regulated activities [pursuant to N.J.S.A. 13:19-1 et seq. (CAFRA)]

(a) [The] **For the failure to obtain a permit prior to conducting regulated activities, the** Department may assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.A.C. 7:7-[2.1]2.2, 2.3, or 2.4. **For the purposes of this section, a permit shall mean an authorization under a general permit-by-certification, authorization under a general permit, individual permit, emergency authorization, letter of authorization, memorandum of agreement, or other written authorization, or other**

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**approval issued pursuant to N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., or 13:9A-1 et seq.**

(b) Each violation of N.J.A.C. 7:7-[2.1] **2.2, 2.3, and 2.4**, shall constitute an additional, separate, and distinct violation.

**(c) Each day during which the violation continues or remains in place without the required permit shall constitute an additional, separate, and distinct offense.**

[(c)] **(d)** To assess a civil administrative penalty pursuant to this section, the Department shall identify the civil administrative base penalty within the table in [(e)] **(f)** below by determining the number of points pursuant to [(d)] **(e)** below. The civil administrative penalty shall be the amount within the table in [(e)] **(f)** below, unless adjusted pursuant to [(f) and/or] **(g) and/or (h)** below.

[(d)] The Department shall determine the number of points assigned to each violation by summing the points according to (d)1 through 3 below.

1. Conduct of violator:

|          |          |
|----------|----------|
| Minor    | 1 point  |
| Moderate | 2 points |
| Major    | 3 points |

i. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

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ii. Moderate shall include any unintentional but foreseeable act or omission by the violator;

or

iii. Minor shall include any other conduct not included in (d)1i or ii above.

2. Area of disturbance in square feet (sf):

|                              |          |
|------------------------------|----------|
| Less than or equal to 270 sf | 1 point  |
| 271 sf to 5,000 sf           | 2 points |
| 5,001 sf to 10,000 sf        | 3 points |
| 10,001 sf to 20,000 sf       | 4 points |
| Greater than 20,000 sf       | 5 points |

The Department shall determine the area of disturbance as that area which was actually disturbed as a result of the violation.

3. Unauthorized activity conducted in special area or resources:

Each special area or resource involved-1 point

The Department shall assess one point for each special area or resource, as defined in N.J.A.C. 7:7E-3, in which the unauthorized activity occurred.

(e) The table of civil administrative base penalties is as follows:

| Points | Base Penalty |
|--------|--------------|
|--------|--------------|

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|     |           |
|-----|-----------|
| 1-3 | \$ 500    |
| 4   | \$ 1,000  |
| 5   | \$ 5,000  |
| 6   | \$10,000  |
| 7   | \$15,000  |
| 8   | \$20,000  |
| 9   | \$25,000] |

**(e) The Department shall use the two factors described in (e)1 and 2 below to determine the number of points assigned to each violation.**

**1. The conduct factor of the violation shall be classified as major, moderate, or minor and assigned points as follows:**

**i. Major shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator and is assigned five points;**

**ii. Moderate shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and**

**iii. Minor shall include any other conduct not included in (e)1i or ii above and is assigned one point.**

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**2. The seriousness factor of the violation is assigned points as provided below and shall be based on the type, size, and location of the violation as provided at (e)2i or ii below, whether the activity also constitutes a Tidelands violation as provided at (e)2iii below, and whether the activity was conducted in a special area as provided at (e)2iv below:**

**i. The area of the violation shall be assessed points in accordance with (e)2i(1) through (13) below for violations located in an area regulated under CAFRA as set forth at N.J.A.C. 7:7-2.2, and upland waterfront development areas as set forth at N.J.A.C. 7:7-2.4(a)3ii. A violation that disturbed:**

**(1) Greater than 200,000 square feet is assigned 13 points;**

**(2) Greater than 150,000 square feet up to and including 200,000 square feet is assigned 12 points;**

**(3) Greater than 100,000 square feet up to and including 150,000 square feet is assigned 11 points;**

**(4) Greater than 70,000 square feet up to and including 100,000 square feet is assigned 10 points;**

**(5) Greater than 40,000 square feet up to and including 70,000 square feet is assigned is assigned nine points;**

**(6) Greater than 20,000 square feet up to and including 40,000 square feet is assigned is assigned eight points;**

**(7) Greater than 10,000 square feet up to and including 20,000 square feet is assigned seven points;**

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**(8) Greater than 5,000 square feet up to and including 10,000 square feet is assigned six points;**

**(9) Greater than 2,000 square feet up to and including 5,000 is assigned five points;**

**(10) Greater than 750 square feet up to and including 2,000 square feet is assigned four points;**

**(11) Greater than 500 square feet up to and including 750 square feet is assigned three points;**

**(12) Greater than 50 square feet up to and including 500 square feet is assigned two points; and**

**(13) Up to and including 50 square feet is assigned one point.**

**ii. The area and/or type of the violation shall be assessed points, in accordance with (e)2ii(1) through (3) below for violations located in areas regulated pursuant to the Wetlands Act of 1970 as set forth at N.J.A.C. 7:7-2.3, and waterfront development areas as set forth at N.J.A.C. 7:7-2.4(a)1, 2, and 3i:**

**(1) A violation comprised of excavation or filling, construction, or placement of structures such as pilings, boat lifts, docks, piers, breakwaters, bulkheads, or other disturbance:**

**(A) Greater than 20,000 square feet is assigned 10 points;**

**(B) Greater than 15,000 square feet up to and including 20,000 square feet is assigned nine points;**

**(C) Greater than 10,000 square feet up to and including 15,000 square feet is assigned eight points;**

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**(D) Greater than 7,500 square feet up to and including 10,000 square feet is assigned seven points;**

**(E) Greater than 5,000 square feet up to and including 7,500 square feet is assigned six points;**

**(F) Greater than 2,000 square feet up to and including 5,000 is assigned five points;**

**(G) Greater than 1,000 square feet up to and including 2,000 square feet is assigned four points;**

**(H) Greater than 500 square feet up to and including 1,000 square feet is assigned three points;**

**(I) Greater than 100 square feet up to and including 500 square feet is assigned two points; or**

**(J) Up to and including 100 square feet is assigned one point;**

**(2) A violation comprised of dredging within a natural waterbody is assigned 10 points; and**

**(3) A violation comprised of dredging within a man-made lagoon is assigned four points.**

**iii. In addition to the points assessed in accordance with (e)2i and ii above, for a violation located in a State-owned Tidelands area for which a current tidelands instrument has not been obtained, or for which payment is in arrears, the Department shall assess an additional one point.**

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**iv. In addition to the points assessed in accordance with (e)2i through iii above, for a violation located in a special area described at N.J.A.C. 7:7-9, the Department shall assess an additional one point per special area.**

**(f) The Department shall sum the total points assigned according to the two factors in (e) above, and shall determine the base penalty amount per day using the following table:**

**Base Penalty Points Table**

| <b>Points</b>       | <b>Base Penalty</b> |
|---------------------|---------------------|
| <b>1-3</b>          | <b>\$500</b>        |
| <b>4-6</b>          | <b>\$1,000</b>      |
| <b>7-8</b>          | <b>\$2,000</b>      |
| <b>9-10</b>         | <b>\$3,000</b>      |
| <b>11-12</b>        | <b>\$6,000</b>      |
| <b>13-14</b>        | <b>\$8,000</b>      |
| <b>15-16</b>        | <b>\$10,000</b>     |
| <b>17-19</b>        | <b>\$15,000</b>     |
| <b>20-22 points</b> | <b>\$20,000</b>     |
| <b>23 or more</b>   | <b>\$25,000</b>     |

**[(f)] (g) The Department shall adjust the amount of the base penalty assessed pursuant to [(e)] (f) above based upon the mitigating penalty component as calculated in [(f)1i] (g)1i or ii**

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below, if applicable.

1. The Department shall multiply the base penalty dollar amount by the multiplier for either of the applicable mitigating factors in [(f)1i] **(g)1i** or ii below to obtain the mitigating penalty component. Where neither mitigating factor in [(f)1i] **(g)1i** or ii below applies, the civil administrative penalty shall be the civil administrative base penalty determined pursuant to [(e)] **(f)** above, unless adjusted pursuant to [(g)] **(h)** below.

| Mitigating Factor   | Multiplier |
|---|------------|
| <p>i Where the nature, timing, and effectiveness of any measures taken by the violator to remove the unauthorized development and to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 <b>calendar</b> days of receipt of the notice of violation from the Department; or</p> | 0.50       |
| <p>ii. Where a complete application is submitted within 30 <b>calendar</b> days of receipt of the notice of the violation from the Department and a permit is subsequently obtained for the unauthorized development without the need of any modification, mitigation or restoration.</p>   | 0.50       |

2. To obtain the civil administrative penalty, the Department shall subtract the mitigating penalty component calculated pursuant to [(f)1] **(g)1** above, where applicable, from the base

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penalty.

[(g)] **(h)** The Department may, in its discretion, adjust the amount of any penalty assessed pursuant to [(e) or] **(f) and**, where applicable, [(f)] **(g)** above based upon any or all of the factors listed in [(g)1] **(h)1** through 4 below. No such factor constitutes a defense to any violation. [In no case shall the assessed penalty be less than 25 percent of the penalty pursuant to (e) above, or more than the statutory limit.] **The factors are:**

1. (No change.)
2. The frequency with which any violation of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., N.J.S.A. 13:9A-1 et seq.,** or rules, permit, or order **adopted or issued pursuant thereto** occurred, **including environmental impacts;**
3. - 4. (No change.)

**(i) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.**

7:7-[8.6]**29.6** Civil administrative penalties for violations [of N.J.S.A. 13:19-1 et seq. (CAFRA)] other than failure to obtain a permit [for] **prior to conducting** regulated activities

(a) [The] **For violations other than failure to obtain a permit prior to conducting**

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**regulated activities, the** Department may, in its discretion, assess a civil administrative penalty pursuant to this section of not more than \$25,000 for each violation of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq.,** or any regulation, rule, permit, **condition,** or order adopted or issued by the Department pursuant [to N.J.S.A. 13:19-1 et seq., other than those violations addressed under N.J.A.C. 7:7-8.5] **thereto.** The Department shall assess penalties under this section [in lieu of] **rather than under** N.J.A.C. 7:7-[8.5]**29.5** when N.J.A.C. 7:7-[8.5]**29.5** is not applicable to the violation.

(b) Each violation of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq.,** or any [rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq.] **regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto,** shall constitute an additional, separate, and distinct violation.

(c) Where any requirement of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., and/or N.J.S.A. 13:9A-1 et seq.,** or any [rule promulgated, any administrative order or permit issued pursuant to N.J.S.A. 13:19-1 et seq.] **regulation, rule, permit, condition, or order adopted or issued by the Department pursuant thereto,** may pertain to more than one act, condition, or occurrence, the failure to comply with such requirement as it pertains to each such act, condition, or occurrence shall constitute an additional, separate, and distinct violation.

(d) [The] **To assess a civil administrative penalty pursuant to this section, the** Department

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[may assess a civil administrative penalty for violations described in this section on the basis of the seriousness of the violation and the conduct of the violator at the mid-point of the following ranges, unless adjusted pursuant to (g) below] **shall use the two factors described at (e) and (f) below, seriousness and conduct, to determine the amount of the base daily civil administrative penalty. The applicable daily penalty amount is determined using the base daily penalty matrix in the table below, based on the seriousness of the violation determined pursuant to (e) below and the conduct of the violator determined pursuant to (f) below:**

**Base Daily Penalty Matrix**

SERIOUSNESS

|          | Major                   | Moderate                               | Minor                               |
|----------|-------------------------|--|-------------------------------------|
| Major    | [\$20,000-]<br>\$25,000 | \$15,000[-<br>\$20,000]                | \$10,000[-<br>\$15,000]             |
| CONDUCT  |                         |  |                                     |
| Moderate | \$15,000[-<br>\$20,000] | [\$10,000-<br>\$15,000] <b>\$7,500</b> | \$ 5,000[-<br>\$10,000]             |
| Minor    | \$10,000[-<br>\$15,000] | \$ 5,000[-<br>\$10,000]                | [\$125-<br>\$ 5,000] <b>\$1,000</b> |

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(e) The seriousness of the violation shall be determined as major, moderate, or minor as follows:

1. Major seriousness shall apply to any violation which has caused or has the potential to cause serious harm to human health, **safety**, or the environment, **or the coastal regulatory program, or seriously deviates from the applicable law and/or condition. “Serious” deviations include, but are not limited to, those violations which are in complete contravention of the law, requirement, and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement, or condition.**

**Violations of “major” seriousness include, but are not limited to, any unauthorized activity occurring within or impacting a special area described at N.J.A.C. 7:7-9;**

2. Moderate seriousness shall apply to any violation which has caused or has the potential to cause substantial harm to human health, **safety**, or the environment[; or], **the coastal regulatory program, or substantially deviates from the applicable law and/or condition. “Substantial deviation” shall include, but not be limited to, violations which are in substantial contravention of the law, requirement, and/or condition, and/or which severely impair or undermine the protection, operation, or intent of the law, requirement, and/or condition.**

**The Department will consider a violation to be of moderate seriousness if limited solely to upland areas that are not designated as a wetland or other special area identified at N.J.A.C. 7:7-9; and**

3. (No change.)

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(f) The conduct of the violator shall be determined as major, moderate, or minor as follows:

1. Major conduct shall include any intentional, deliberate, purposeful, knowing, or willful act or omission by the violator. **There is a rebuttable presumption that any violation of a Department permit or authorization, emergency authorization, exemption under N.J.S.A. 12:5-3.a, applicability determination, and/or Tidelands instrument or the conditions thereof to be knowing violations;**

2. - 3. (No change.)

[(g) The Department may, in its discretion, adjust the amount determined pursuant to (d), (e) and (f) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range described in (d) above, on the basis of any or a combination of the factors listed in (g)1 through 5 below. No such factor constitutes a defense to any violation:

1. The compliance history of the violator;
2. The number and frequency of violation(s) by the violator;;
3. The measures taken by the violator to mitigate the effects of the current violation;
4. The deterrent effect of the penalty; and/or
5. Any other extenuating, mitigating or aggravating circumstances.]

**(g)The total civil administrative penalty shall be the daily civil administrative penalty determined under (d) through (f) above, multiplied by the number of calendar days during which each violation continued or remained in place without the required permit.**

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**(h) Notwithstanding the maximum civil administrative penalty of \$25,000 pursuant to this subsection, the Department may add to a civil administrative penalty assessed under this subchapter the amount of economic benefit in dollars that the violator has realized as the result of not complying, or by delaying compliance with, an applicable law and/or condition.**

7:7-[8.7]**29.7** Civil **penalties** [penalty for violations of N.J.S.A. 13:19-1 et seq. (CAFRA)]

(a) Any person who violates the provisions of N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., and /or N.J.S.A. 13:9A-1 et seq.,** any regulation, rule, permit, [or] order, **or court order** [adopted or] issued [by the Department pursuant to N.J.S.A. 13:19-1 et seq., an administrative order or a court order issued pursuant to N.J.S.A. 13:19-1 et seq., or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-8.3,] **pursuant thereto, or who fails to pay a civil administrative penalty in full pursuant to N.J.A.C. 7:7-29.3, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the Department,** shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

(b) Any penalty established pursuant to this section may be imposed and collected with costs in a summary proceeding pursuant to the Penalty Enforcement Law **of 1999**, N.J.S.A. 2A:58-[1]**10** et seq. The Superior Court [and the municipal court] shall have jurisdiction to enforce the

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provisions of the Penalty Enforcement Law **of 1999** in connection with N.J.S.A. 13:19-1 et seq., **N.J.S.A. 12:5-1 et seq., and /or N.J.S.A. 13:9A-1 et seq.**

7:7-[8.13]**29.8** Civil actions [for violations of N.J.S.A. 13:19-1 et seq. (CAFRA), N.J.S.A. 12:5-1 et seq. (Waterfront Development), and N.J.S.A. 13:9A-1 et seq. (Wetlands Act of 1970)]

(a) The Department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver, for any violation of N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq. and 12:5-1 et seq. or any regulation, rule, permit, or order adopted or issued by the Department pursuant to any of these acts, and the court may proceed in the action in a summary manner. Such relief may include, singly or in combination:

1. (No change.)

[2. Assessment against the violator for any costs incurred by the Department in removing, correcting or terminating the violation of any provision of any of the acts, or any regulation or rule adopted, or permit or order issued, by the Department pursuant to any of these acts, for which the action under this section may have been brought; and/or

3. A requirement that the violator restore the site of the violation to the maximum extent practicable and feasible.]

**2. Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;**

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**3. Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;**

**4. Recovery of compensatory damages for any loss or destruction of natural resources, including, but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection; and/or**

**5. Execution of an order requiring the violator to restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for an off-site restoration alternative as approved by the Department.**

[(b) For violations of N.J.S.A. 13:19-1 et seq., the Department may institute an action or proceeding in the Superior Court for the assessment against the violator for any costs incurred by the Department in terminating the adverse effects upon the land, or upon water or air quality, resulting from any violation of any provision of N.J.S.A. 13:19-1 et seq., or any rule promulgated or any permit or order issued by the Department pursuant to N.J.S.A. 13:19-1 et seq., for which the action under this section may have been brought.]

**(b) Recovery of damages and costs under (a) above shall be paid to the State Treasurer.**

### **7:7-29.9 Criminal action**

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**(a) The Department, upon petition to the Attorney General, may bring a criminal action in court for certain violations of N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and/or 13:9A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto.**

**(b) A person who knowingly, purposely, or recklessly violates N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and/or 13:9A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of no less than \$5,000 and not more than \$50,000 per day of violation, or imprisonment, or both.**

**(c) A person shall be guilty, upon conviction, of a crime of the third degree and shall be subject to a fine of not more than \$50,000 per day of violation, or imprisonment, or both, if the person:**

**1. Knowingly, purposely, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and/or 13:9A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto;**  
**or**

**2. Falsifies, tampers with, or purposely, recklessly, or knowingly renders inaccurate, any monitoring device or method required to be maintained under N.J.S.A. 13:19-1 et seq.,**

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**12:5-1 et seq., and/or 13:9A-1 et seq., or any regulation, rule, permit, or order adopted or issued by the Department pursuant thereto.**

7:7-[8.14] **29.10** Grace period applicability; procedures

(a) Each violation of **N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and 13:9A-1 et seq.** identified in Table A at (f) below by an “M” in the Type of Violation column for which the conditions of (d)1 through 6 below are satisfied, and each violation determined under (c) below as minor for which the conditions of (d)1 through 9 below are satisfied, is a minor violation and is subject to a [30-day] **30-calendar-day** grace period.

(b) Each violation of **N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and 13:9A-1 et seq.** identified in Table A at (f) below by an “NM” in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) If a violation of **N.J.S.A. 13:19-1 et seq., 12:5-1 et seq., and 13:9A-1 et seq.** is not listed in Table A at (f) below, the designation of the violation as minor or non-minor is determined as follows:

1. If the violation is not listed in Table A at (f) below but is comparable to a violation designated as “M” in Table A and the violation meets all of the criteria of (d)1 through 6 below, then the violation is minor. The minor violation shall be subject to a grace period of 30 **calendar** days as described at (e) below.

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2. If the violation is not listed in Table A at (f) below and is not comparable to a violation listed in Table A but the violation meets all of the criteria of (d)1 through 9 below, the violation is minor. The minor violation shall be subject to a grace period of 30 **calendar** days as described at (e) below.

3. – 5. (No change.)

(d) The Department shall provide a grace period of 30 **calendar** days for any violation identified as minor under this section, provided the following conditions are met:

1. – 9. (No change.)

(e) For a violation determined to be minor under (a) or (c) above, the following provisions apply:

1. The Department shall issue a notice of violation to the person responsible for the minor violation that:

i. (No change.)

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period of 30 **calendar** days.

2. – 3. (No change.)

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period in writing no later than one week before the expiration of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or

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causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The request shall be signed and certified to be true by the responsible party or their designee. The Department may, in its discretion, approve in writing an extension which shall not exceed 90 **calendar** days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department may consider the following:

i. – iv. (No change.)

5. – 6. (No change.)

(f) The designations of violations [of the Coastal Permit Program rules] relating to [the Wetlands Act of 1970 and CAFRA] **N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq., and 12:5-1 et seq.** and this chapter as minor (M) or non-minor (NM) are set forth in Table A below. The violation descriptions are provided for informational purposes only. In the event that there is a conflict between a violation description in Table A and the rule to which the violation description corresponds, the rule shall govern.

Table A

| <u>[Rule Citation]</u>                         | <u>Violation Description</u>  | <u>Type of Violation</u> |
|--|---|--------------------------|
| N.J.A.C. 7:7-1.5(a),<br>7:7-2.1(a), 7:7-2.2(a) | Failure to obtain a permit prior to conducting regulated activities (CAFRA, Wetlands Act of | NM                       |

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|----------------------|---|----|
| N.J.A.C. 7:7-1.5(b)1 | Failure to notify the Department in writing at least three working days prior to starting work under a permit   | NM |
| N.J.A.C. 7:7-1.5(b)2 | Failure to notify the Department in writing and certify that all permit conditions have been met within five working days prior to operation of a CAFRA development | NM |
| N.J.A.C. 7:7-1.5(b)4 | Failure to allow the Department free access to the site   | NM |
| N.J.A.C. 7:7-1.5(b)5 | Failure to obtain written permission from the Department prior to a change in plans or specifications on which a permit is issued                                   | NM |
| N.J.A.C. 7:7-1.5(b)6 | Failure to post and maintain permits, and plans at the permitted site   | NM |
| N.J.A.C. 7:7-1.5(b)7 | Failure to inform the Department of adverse effects   | NM |

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on the environment not described in the application  
or in the conditions of the permit

|                       |  |    |
|-----------------------|--|----|
| N.J.A.C. 7:7-1.5(b)10 | Failure to comply with the terms of a suspension or revocation notice  | NM |
| N.J.A.C. 7:7-1.5(b)12 | Failure to notify the Department of political subdivision's decision whether or not to accept land dedication  | NM |
| N.J.A.C. 7:7-1.5(b)13 | Failure to apply for permit modification in the event of a rental, lease, sale or other conveyance by the permittee when there is a change in the site, proposed construction, or proposed use of the development from that identified in the original application | NM |
| N.J.A.C. 7:7-1.5(b)14 | Failure to comply with a permit condition that must be satisfied prior to the commencement of construction   | NM |
| N.J.A.C. 7:7-1.5(b)15 | Failure to file permit with the county clerk   | NM |

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|-----------------------|---|----|
| N.J.A.C. 7:7-1.5(b)16 | Failure to minimize noise during construction   | NM |
| N.J.A.C. 7:7-1.5(b)17 | Failure to comply with the latest revised standards for soil erosion and sediment control under the Soil Erosion and Sediment Control Act of 1975       | NM |
| N.J.A.C. 7:7-1.5(b)18 | Failure to submit proof that the conservation restriction has been recorded   | M  |
| N.J.A.C. 7:7-1.5(c)2  | Failure to submit a request to continue construction beyond the expiration of a permit no later than 20 business days prior to expiration of the permit | M  |
| N.J.A.C. 7:7-1.7(a)4  | Failure to submit a complete coastal permit application within 10 working days of issuance of an emergency permit authorization                         | NM |
| N.J.A.C. 7:7-2.2(b)   | Conducting identified prohibited activities within coastal wetlands without prior Department authorization  | NM |
| N.J.A.C. 7:7-4.2(a)3  | Failure to provide verification that copies of the  | M  |

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application have been submitted to the clerk of the municipality in which the proposed development would occur including a letter requesting that the clerk distribute one copy to the planning board and one copy to the environmental commission

|                      |  |    |
|----------------------|--|----|
| N.J.A.C. 7:7-4.2(a)4 | Failure to provide verification that the application has been submitted to the municipal construction official, planning board and environmental commission, and to property owners within 200 feet of the property or properties. | M  |
| N.J.A.C. 7:7-4.3(a)  | Failure by a CAFRA applicant to provide appropriate newspaper public notice of permit application  | NM |
| N.J.A.C. 7:7-4.3(b)  | Failure to submit proof to the Department that CAFRA newspaper public notice requirements have been met  | M  |
| N.J.A.C. 7:7-4.5(f)  | Failure of an applicant to provide appropriate   | NM |

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public notice of public hearing on a permit  
application

|                      |   |    |
|----------------------|---|----|
| N.J.A.C. 7:7-7.3(a)4 | Failure to provide verification that three copies of the application have been submitted to the clerk of the municipality in which the general permit activity would occur, and if appropriate, to the Pinelands Commission                       | M  |
| N.J.A.C. 7:7-7.3(a)5 | Failure to provide verification that a copy of the application has been submitted to the construction official and that certified mail notice has been provided to all owners of real property surrounding and sharing a common property boundary | M  |
| N.J.A.C. 7:7-7.3A    | Failure to submit to the Department a request for modification of a coastal general permit authorization should a permittee propose a change in the development   | NM |
| N.J.A.C. 7:7-7.3A(e) | Failure to provide public notice for request of a   | NM |

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modification of a coastal permit authorization

N.J.A.C. 7:7-8.1      Failure to comply with a site-specific CAFRA      NM  
 permit condition issued by the Department

N.J.A.C. 7:7-8.1      Failure to submit to the Department documentation      M]  
 required by a CAFRA permit condition

| <b><u>Rule Citation</u></b>            | <b><u>Violation Description</u></b>  | <b><u>Type of Violation</u></b> |
|--|--|---------------------------------|
| N.J.A.C. 7:7-2.2, 7:7-2.3, and 7:7-2.4 | Conducting regulated or prohibited activities under CAFRA, Wetlands Act of 1970, and/or Waterfront Development Statutes without prior Department approval  | NM                              |
| N.J.A.C. 7:7-8.2 and 7:7-27.3          | Failure to submit a request to continue construction beyond the expiration of a permit no later than 20 working days prior to expiration of the permit, excluding permits authorizing activities located waterward of the mean high water line | M                               |

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|--|---|------------------|
| <p><b>N.J.A.C. 7:7-17.9, 7:7-17.11, 7:7-17.13, and 7:7-17.22</b></p> | <p><b>Failure to execute and record the conservation restriction that meets the requirements of N.J.A.C. 7:7-18</b></p>                               | <p><b>NM</b></p> |
| <p><b>N.J.A.C. 7:7-17.11 and 7:7-17.13</b></p>                       | <p><b>Failure to submit a construction completion report for the mitigation site within the required time frame of completion of construction</b></p> | <p><b>M</b></p>  |
| <p><b>N.J.A.C. 7:7-17.11 and 7:7-17.13</b></p>                       | <p><b>Failure to submit an annual monitoring report at the required intervals following completion of construction of the mitigation site</b></p>     | <p><b>M</b></p>  |
| <p><b>N.J.A.C. 7:7-17.11 and 7:7-17.13</b></p>                       | <p><b>Failure to demonstrate to the Department at the end of the monitoring period that the mitigation project is successful</b></p>                  | <p><b>M</b></p>  |
| <p><b>N.J.A.C. 7:7-17.11 and 7:7-17.14</b></p>                       | <p><b>Failure to provide the government agency or charitable conservancy with a maintenance</b></p>   | <p><b>NM</b></p> |

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**fund for the mitigation area transferred to  
the government agency or charitable  
conservancy**

**N.J.A.C. 7:7-17.11 and  
7:7-17.14**      **Failure to apply to the Wetland Mitigation  
Council for approval of the amount of  
monetary contribution**      **NM**

**N.J.A.C. 7:7-17.11 and  
7:7-17.14**      **Failure to apply to the Wetland Mitigation  
Council for approval of the particular parcel  
of land to be donated following the  
Department's determination that land  
donation is the appropriate mitigation  
alternative**      **NM**

**N.J.A.C. 7:7-17**      **Failure to conduct mitigation as required by  
a Department approval or administrative  
order**      **NM**

**N.J.A.C. 7:7-17**      **Failure to comply with all conditions of a  
mitigation plan**      **NM**

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| <b>N.J.A.C. 7:7-18</b>      | <b>Failure to submit proof that a conservation restriction has been recorded</b>  | <b>M</b>  |
| <b>N.J.A.C. 7:7-21.3</b>    | <b>Failure to comply with the terms of an emergency authorization.</b>  | <b>NM</b> |
| <b>N.J.A.C. 7:7-21.3(e)</b> | <b>Failure to file a complete permit application and “as built” site plans for completed activities within 90 calendar days after verbal approval</b> | <b>NM</b> |
| <b>N.J.A.C. 7:7-21.3(i)</b> | <b>Failure to modify the activities to comply with the requirements of this chapter where directed to do so by the Department</b>                     | <b>NM</b> |
| <b>N.J.A.C. 7:7-23</b>      | <b>Submittal of false information by the applicant, its consultants and/or agents</b>   | <b>NM</b> |
| <b>N.J.A.C. 7:7-23.2(k)</b> | <b>Failure to provide complete and accurate information of which an applicant or its</b>  | <b>NM</b> |

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**agents are aware, or reasonably should have  
been aware**

**N.J.A.C. 7:7-24.2**                      **Failure to provide timely public notice of an**                      **M**  
**application**

**N.J.A.C. 7:7-24.3(a)**                      **Failure to provide verification that a copy of**                      **M**  
**the entire application has been submitted to**  
**the municipal clerk**

**N.J.A.C. 7:7-24.3(b)**                      **Failure to provide notice of the application to**                      **M**  
**the following entities: construction official,**  
**environmental commission, county planning**  
**board, municipal planning board, local soil**  
**conservation district, and all owners of real**  
**property and easements within 200 feet of**  
**the property boundary of the site**

**N.J.A.C. 7:7-24.3(e)**                      **Failure to provide verification that a copy of**                      **M**  
**the entire application has been to the**  
**Pinelands Commission**

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|----------------------------------|--|-----------|
| <b>N.J.A.C. 7:7-27.2(c)6</b>     | <b>Failure to inform the Department of adverse effects on the environment not described in the application or in the conditions of the permit</b>                          | <b>NM</b> |
| <b>N.J.A.C. 7:7-27.2(c)10</b>    | <b>Failure to minimize noise during construction</b>   | <b>NM</b> |
| <b>N.J.A.C. 7:7-27.2(c)13iii</b> | <b>Failure to allow the Department reasonable access to the site</b>   | <b>NM</b> |
| <b>N.J.A.C. 7:7-27.2(d)3</b>     | <b>Failure to record a permit with the county clerk</b>  | <b>M</b>  |
| <b>N.J.A.C. 7:7-27.2(d)4</b>     | <b>Failure to notify the Department in writing and certify that all permit conditions have been met within five working days prior to operation of a CAFRA development</b> | <b>M</b>  |

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|                               |  |           |
|-------------------------------|--|-----------|
| <b>N.J.A.C. 7:7-27.2(d)7</b>  | <b>Failure to comply with a permit condition that must be satisfied prior to the commencement of construction</b>  | <b>NM</b> |
| <b>N.J.A.C. 7:7-27.2(d)8</b>  | <b>Failure to post and maintain permits and approved site plans at the permitted site at all times</b>   | <b>M</b>  |
| <b>N.J.A.C. 7:7-27.2(d)14</b> | <b>Failure to notify the Department in writing at least three working days prior to starting work under a permit</b>   | <b>M</b>  |
| <b>N.J.A.C. 7:7-27.4</b>      | <b>Failure to submit required documentation concerning the transfer of a property</b>  | <b>M</b>  |
| <b>N.J.A.C. 7:7-27.6</b>      | <b>Failure to submit to the Department an application for modification of a general permit authorization or individual permit, should a permittee proposed a change in the development</b> | <b>NM</b> |

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|                                       |   |           |
|---------------------------------------|---|-----------|
| <b>N.J.A.C. 7:7-27.6</b>              | <b>Failure to provide public notice for request for modification of a permit authorization</b>        | <b>M</b>  |
| <b>N.J.A.C. 7:7-27.7 and 7:7-27.8</b> | <b>Failure to comply with the terms of a suspension or termination notice</b>                         | <b>NM</b> |
| <b>N.J.A.C. 7:7-27.8</b>              | <b>Failure to properly remediate and restore impacts caused under a terminated permit or approval</b> | <b>NM</b> |

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[Appendix A

Illustration of the Waterward Side

of Development

Pursuant to N.J.A.C. 7:7-1.3]

**APPENDIX A**

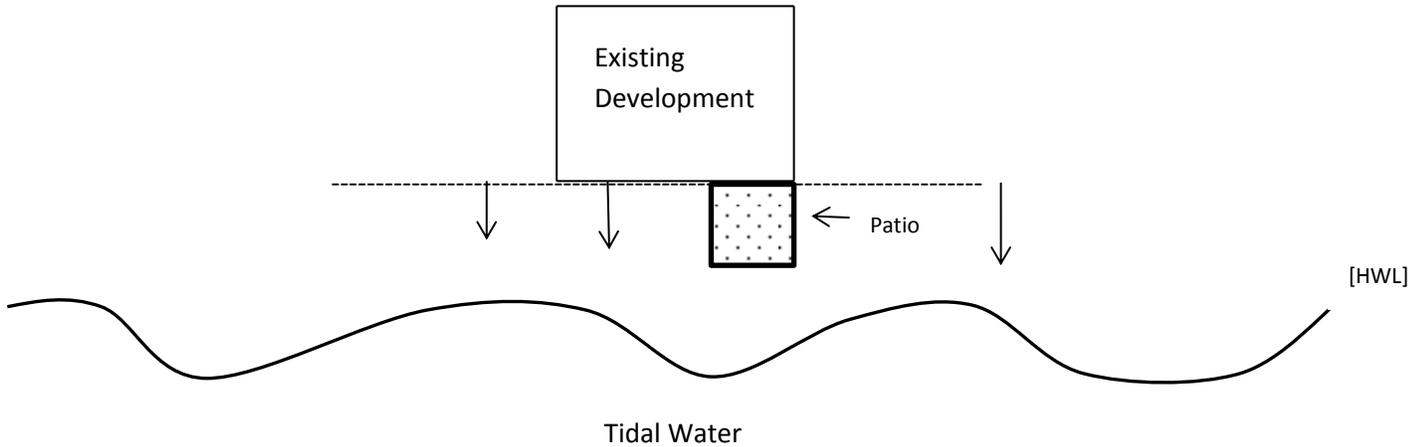
**ILLUSTRATION OF THE WATERWARD SIDE**

**OF DEVELOPMENT**

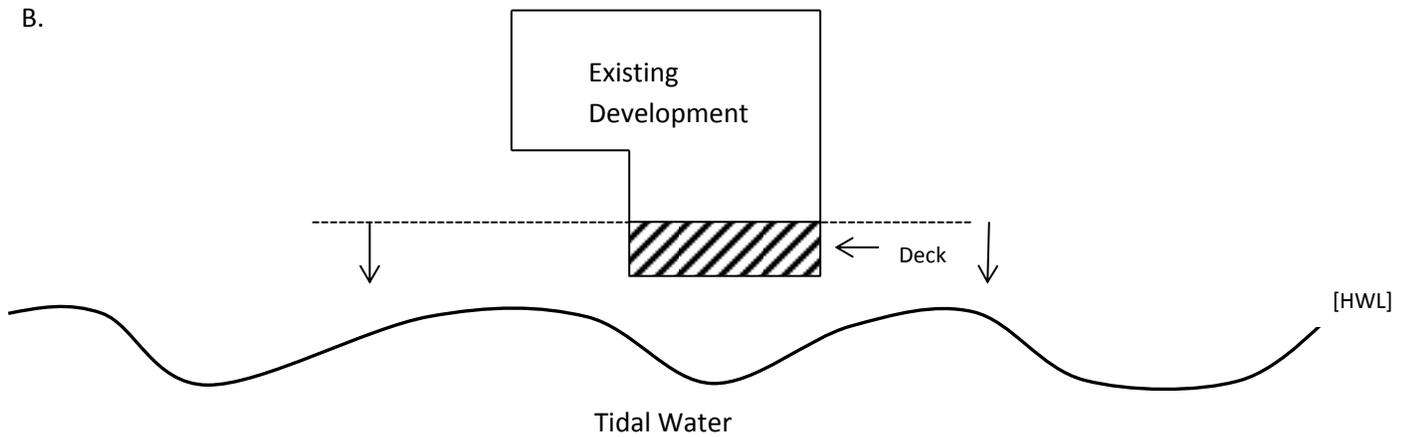
**(incorporated by reference at N.J.A.C. 7:7-1.5)**

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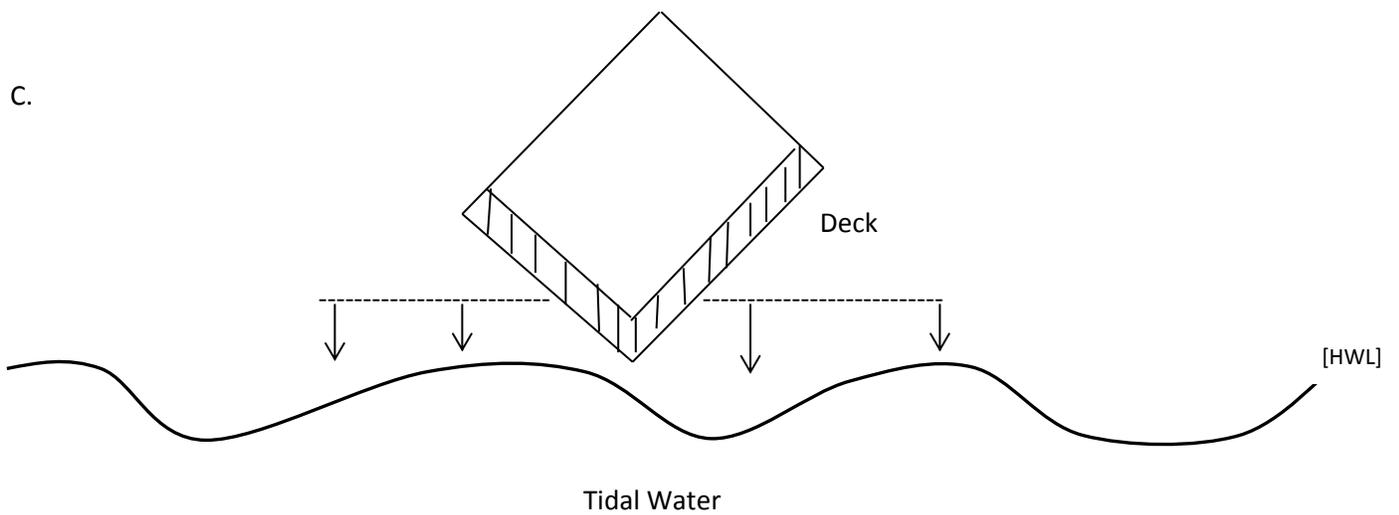
A.



B.

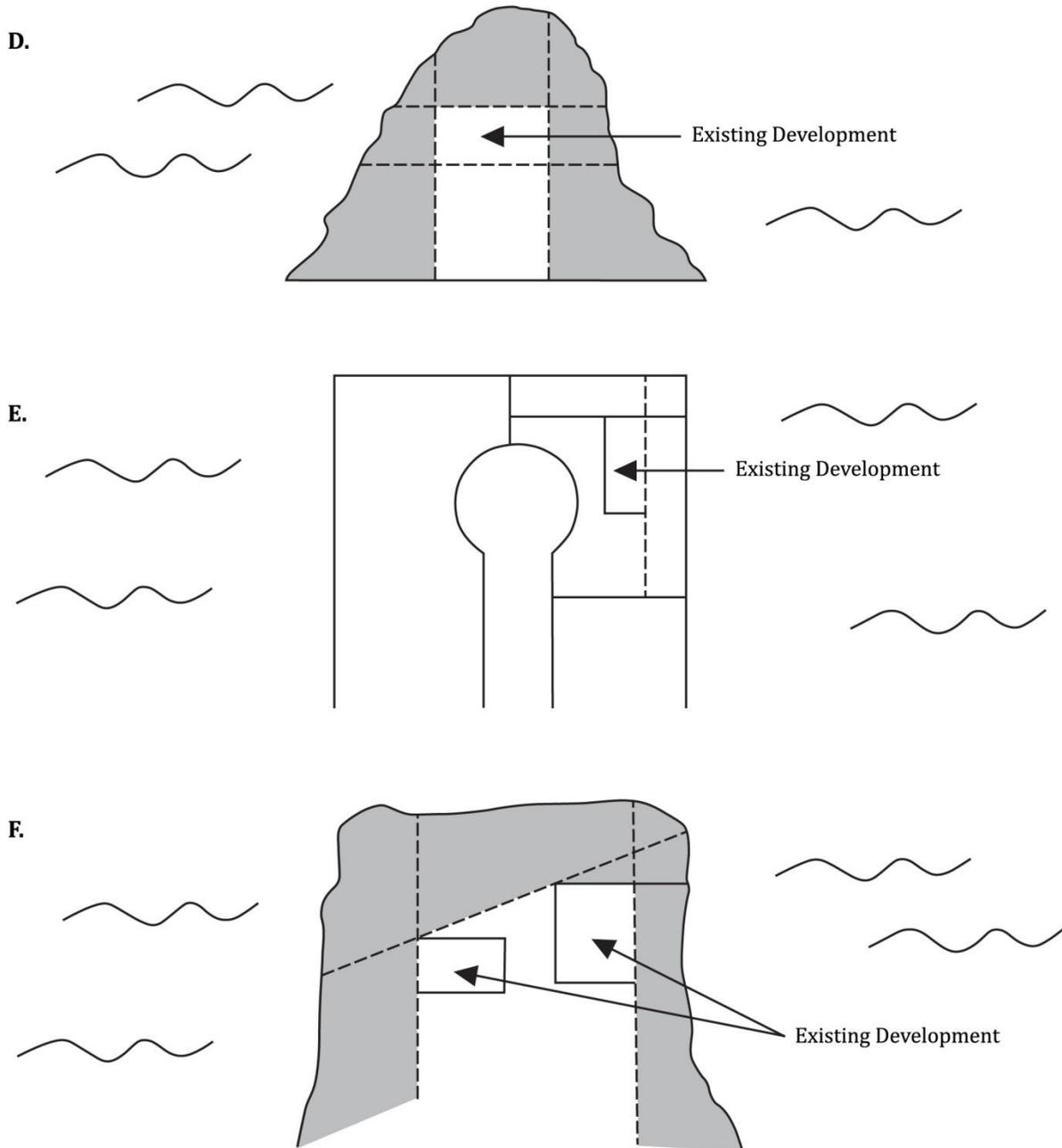


C.



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NOTE: Shaded areas denote waterward side of development

**NOT TO SCALE**

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[Appendix B

Illustration of Intervening Development for Proposed

Development other than a Single Family Home or Duplex

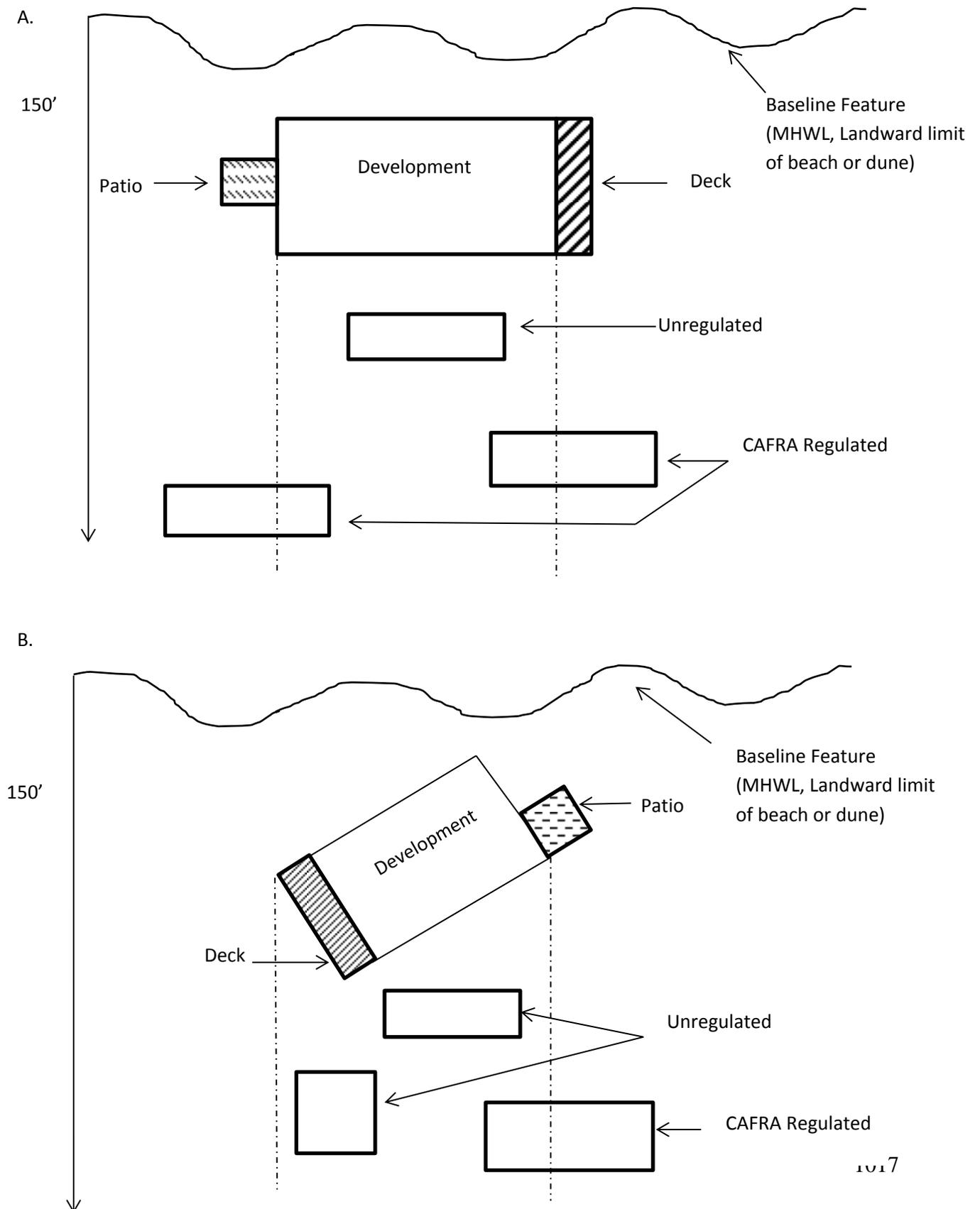
pursuant to N.J.A.C. 7:7-2.1(b)]

**APPENDIX B**

**ILLUSTRATION OF INTERVENING DEVELOPMENT FOR PROPOSED  
DEVELOPMENT OTHER THAN A SINGLE-FAMILY HOME OR DUPLEX**

**(incorporated by reference at N.J.A.C. 7:7-2.2(b)1)**

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[Appendix C

Illustration of Intervening Development for

Proposed Single Family Home or Duplex

pursuant to N.J.A.C. 7:7-2.1(b)1]

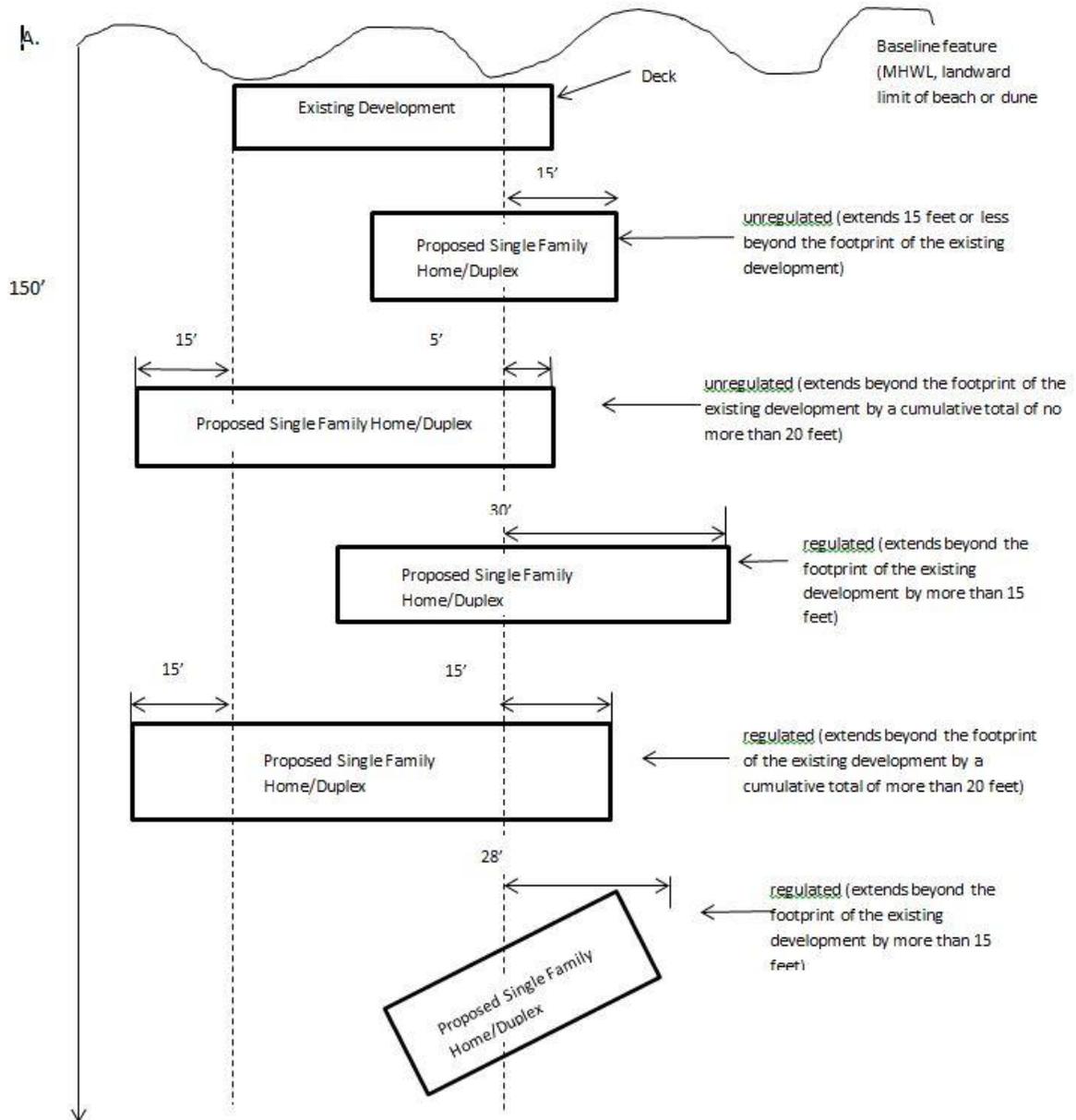
**APPENDIX C**

**ILLUSTRATION OF INTERVENING DEVELOPMENT FOR**

**PROPOSED SINGLE-FAMILY HOME OR DUPLEX**

**(incorporated by reference at N.J.A.C. 7:7-2.1(b)1)**

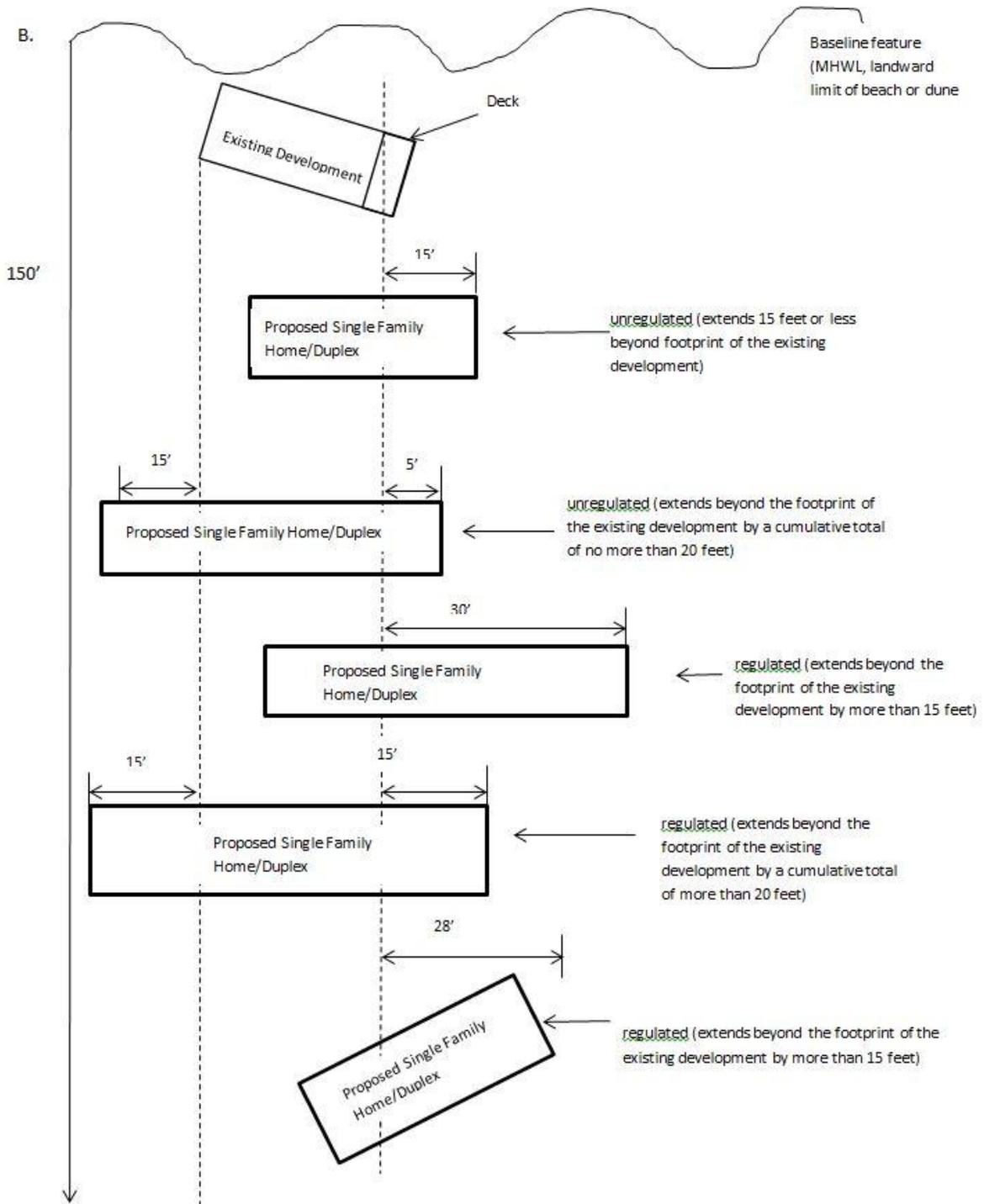
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**APPENDIX D**

**COASTAL WETLANDS MAPS**

**(Incorporated by reference at N.J.A.C. 7:7-2.3(c))**

**1. Middlesex County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>574-2082</b> | <b>588-2106</b> | <b>602-2070</b> |
| <b>574-2088</b> | <b>588-2112</b> | <b>602-2076</b> |
| <b>581-2082</b> | <b>588-2118</b> | <b>602-2082</b> |
| <b>581-2088</b> | <b>595-2070</b> | <b>602-2088</b> |
| <b>581-2100</b> | <b>595-2076</b> | <b>602-2094</b> |
| <b>581-2106</b> | <b>595-2082</b> | <b>602-2100</b> |
| <b>581-2112</b> | <b>595-2088</b> | <b>602-2106</b> |
| <b>581-2118</b> | <b>595-2094</b> | <b>609-2094</b> |
| <b>588-2076</b> | <b>595-2106</b> | <b>609-2100</b> |
| <b>588-2082</b> | <b>602-2064</b> | <b>609-2106</b> |

**2. Monmouth County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>455-2160</b> | <b>539-2184</b> | <b>574-2160</b> |
|-----------------|-----------------|-----------------|

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>455-2166</b> | <b>539-2190</b> | <b>574-2166</b> |
| <b>462-2160</b> | <b>546-2154</b> | <b>574-2172</b> |
| <b>462-2166</b> | <b>546-2160</b> | <b>574-2178</b> |
| <b>462-2172</b> | <b>546-2172</b> | <b>574-2184</b> |
| <b>462-2154</b> | <b>546-2178</b> | <b>574-2190</b> |
| <b>469-2160</b> | <b>546-2184</b> | <b>581-2112</b> |
| <b>469-2172</b> | <b>546-2190</b> | <b>581-2118</b> |
| <b>469-2178</b> | <b>553-2160</b> | <b>581-2124</b> |
| <b>476-2166</b> | <b>553-2166</b> | <b>581-2130</b> |
| <b>476-2172</b> | <b>553-2172</b> | <b>581-2136</b> |
| <b>476-2178</b> | <b>553-2178</b> | <b>581-2142</b> |
| <b>483-2172</b> | <b>553-2184</b> | <b>581-2148</b> |
| <b>490-2166</b> | <b>553-2190</b> | <b>581-2154</b> |
| <b>490-2172</b> | <b>560-2166</b> | <b>581-2160</b> |
| <b>490-2178</b> | <b>560-2172</b> | <b>581-2166</b> |
| <b>497-2166</b> | <b>560-2178</b> | <b>581-2184</b> |
| <b>497-2172</b> | <b>560-2184</b> | <b>588-2118</b> |
| <b>518-2184</b> | <b>560-2190</b> | <b>588-2124</b> |
| <b>532-2178</b> | <b>567-2172</b> | <b>588-2130</b> |
| <b>539-2154</b> | <b>567-2718</b> | <b>588-2136</b> |
| <b>539-2160</b> | <b>567-2184</b> | <b>588-2142</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>539-2166</b> | <b>567-2190</b> | <b>588-2184</b> |
| <b>539-2172</b> | <b>574-2118</b> | <b>595-2178</b> |
| <b>539-2178</b> | <b>574-2124</b> | <b>595-2184</b> |

### **3. Ocean County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>245-2088</b> | <b>294-2130</b> | <b>378-2142</b> |
| <b>245-2094</b> | <b>294-2136</b> | <b>378-2148</b> |
| <b>245-2100</b> | <b>301-2112</b> | <b>378-2160</b> |
| <b>245-2106</b> | <b>301-2118</b> | <b>385-2142</b> |
| <b>252-2076</b> | <b>301-2124</b> | <b>385-2148</b> |
| <b>252-2088</b> | <b>301-2130</b> | <b>385-2160</b> |
| <b>252-2094</b> | <b>301-2136</b> | <b>392-2136</b> |
| <b>252-2100</b> | <b>301-2142</b> | <b>392-2142</b> |
| <b>252-2106</b> | <b>308-2118</b> | <b>392-2148</b> |
| <b>252-2112</b> | <b>308-2124</b> | <b>392-2154</b> |
| <b>259-2070</b> | <b>308-2130</b> | <b>392-2160</b> |
| <b>259-2076</b> | <b>308-2136</b> | <b>399-2124</b> |
| <b>259-2082</b> | <b>308-2142</b> | <b>399-2130</b> |
| <b>259-2088</b> | <b>315-2124</b> | <b>399-2136</b> |
| <b>259-2094</b> | <b>315-2130</b> | <b>399-2142</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>259-2100</b> | <b>315-2136</b> | <b>399-2148</b> |
| <b>259-2106</b> | <b>315-2142</b> | <b>399-2154</b> |
| <b>259-2112</b> | <b>315-2148</b> | <b>399-2160</b> |
| <b>259-2118</b> | <b>322-2124</b> | <b>406-2118</b> |
| <b>266-2070</b> | <b>322-2130</b> | <b>406-2124</b> |
| <b>266-2076</b> | <b>322-2136</b> | <b>406-2130</b> |
| <b>266-2082</b> | <b>322-2142</b> | <b>406-2148</b> |
| <b>266-2088</b> | <b>322-2148</b> | <b>406-2154</b> |
| <b>266-2094</b> | <b>329-2124</b> | <b>406-2160</b> |
| <b>266-2100</b> | <b>329-2130</b> | <b>413-2118</b> |
| <b>266-2106</b> | <b>329-2136</b> | <b>413-2148</b> |
| <b>266-2112</b> | <b>329-2142</b> | <b>413-2154</b> |
| <b>266-2118</b> | <b>329-2148</b> | <b>413-2160</b> |
| <b>273-2076</b> | <b>329-2154</b> | <b>420-2142</b> |
| <b>273-2088</b> | <b>336-2124</b> | <b>420-2148</b> |
| <b>273-2094</b> | <b>336-2130</b> | <b>420-2154</b> |
| <b>273-2100</b> | <b>336-2142</b> | <b>420-2160</b> |
| <b>273-2112</b> | <b>336-2148</b> | <b>420-2166</b> |
| <b>273-2118</b> | <b>336-2154</b> | <b>427-2142</b> |
| <b>273-2124</b> | <b>343-2130</b> | <b>427-2148</b> |
| <b>280-2088</b> | <b>343-2148</b> | <b>427-2154</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>280-2094</b> | <b>343-2154</b> | <b>427-2160</b> |
| <b>280-2100</b> | <b>343-2160</b> | <b>434-2148</b> |
| <b>280-2106</b> | <b>350-2130</b> | <b>434-2154</b> |
| <b>280-2112</b> | <b>350-2136</b> | <b>434-2160</b> |
| <b>280-2118</b> | <b>350-2148</b> | <b>434-2166</b> |
| <b>287-2094</b> | <b>350-2154</b> | <b>441-2148</b> |
| <b>287-2100</b> | <b>357-2124</b> | <b>441-2154</b> |
| <b>287-2106</b> | <b>357-2130</b> | <b>441-2160</b> |
| <b>280-2124</b> | <b>357-2136</b> | <b>441-2166</b> |
| <b>280-2130</b> | <b>357-2142</b> | <b>441-2172</b> |
| <b>287-2094</b> | <b>357-2154</b> | <b>448-2142</b> |
| <b>287-2100</b> | <b>357-2160</b> | <b>448-2148</b> |
| <b>287-2106</b> | <b>359-2160</b> | <b>448-2154</b> |
| <b>287-2112</b> | <b>364-2130</b> | <b>448-2160</b> |
| <b>287-2124</b> | <b>364-2136</b> | <b>448-2166</b> |
| <b>287-2130</b> | <b>364-2142</b> | <b>448-2172</b> |
| <b>294-2100</b> | <b>364-2160</b> | <b>455-2154</b> |
| <b>294-2106</b> | <b>371-2136</b> | <b>462-2166</b> |
| <b>294-2112</b> | <b>371-2142</b> | <b>462-2154</b> |
| <b>294-2118</b> | <b>371-2148</b> | <b>462-2172</b> |
| <b>294-2124</b> | <b>371-2160</b> | <b>469-2154</b> |

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#### 4. Burlington County

|          |          |          |
|----------|----------|----------|
| 252-2064 | 273-2076 | 420-1944 |
| 259-2046 | 280-2004 | 427-1926 |
| 259-2052 | 280-2010 | 427-1932 |
| 259-2058 | 280-2016 | 427-1938 |
| 259-2064 | 280-2022 | 434-1908 |
| 259-2070 | 280-2028 | 434-1914 |
| 266-2034 | 280-2040 | 434-1920 |
| 266-2040 | 280-2046 | 434-1926 |
| 266-2046 | 280-2052 | 434-1932 |
| 266-2052 | 280-2058 | 448-1944 |
| 266-2058 | 287-2004 | 448-1950 |
| 266-2064 | 287-2010 | 448-1956 |
| 266-2070 | 287-2016 | 462-1968 |
| 273-2022 | 287-2040 | 469-1974 |
| 273-2028 | 287-2046 | 476-1980 |
| 273-2034 | 294-2040 | 476-1986 |
| 273-2040 | 413-1896 | 483-1986 |
| 273-2046 | 413-1902 | 483-1992 |
| 273-2052 | 420-1890 | 490-1986 |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>273-2058</b> | <b>420-1896</b> | <b>490-1992</b> |
| <b>273-2064</b> | <b>420-1932</b> |                 |
| <b>273-2070</b> | <b>420-1938</b> |                 |

#### **5. Atlantic County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>161-1980</b> | <b>189-2052</b> | <b>224-2088</b> |
| <b>161-1992</b> | <b>189-2058</b> | <b>224-2094</b> |
| <b>161-1986</b> | <b>196-1974</b> | <b>231-2058</b> |
| <b>161-2004</b> | <b>196-1980</b> | <b>231-2064</b> |
| <b>168-1956</b> | <b>196-1986</b> | <b>231-2070</b> |
| <b>168-1962</b> | <b>196-2034</b> | <b>231-2076</b> |
| <b>168-1968</b> | <b>196-2040</b> | <b>231-2082</b> |
| <b>168-1974</b> | <b>196-2046</b> | <b>231-2088</b> |
| <b>168-1980</b> | <b>196-2052</b> | <b>231-2094</b> |
| <b>168-1986</b> | <b>196-2058</b> | <b>231-2100</b> |
| <b>168-1992</b> | <b>196-2064</b> | <b>238-2058</b> |
| <b>168-1998</b> | <b>196-2070</b> | <b>238-2064</b> |
| <b>168-2004</b> | <b>203-1980</b> | <b>238-2070</b> |
| <b>168-2010</b> | <b>203-1986</b> | <b>238-2076</b> |
| <b>168-2016</b> | <b>203-2040</b> | <b>238-2082</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>168-2022</b> | <b>203-2046</b> | <b>238-2088</b> |
| <b>168-2028</b> | <b>203-2052</b> | <b>238-2094</b> |
| <b>168-2034</b> | <b>203-2058</b> | <b>245-2046</b> |
| <b>175-1974</b> | <b>203-2064</b> | <b>245-2052</b> |
| <b>175-1980</b> | <b>203-2070</b> | <b>245-2058</b> |
| <b>175-1986</b> | <b>203-2076</b> | <b>245-2064</b> |
| <b>175-1992</b> | <b>210-1974</b> | <b>245-2070</b> |
| <b>175-1998</b> | <b>210-1980</b> | <b>252-2046</b> |
| <b>175-2004</b> | <b>210-1986</b> | <b>252-2040</b> |
| <b>175-2010</b> | <b>210-2040</b> | <b>252-2052</b> |
| <b>175-2016</b> | <b>210-2046</b> | <b>252-2058</b> |
| <b>175-2022</b> | <b>210-2052</b> | <b>252-2064</b> |
| <b>175-2028</b> | <b>210-2058</b> | <b>252-2070</b> |
| <b>175-2034</b> | <b>210-2064</b> | <b>259-2034</b> |
| <b>175-2040</b> | <b>210-2070</b> | <b>259-2040</b> |
| <b>182-1980</b> | <b>210-2076</b> | <b>259-2046</b> |
| <b>182-1986</b> | <b>210-2082</b> | <b>259-2052</b> |
| <b>182-1992</b> | <b>210-2088</b> | <b>259-2058</b> |
| <b>182-1998</b> | <b>217-1974</b> | <b>259-2064</b> |
| <b>182-2004</b> | <b>217-1980</b> | <b>259-2070</b> |
| <b>182-2010</b> | <b>217-1986</b> | <b>266-2022</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>182-2016</b> | <b>217-2040</b> | <b>266-2028</b> |
| <b>182-2022</b> | <b>217-2046</b> | <b>266-2034</b> |
| <b>182-2028</b> | <b>217-2052</b> | <b>266-2040</b> |
| <b>182-2034</b> | <b>217-2058</b> | <b>273-2016</b> |
| <b>182-2040</b> | <b>217-2064</b> | <b>273-2026</b> |
| <b>182-2046</b> | <b>217-2070</b> | <b>273-2022</b> |
| <b>182-2052</b> | <b>217-2076</b> | <b>273-2028</b> |
| <b>189-1974</b> | <b>217-2082</b> | <b>273-2034</b> |
| <b>189-1980</b> | <b>217-2088</b> | <b>280-2004</b> |
| <b>189-1986</b> | <b>217-2094</b> | <b>280-2010</b> |
| <b>189-1992</b> | <b>224-1980</b> | <b>280-2016</b> |
| <b>189-1998</b> | <b>224-2052</b> | <b>280-2022</b> |
| <b>189-2022</b> | <b>224-2058</b> | <b>287-1998</b> |
| <b>189-2028</b> | <b>224-2064</b> | <b>287-2004</b> |
| <b>189-2034</b> | <b>224-2070</b> | <b>287-2010</b> |
| <b>189-2040</b> | <b>224-2076</b> | <b>287-2040</b> |
| <b>189-2046</b> | <b>224-2082</b> |                 |

## **6. Cape May County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>035-1914</b> | <b>091-1974</b> | <b>126-1956</b> |
|-----------------|-----------------|-----------------|

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>035-1920</b> | <b>091-1980</b> | <b>126-1980</b> |
| <b>035-1926</b> | <b>098-1932</b> | <b>126-1986</b> |
| <b>035-1932</b> | <b>098-1938</b> | <b>126-1992</b> |
| <b>035-1938</b> | <b>098-1944</b> | <b>126-1998</b> |
| <b>042-1914</b> | <b>098-1950</b> | <b>133-1926</b> |
| <b>042-1920</b> | <b>098-1962</b> | <b>133-1932</b> |
| <b>042-1926</b> | <b>098-1968</b> | <b>133-1986</b> |
| <b>042-1932</b> | <b>098-1974</b> | <b>133-1992</b> |
| <b>042-1938</b> | <b>098-1980</b> | <b>133-1998</b> |
| <b>042-1944</b> | <b>098-1986</b> | <b>133-2004</b> |
| <b>049-1914</b> | <b>105-1932</b> | <b>140-1926</b> |
| <b>049-1926</b> | <b>105-1938</b> | <b>140-1932</b> |
| <b>049-1932</b> | <b>105-1944</b> | <b>140-1974</b> |
| <b>049-1938</b> | <b>105-1968</b> | <b>140-1980</b> |
| <b>049-1944</b> | <b>105-1974</b> | <b>140-1992</b> |
| <b>049-1950</b> | <b>105-1980</b> | <b>140-1998</b> |
| <b>056-1914</b> | <b>105-1986</b> | <b>140-2004</b> |
| <b>056-1920</b> | <b>112-1932</b> | <b>140-2010</b> |
| <b>056-1932</b> | <b>112-1938</b> | <b>147-1980</b> |
| <b>056-1938</b> | <b>112-1944</b> | <b>147-1986</b> |
| <b>056-1944</b> | <b>112-1950</b> | <b>147-1992</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>056-1950</b> | <b>112-1956</b> | <b>147-1998</b> |
| <b>056-1956</b> | <b>112-1968</b> | <b>147-2004</b> |
| <b>063-1938</b> | <b>112-1974</b> | <b>147-2010</b> |
| <b>063-1944</b> | <b>112-1980</b> | <b>154-1980</b> |
| <b>063-1950</b> | <b>112-1986</b> | <b>154-1986</b> |
| <b>063-1956</b> | <b>112-1992</b> | <b>154-1992</b> |
| <b>063-1962</b> | <b>119-1926</b> | <b>154-1998</b> |
| <b>070-1920</b> | <b>119-1932</b> | <b>154-2004</b> |
| <b>070-1926</b> | <b>119-1938</b> | <b>154-2010</b> |
| <b>070-1944</b> | <b>119-1944</b> | <b>154-2016</b> |
| <b>070-1950</b> | <b>119-1950</b> | <b>161-1962</b> |
| <b>070-1956</b> | <b>119-1874</b> | <b>161-1968</b> |
| <b>060-1962</b> | <b>119-1980</b> | <b>161-1974</b> |
| <b>070-1968</b> | <b>119-1986</b> | <b>161-1980</b> |
| <b>077-1920</b> | <b>119-1992</b> | <b>161-1986</b> |
| <b>077-1926</b> | <b>126-1926</b> | <b>168-1992</b> |
| <b>077-1932</b> | <b>126-1932</b> | <b>161-1992</b> |
| <b>077-1950</b> | <b>126-1938</b> | <b>161-1998</b> |
| <b>077-1956</b> | <b>126-1944</b> | <b>161-2004</b> |
| <b>077-1962</b> | <b>126-1950</b> | <b>161-2010</b> |
| <b>077-1968</b> | <b>126-1956</b> | <b>161-2016</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>084-1926</b> | <b>126-1980</b> | <b>161-2022</b> |
| <b>084-1932</b> | <b>126-1986</b> | <b>168-1956</b> |
| <b>084-1938</b> | <b>126-1992</b> | <b>168-1962</b> |
| <b>084-1950</b> | <b>126-1998</b> | <b>168-1968</b> |
| <b>084-1956</b> | <b>133-1926</b> | <b>168-1974</b> |
| <b>091-1944</b> | <b>133-1932</b> | <b>168-1980</b> |
| <b>091-1956</b> | <b>133-1986</b> | <b>168-1986</b> |
| <b>091-1962</b> | <b>126-1944</b> |                 |
| <b>091-1968</b> | <b>126-1950</b> |                 |

#### **7. Cumberland County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>119-1926</b> | <b>154-1896</b> | <b>182-1914</b> |
| <b>126-1860</b> | <b>154-1902</b> | <b>189-1794</b> |
| <b>126-1866</b> | <b>154-1908</b> | <b>189-1800</b> |
| <b>126-1896</b> | <b>161-1818</b> | <b>189-1806</b> |
| <b>126-1902</b> | <b>161-1824</b> | <b>189-1812</b> |
| <b>126-1908</b> | <b>161-1830</b> | <b>189-1818</b> |
| <b>126-1914</b> | <b>161-1836</b> | <b>189-1824</b> |
| <b>126-1920</b> | <b>161-1842</b> | <b>189-1830</b> |
| <b>126-1926</b> | <b>161-1848</b> | <b>189-1890</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>133-1854</b> | <b>161-1854</b> | <b>189-1902</b> |
| <b>133-1860</b> | <b>161-1860</b> | <b>196-1782</b> |
| <b>133-1866</b> | <b>161-1866</b> | <b>196-1788</b> |
| <b>133-1872</b> | <b>161-1872</b> | <b>196-1794</b> |
| <b>133-1878</b> | <b>161-1878</b> | <b>196-1800</b> |
| <b>133-1884</b> | <b>161-1884</b> | <b>196-1806</b> |
| <b>133-1890</b> | <b>161-1896</b> | <b>196-1812</b> |
| <b>133-1896</b> | <b>161-1902</b> | <b>196-1818</b> |
| <b>133-1902</b> | <b>161-1908</b> | <b>196-1824</b> |
| <b>133-1908</b> | <b>161-1914</b> | <b>196-1830</b> |
| <b>133-1914</b> | <b>168-1812</b> | <b>196-1836</b> |
| <b>133-1920</b> | <b>168-1818</b> | <b>196-1842</b> |
| <b>133-1926</b> | <b>168-1824</b> | <b>196-1890</b> |
| <b>140-1854</b> | <b>168-1830</b> | <b>196-1896</b> |
| <b>140-1860</b> | <b>168-1836</b> | <b>203-1782</b> |
| <b>140-1866</b> | <b>168-1842</b> | <b>203-1788</b> |
| <b>140-1872</b> | <b>168-1848</b> | <b>203-1794</b> |
| <b>140-1878</b> | <b>168-1854</b> | <b>203-1800</b> |
| <b>140-1884</b> | <b>168-1902</b> | <b>203-1806</b> |
| <b>140-1890</b> | <b>168-1908</b> | <b>203-1812</b> |
| <b>140-1896</b> | <b>168-1914</b> | <b>203-1818</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>140-1902</b> | <b>175-1812</b> | <b>203-1824</b> |
| <b>140-1908</b> | <b>175-1818</b> | <b>203-1836</b> |
| <b>140-1914</b> | <b>175-1824</b> | <b>203-1842</b> |
| <b>140-1926</b> | <b>175-1830</b> | <b>203-1890</b> |
| <b>147-1848</b> | <b>175-1836</b> | <b>210-1782</b> |
| <b>147-1854</b> | <b>175-1842</b> | <b>210-1788</b> |
| <b>147-1860</b> | <b>175-1848</b> | <b>210-1794</b> |
| <b>147-1866</b> | <b>175-1896</b> | <b>210-1800</b> |
| <b>147-1872</b> | <b>175-1902</b> | <b>210-1836</b> |
| <b>147-1878</b> | <b>175-1908</b> | <b>217-1782</b> |
| <b>147-1884</b> | <b>175-1914</b> | <b>217-1788</b> |
| <b>147-1890</b> | <b>182-1800</b> | <b>217-1794</b> |
| <b>147-1896</b> | <b>182-1806</b> | <b>217-1836</b> |
| <b>147-1902</b> | <b>182-1812</b> | <b>224-1788</b> |
| <b>147-1908</b> | <b>182-1818</b> | <b>224-1794</b> |
| <b>154-1836</b> | <b>182-1824</b> | <b>224-1800</b> |
| <b>154-1842</b> | <b>182-1830</b> |                 |
| <b>154-1884</b> | <b>182-1908</b> |                 |

## **8. Salem County**

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>196-1782</b> | <b>252-1764</b> | <b>287-1770</b> |
| <b>196-1788</b> | <b>252-1770</b> | <b>287-1776</b> |
| <b>203-1776</b> | <b>252-1776</b> | <b>287-1782</b> |
| <b>203-1782</b> | <b>252-1782</b> | <b>287-1788</b> |
| <b>203-1788</b> | <b>252-1788</b> | <b>294-1746</b> |
| <b>210-1776</b> | <b>259-1752</b> | <b>294-1752</b> |
| <b>210-1782</b> | <b>259-1758</b> | <b>294-1764</b> |
| <b>210-1788</b> | <b>259-1764</b> | <b>294-1770</b> |
| <b>217-1764</b> | <b>259-1770</b> | <b>294-1776</b> |
| <b>217-1770</b> | <b>259-1776</b> | <b>294-1782</b> |
| <b>217-1776</b> | <b>259-1782</b> | <b>294-1788</b> |
| <b>217-1782</b> | <b>259-1788</b> | <b>294-1794</b> |
| <b>217-1788</b> | <b>259-1794</b> | <b>301-1764</b> |
| <b>224-1752</b> | <b>259-1800</b> | <b>301-1770</b> |
| <b>224-1758</b> | <b>266-1758</b> | <b>301-1776</b> |
| <b>224-1764</b> | <b>266-1764</b> | <b>301-1782</b> |
| <b>224-1770</b> | <b>266-1770</b> | <b>301-1788</b> |
| <b>224-1776</b> | <b>266-1776</b> | <b>301-1794</b> |
| <b>224-1782</b> | <b>266-1782</b> | <b>308-1770</b> |
| <b>224-1788</b> | <b>266-1788</b> | <b>308-1776</b> |
| <b>224-1794</b> | <b>266-1794</b> | <b>308-1782</b> |

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>224-1800</b> | <b>266-1800</b> | <b>315-1764</b> |
| <b>231-1752</b> | <b>273-1746</b> | <b>315-1770</b> |
| <b>231-1758</b> | <b>273-1752</b> | <b>315-1776</b> |
| <b>231-1764</b> | <b>273-1758</b> | <b>315-1800</b> |
| <b>231-1770</b> | <b>273-1764</b> | <b>315-1806</b> |
| <b>231-1776</b> | <b>273-1770</b> | <b>322-1770</b> |
| <b>231-1782</b> | <b>273-1776</b> | <b>322-1788</b> |
| <b>231-1788</b> | <b>273-1782</b> | <b>322-1794</b> |
| <b>238-1752</b> | <b>273-1788</b> | <b>322-1800</b> |
| <b>238-1758</b> | <b>273-1794</b> | <b>329-1770</b> |
| <b>238-1764</b> | <b>280-1746</b> | <b>329-1776</b> |
| <b>238-1770</b> | <b>280-1752</b> | <b>329-1782</b> |
| <b>238-1776</b> | <b>280-1758</b> | <b>329-1788</b> |
| <b>238-1782</b> | <b>280-1764</b> | <b>329-1794</b> |
| <b>245-1752</b> | <b>280-1770</b> | <b>329-1800</b> |
| <b>245-1758</b> | <b>280-1776</b> | <b>336-1770</b> |
| <b>245-1764</b> | <b>280-1782</b> | <b>336-1776</b> |
| <b>245-1770</b> | <b>280-1788</b> | <b>336-1788</b> |
| <b>245-1776</b> | <b>280-1794</b> | <b>336-1794</b> |
| <b>245-1782</b> | <b>287-1746</b> | <b>343-1782</b> |
| <b>245-1752</b> | <b>287-1752</b> | <b>343-1788</b> |

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252-1758

287-1764

343-1794

## 9. Gloucester County

315-1800

343-1854

357-1848

315-1806

343-1860

357-1854

322-1794

350-1794

357-1878

322-1800

350-1800

364-1806

329-1794

350-1806

364-1812

329-1800

350-1812

364-1818

329-1806

350-1818

364-1824

329-1818

350-1824

364-1830

329-1824

350-1830

364-1836

336-1788

350-1842

364-1842

336-1794

350-1848

364-1848

336-1800

350-1854

364-1854

336-1806

350-1860

364-1860

336-1812

350-1878

364-1872

336-1818

357-1794

364-1878

336-1860

357-1800

371-1848

343-1782

357-1806

371-1854

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|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>343-1788</b> | <b>357-1812</b> | <b>371-1860</b> |
| <b>343-1794</b> | <b>357-1818</b> | <b>371-1872</b> |
| <b>343-1800</b> | <b>357-1824</b> | <b>371-1878</b> |
| <b>343-1806</b> | <b>357-1830</b> | <b>378-1866</b> |
| <b>343-1824</b> | <b>357-1836</b> |                 |
| <b>343-1848</b> | <b>357-1842</b> |                 |

#### **10. Camden County**

|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>364-1878</b> | <b>378-1866</b> | <b>413-1902</b> |
| <b>371-1872</b> | <b>378-1872</b> | <b>420-1890</b> |
| <b>371-1878</b> | <b>413-1896</b> | <b>420-1896</b> |

#### **11. Mercer County**

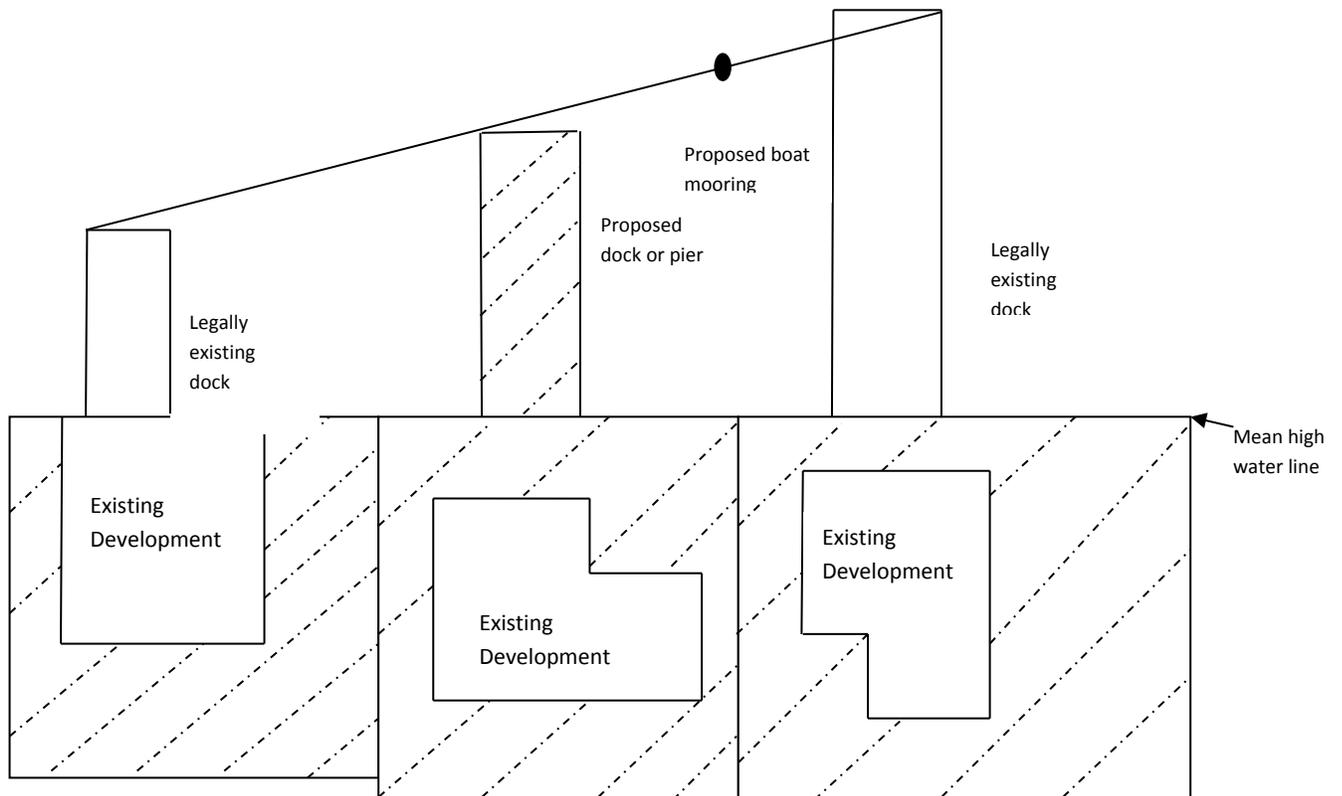
|                 |                 |                 |
|-----------------|-----------------|-----------------|
| <b>476-1980</b> | <b>483-1986</b> | <b>490-1980</b> |
| <b>476-1986</b> | <b>483-1992</b> | <b>490-1986</b> |
| <b>483-1980</b> | <b>490-1974</b> |                 |

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### APPENDIX E

#### ILLUSTRATION REGARDING THE CONSTRUCTION OF A SINGLE NONCOMMERCIAL DOCK, PIER, OR BOAT MOORING IN SHELLFISH HABITAT PURSUANT TO N.J.A.C. 7:7-9.2(d)3ii

**(Note: A dock or pier as well as a boat mooring are shown for illustration purposes only; only one single dock, pier, or boat mooring is allowed pursuant to N.J.A.C. 7:7-9.2(d)3ii.**



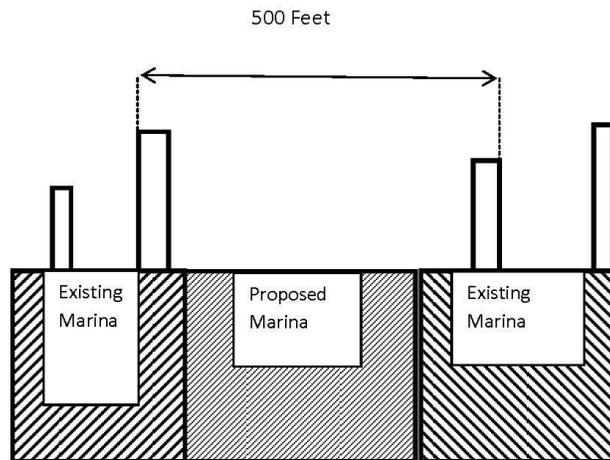
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**\*NOT TO SCALE\***

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APPENDIX F

ILLUSTRATION OF CONSTRUCTION OF A  
NEW COMMERCIAL MARINA PURSUANT TO N.J.A.C. 7:7-9.2(d)5



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*(INSERT APPENDIX G)*

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## APPENDIX [3] H

### BOUNDARIES OF NON-MAINLAND COASTAL CENTERS IN THE CAFRA AREA

For purposes of N.J.A.C. [7:7E-5 and 5B] **7:7-13**, this appendix sets forth the boundaries of the non-mainland coastal centers in the CAFRA area.

In accordance with N.J.A.C. [7:7E-5.3(c)] **7:7-13.3(d)**, the [impervious] **non-porous** cover allowed on a site within a Department-delineated coastal center must be placed on the net land area of the site, as determined under N.J.A.C. [7:7E-5.3(e)] **7:7-13.3(e)**. The placement of [impervious] **non-porous** cover on a site in a coastal center may be further restricted by other provisions of this chapter, including the [Special Area] **special area** rules at N.J.A.C. [7:7E-3] **7:7-9**.

The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.

I. – IV. (No change.)

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## APPENDIX [5] I

### CAFRA CENTERS

This non-regulatory appendix contains the list of CAFRA centers, **CAFRA cores**, and **CAFRA nodes**, the boundaries of which have been accepted by the Department under N.J.A.C. [7:7E-5B.3(b)] **7:7-13.16(b)**, and which are incorporated into and shown on the CAFRA Planning Map. As required under N.J.A.C. [7:7E-5B.4(b)] **7:7-13.17(b)**, an applicant shall refer to the CAFRA Planning Map in order to determine the location of a site for the purposes of determining the applicable [impervious] **non-porous** cover limits under this chapter.

The Department will update the list of CAFRA centers, **CAFRA cores**, and **CAFRA nodes** in this Appendix by notice of administrative change as part of the New Jersey Register notice required in N.J.A.C. [7:7E-5B.3(b)] **7:7-13.16(b)**. The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the CAFRA centers, **CAFRA cores**, and **CAFRA nodes** are listed alphabetically.

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I. – VII. (No change.)

## **APPENDIX J**

### **BOUNDARIES OF MAINLAND COASTAL CENTERS IN THE CAFRA AREA RE- ESTABLISHED UNDER THE PERMIT EXTENSION ACT OF 2008 AS AMENDED JANUARY 18, 2010, AND SEPTEMBER 19, 2012**

For purposes of N.J.A.C. 7:7-13, this appendix sets forth the boundary descriptions of the mainland coastal centers whose March 15, 2007, expiration has been extended under the Permit Extension Act of 2008, N.J.S.A. 40:55D-136.1 et seq. and the January 18, 2010, and September 19, 2012, amendments to that Act. The areas listed at N.J.A.C. 7:7-13.19(d) shall not be considered part of a mainland coastal center. In addition, the areas that are within the “environmentally sensitive area” defined by the Permit Extension Act of 2008, as amended, at N.J.S.A. 40:55D-136.3, were not extended by the Act and, therefore, are not part of the mainland coastal center. Further information on the Permit Extension Act and environmentally sensitive areas is described on the Department’s webpage at [www.state.nj.us/dep/permitextension/peasa.html](http://www.state.nj.us/dep/permitextension/peasa.html).

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**In accordance with N.J.A.C. 7:7-13.3(d), the non-porous cover allowed on a site within a mainland coastal center must be placed on the net land area of the site, as determined under N.J.A.C. 7:7-13.3(e). The placement of non-porous cover on a site in a mainland coastal center may be further restricted by other provisions of this chapter, including the special area rules at N.J.A.C. 7:7-9.**

**The appendix is organized as follows: Counties are listed alphabetically. Within each county, the municipalities are listed alphabetically. Within each municipality, the non-mainland coastal centers are listed alphabetically.**

**I. Atlantic County coastal centers**

**A. Egg Harbor Township coastal centers**

**1. Egg Harbor coastal town**

**a. The coastal town boundary extends from the intersection of English Creek Avenue and Schoolhouse Lane, thence south on Schoolhouse Lane to Mays Landinomers Point Road (County Route 559), thence southeast on Mays Landinomers Point Road (County Route 559) to Steelmanville Road (County Route 651), thence east on Steelmanville Road (County Route 651) to Robert Best Road, thence northeast on Robert Best Road to a point that is a perpendicular distance of 2,000 feet west of Ocean Heights Avenue, thence south along a line that is parallel to and 2,000 feet west of Ocean Heights Avenue to Steelmanville Road (County Route 651), thence west on Steelmanville Road (County Route 651) to a**

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point that is a perpendicular distance of 3,000 feet west of Ocean Heights Avenue, thence south along a line that is parallel to and 3,000 feet west of Ocean Heights Avenue to the Garden State Parkway, thence northeast on the Garden State Parkway to Ocean Heights Avenue, thence northwest on Ocean Heights Avenue to a point that is a perpendicular distance of 2,000 feet north of English Creek Avenue, thence west along a line that is parallel to and 2,000 feet north of English Creek Avenue to Evergreen Avenue, thence south on Evergreen Avenue to English Creek Avenue, and thence west on English Creek Avenue to Schoolhouse Lane.

## **II. Cape May County coastal centers**

### **A. Lower Township coastal centers**

#### **1. Town Bank/North Cape May coastal town**

a. The coastal town boundary extends from the intersection of Shore Drive and Pinewood Road, thence east on Pinewood Road to Clubhouse Drive, thence south on Clubhouse Drive to Fernwood Road, thence east on Fernwood Road to Norwood Road, thence south on Norwood Road to Brookdale Road, thence west on Brookdale Road to Clubhouse Drive, thence south on Clubhouse Drive to Delair, thence east on Delair to Oxford, thence south on Oxford to Racetrack, thence south on Racetrack to Town Bank Road, thence southeast on Town Bank Road to Beachhurst Drive, thence north on Beachhurst Drive to Clearwater Drive, thence north on Clearwater Drive to Linda Anne Drive, thence east on Linda Anne Drive to Margaret Drive, thence north on Margaret Drive to Heidi Drive, thence east on Heidi Drive to Bayshore Road (County Route 603),

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thence southwest on Bayshore Road (County Route 603) to Fire Lane, thence southeast on Fire Lane to Apple Blossom Drive, thence east on Apple Blossom Drive to Sunnyside Drive, thence south on Sunnyside Drive to a point 200 feet north of Town Bank Road, thence southeast along a line parallel to and 200 feet north of Town Bank Road to Shunpike Road, thence south on Shunpike Road to U.S. Route 9, thence west on U.S. Route 9 to Adriatic Road, thence south on the same bearing as Adriatic Road to the mean high water line of the Cape May Canal, thence west along the mean high water line to Beach Drive, thence north on Beach Drive, which becomes Shore Drive, and thence north on Shore Drive to Pinewood Road.

### **III. Ocean County coastal centers**

#### **A. Toms River coastal centers**

##### **1. Toms River coastal regional center**

a. The coastal regional center boundary extends from intersection of the former Central Railroad of New Jersey railroad right of way and the Manchester Township/Dover Township municipal boundary, thence east along the railroad right of way to the Dover Township/Berkeley Township municipal boundary, thence southeast along the municipal boundary to Main Street, thence east along the north bank of the Toms River to the Island Heights Borough municipal boundary, thence north, east, south, and east along the municipal boundary to the mean high water line of Barnegat Bay, thence north and east along the mean high water line of Barnegat Bay to Adams Avenue, thence west on Adams Avenue to a point that is a perpendicular distance of 500 feet from Fischer Boulevard,

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thence northwest along a line parallel to and 500 feet east of Fischer Boulevard to a point 1,000 feet southeast of Hooper Avenue, thence northeast along a line that is parallel to and 1,000 feet southeast of Hooper Avenue to the Dover Township/Brick Township municipal boundary, thence west along the municipal boundary to a point that is a perpendicular distance of 1,000 feet west of Hooper Avenue, thence southeast along a line that is parallel to and 1,000 feet from Hooper Avenue to Bay Avenue, thence northwest on Bay Avenue to Bay Lea Road (County Route 571), thence west on Bay Lea Road (County Route 571) to Old Freehold Road (County Route 623), thence north on Old Freehold Road (County Route 623) to Intermediate West Way, thence west on Intermediate West Way to Indian Head Road, thence west on Indian Head Road to a point that is a perpendicular distance of 1,200 feet east of U.S. Route 9, thence north along a line that is parallel to and 1,200 feet east of U.S. Route 9 to a point that is a perpendicular distance of 2,000 feet west of Vermont Avenue at its intersection with the Lakewood Township/Dover Township boundary, thence east along that perpendicular line to the intersection of Vermont Avenue and the Lakewood Township/Dover Township boundary, thence northwest along the municipal boundary to a point that is a perpendicular distance of 1,000 feet northwest of State Route 70, thence southwest along a line that is parallel to and 1,000 feet from State Route 70 to Dover Pines Avenue, thence south on Dover Pines Avenue to State Route 70, thence northeast on State Route 70 to Whitesville Road, thence southeast on Whitesville Road to Cox Cro Road, thence southeast on Cox Cro Road to a point that is a perpendicular distance of 750 feet west of US route 9, thence south along a line that is parallel to and 750 feet west of U.S. Route 9 to Indian Head Road, thence west on Indian

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**Head Road to Whitesville Road, thence southeast on Whitesville Road to the Garden State Parkway, thence south on the Garden State Parkway to a point that is a perpendicular distance of 600 feet north of State Route 37, thence west along a line that is parallel to and 600 feet from State Route 37 to Shady Nook Drive, thence south on Shady Nook Drive to a point that is a perpendicular distance of 300 feet north of State Route 37, thence west along a line that is parallel to and 300 feet from State Route 37 to Cardinal Drive, thence north on Cardinal Drive to Oak Ridge Parkway, thence north on Oak Ridge Parkway to the mean high water line of the Toms River, thence northwest along the mean high water line of the Toms River to the Dover Township/Manchester Township municipal boundary, thence southwest along the municipal boundary to the intersection of the former Central Railroad of New Jersey railroad right of way and the Manchester Township/Dover Township municipal boundary.**

**B. Lakewood coastal centers**

**1. Lakewood regional center**

**a. The coastal regional center boundary extends from the intersection of the Conrail railroad right of way and County Line Road (County Route 526), thence east on County Line Road to Brook Road, thence south on Brook Road to Ridge Avenue, thence southwest on Ridge Avenue to Somerset Avenue, thence south on Somerset Avenue to Bergen Avenue, thence west on Bergen Avenue to Linden Avenue, thence south on Linden Avenue to Ocean Avenue (State Route 88), thence east on Ocean Avenue (State Route 88) to Chambers Bridge Road (County Route 549), thence south on Chambers Bridge Road to the Garden State Parkway, thence south on the Garden State Parkway to State Route 70, thence west**

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**on State Route 70 to the Lakewood-Dover Township boundary line, thence northwest along the Lakewood-Dover Township boundary line to the Lakewood-Jackson Township boundary line, thence north along the Lakewood-Jackson Township boundary line to the Conrail railroad right of way, and thence northeast along the Conrail railroad right of way to County Line Road.**

#### [CHAPTER 7E

#### COASTAL ZONE MANAGEMENT]

(**Agency Note:** The purpose and scope provisions of the Coastal Zone Management rules, currently codified as N.J.A.C. 7:7E-1.1, have been recodified with amendments at N.J.A.C. 7:7-1.1.

The jurisdiction provisions, currently codified at N.J.A.C. 7:7E-1.2, have been recodified with amendments at N.J.A.C. 7:7-1.2.

The provision addressing the Department's periodic review of the chapter in consideration of the various national, State, and local interests in coastal resources, currently codified at N.J.A.C. 7:7E-1.4, has been recodified with amendments at N.J.A.C. 7:7-1.3.

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The findings the Department is required to make prior to issuing a CAFRA permit, currently codified at N.J.A.C. 7:7E-1.5, have been recodified with no changes in text at N.J.A.C. 7:7-1.4(b).

The provision addressing mitigation as a means of compensation for the loss or degradation of a particular natural resource, currently codified at N.J.A.C. 7:7E-1.6, is repealed, with the substance of this provision relocated to proposed N.J.A.C. 7:7-17.2(a).

The Department's rules governing special areas, that is areas that are so naturally valuable, important for human use, hazardous, sensitive to impact, or particular in their planning requirements as to merit focused attention and special management, currently codified at N.J.A.C. 7:7E-3, have been recodified with amendments at N.J.A.C. 7:7-9.

The Department's standards for beach and dune activities that address routine beach maintenance, emergency post-storm beach restoration, dune creation and maintenance, and the construction of boardwalks, currently codified at N.J.A.C. 7:7E-3A, have been recodified with amendments at N.J.A.C. 7:7-10.

The Department's standards for conducting and reporting the results of an endangered or threatened wildlife or plant species habitat impact assessment and/or endangered or threatened wildlife species habitat evaluation, currently codified at N.J.A.C. 7:7E-3C, have been recodified with amendments at N.J.A.C. 7:7-11.

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The Department's requirements for specific types of development within general water areas, that is, all water areas which are located below either the spring high water line or the normal water level of non-tidal waters, currently codified at N.J.A.C. 7:7E-4, have been recodified with amendments at N.J.A.C. 7:7-12.

The requirements for impervious cover and vegetative cover on sites in the upland waterfront development area and in the CAFRA area, currently codified at N.J.A.C. 7:7E-5, have been recodified with amendments at N.J.A.C. 7:7-13.1 through 13.5.

The impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area currently codified at N.J.A.C. 7:7E-5A, have been recodified with amendments at N.J.A.C. 7:7-13.6 through 13.14.

The impervious cover limits and vegetative cover percentages for sites in the CAFRA area currently codified at N.J.A.C. 7:7E-5B, have been recodified with amendments at N.J.A.C. 7:7-13.15 through 13.19.

The Department's process for determining the most acceptable route for linear development (roads and utility lines) and discussion of secondary impacts and the requirements for a secondary impact analysis, currently codified at N.J.A.C. 7:7E-6, have been recodified with minor amendments at N.J.A.C. 7:7-14.

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With the exception of the marina development rules, N.J.A.C. 7:7E-7.3A, and the coastal engineering rule, N.J.A.C. 7:7E-7.11, the Department's rules for particular uses of coastal resources (including housing, resorts, marinas, energy, transportation, mining, ports, commercial facilities, and dredging), currently codified at N.J.A.C. 7:7E-7, have been recodified with amendments at N.J.A.C. 7:7-15.

The Department's rules used to review proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone, both at the proposed site as well as in its surrounding region, currently codified at N.J.A.C. 7:7E-8, have been recodified with amendments at N.J.A.C. 7:7-16.

The verbal description of the non-mainland coastal center boundaries in the CAFRA area currently codified as N.J.A.C. 7:7E Appendix 3, has been recodified with minor amendments at N.J.A.C. 7:7 Appendix H.

The non-regulatory list of CAFRA centers, the boundaries of which have been accepted by the Department and which are incorporated into and shown on the CAFRA Planning Map, currently codified at N.J.A.C. 7:7E Appendix 5, has been recodified, with minor changes, at N.J.A.C. 7:7 Appendix I.)