

CHAPTER 7:7E
COASTAL ZONE MANAGEMENT RULES

Changes to existing rule text approved by OCRM are shown as follows:
Additions indicated in **underlined boldface**; and
Deletions shown in [~~bracketed strikethrough~~].

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.38 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 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. Areas mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife (known hereafter as Landscape Maps) are subject to the requirements of this section unless excluded in accordance with (c)2 below. Buffer areas, which are part of the endangered or threatened wildlife species habitat, may extend beyond the mapped areas. The Department's Landscape Maps, with a listing of the endangered and threatened species within a specific area, are available from the Department's Division of Fish and Wildlife, Endangered and Nongame Species Program at the Division's web address, www.state.nj.us/dep/fgw/ensphome.

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 Office of Natural Lands Management, Natural Heritage Database at PO Box 404, Trenton, New Jersey 08625-0404.

3. The required endangered or threatened wildlife or plant species habitat buffer area shall be based upon the home range and habitat requirements of the species and the development's anticipated impacts on the species habitat.

(b) – (i) (No change.)

7:7E-3.49 Atlantic City

(a) – (b) (No change.)

(c) The following standards apply to all development proposed on or over the existing ocean piers listed at (c)1 below.

1. Existing ocean piers (piers) are limited to the footprint of the following five piers, as depicted on the Department's 1995-1997 National Aerial Photographic Program imagery (GIS):

i. Garden Pier;

ii. Steel Pier;

iii. Steeplechase Pier, except that Steeplechase Pier may be connected to the Boardwalk provided the connecting portion of the pier does not exceed the width of the existing Steeplechase Pier;

iv. Central Pier; and

v. Million Dollar Pier (Ocean One).

2. Residential development is prohibited on the existing ocean piers except where a waiver of strict compliance with the municipal flood damage prevention ordinance has been granted by the Federal Emergency Management Agency for a hotel to be located over the water.

3. The development proposed on the pier must have an evacuation plan approved by the Atlantic City Office of Emergency Management.

4. A minimum of 50 percent of the total floor area of any building constructed on the pier shall be devoted to publicly accessible, non-casino entertainment and recreation.

5. The height of ~~the~~ structures on the pier shall not exceed 100 feet above the deck surface of the Boardwalk, except for decorative architectural elements, ~~and~~ amusement rides, **and wind turbines**, which shall not exceed 200 feet. **The height of the wind turbine shall be measured from the decking of the pier to the tip of the blade at its highest position.** There shall be no occupancy above the 100 foot elevation.

6. The height of the structures on the pier shall not exceed 50 feet above the deck surface of the Boardwalk within 100 feet of the property line in common with the Boardwalk.

7. A building setback of 50 feet shall be maintained from the seaward end of the pier. If a building is 50 feet or more in height, an additional 20 feet setback from the seaward end of the pier is required.

8. Public access shall be provided in accordance with all of the following:

i. The development shall provide a means for pedestrians to walk along the dry beach under the pier from one side to the other, except where the beach is so narrow as to preclude such passage;

ii. A stairway shall be provided from the pier to the beach and from the Boardwalk to the beach on the southwesterly side of the pier, where the pier intersects the Boardwalk and, on the northeasterly side of the pier, either where the pier intersects the Boardwalk or on the Boardwalk within 50 feet of the point at which the pier intersects the Boardwalk;

iii. Publicly accessible open space, including lighted public seating and viewing and, where appropriate, fishing areas, shall be provided at the seaward end of the pier at the level of the deck surface of the Boardwalk. The publicly accessible open space shall occupy the entire width of the pier (parallel to the ocean shoreline in a northeast-southwest direction) for a distance of 50 feet landward from the end of the pier. The area between 30 and 50 feet inland from the end of the pier may be occupied by outdoor dining and food concessions and be partially enclosed, through the use of awnings, canopies, and windbreaks. No other structures shall be placed in this area;

iv. The public open space shall have unrestricted access, at no cost, and shall not be limited to patrons of the commercial or hotel facilities;

v. An open-air public access walkway of at least 18 feet in width shall be provided perpendicular to the Boardwalk, along the entire southwestern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vi. An open-air public access walkway of at least 12 feet in width shall be provided perpendicular to the Boardwalk, along the entire northeastern side of the pier at the level of the deck surface of the Boardwalk, with amenities such as seating and lighting. Servicing of buildings and storage of materials, refuse or any other obstructions are prohibited within this walkway;

vii. Public restrooms, showers and changing areas shall be provided on the pier, immediately adjacent to the Boardwalk and the stairs from the beach on either side of the pier. Alternatively, the public restrooms, showers and changing areas may be located immediately adjacent to the Boardwalk provided these facilities are:

(1) Owned and maintained by the pier owner; and

(2) Located no further than 200 linear feet from the pier; and

viii. Signage shall be provided along the Boardwalk at the entrance to the piers indicating the location and availability of the public access features listed in (c)8i through vii above.

9. Service corridors to the piers shall be located beneath the Boardwalk, or if service to the piers is to be provided over the Boardwalk, it shall be restricted to the period between 12 o'clock midnight and 8:00 A.M.

10. The size and spacing of the pilings necessary to support the proposed development on the piers shall comply with the following conditions:

i. The pilings shall not cause significant adverse long-term impact to natural functioning of the beach and dune system, either individually or in combination with other existing or proposed structures, land disturbances or activities;

ii. The pilings shall not cause significant adverse impacts to the local sediment supply;

iii. The pilings shall not create net adverse shoreline sand movement downdrift, including erosion or shoaling; and

iv. Pilings shall be spaced so as to provide linear access along the dry beach as required by (c)8i above.

11. Parking is prohibited on the piers.

(d) – (l) (No change.)

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

7:7E-3C.2 Standards for conducting Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessments

(a) – (b) (No change.)

(c) Impact assessments shall be conducted for each endangered or threatened wildlife or plant species described in (a) and/or (b) above. The impact assessment shall consider the likely affects of the proposed development on the local populations of the particular species on or abutting the site. The impacts shall be assessed using accepted ecological principles and scientific literature on each species and both direct and indirect impacts of the proposed development shall be considered. This assessment shall be based on habitat requirements and life history of each species, and the manner in which the proposed development may alter habitat, including, but not limited to, vegetation, soils, **substrate, bathymetry, salinity**, hydrology, **wildlife movement corridors**, human disturbance, and effects on competitor, parasite, or predator species.

SUBCHAPTER 7. USE RULES

7:7E-7.4 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 as defined at N.J.A.C. 7:7E-3.1 through 3.42, 3.44, 3.46, and marine fish and fisheries areas defined at N.J.A.C. 7:7E-8.2, 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:

i. The CAFRA area; and

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);

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; or

ii. A wind energy facility that meets (1) and (2) below. The Department shall limit approvals under this subparagraph to ensure that the cumulative number of wind turbines approved does not exceed five, each with a power rating as determined by the manufacturer of 5 megawatts or less or six, each with a power rating as determined by the manufacturer of 4 megawatts or less. The wind energy facility shall be:

(1) Located in the Atlantic Ocean within State waters between latitude 39° 55' 56" N (offshore of Seaside Park) and latitude 39° 01' 58" N (offshore of Stone Harbor); and

(2) No closer than 2.5 nautical miles to the mean high water line;

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, and the public trust rights rule, N.J.A.C. 7:7E-8.; 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.

(c) – (q) (No change.)

(r) Standards relevant to electric generating stations are as follows:

1. New or expanded electric generating facilities (for base load, cycling, or peaking purposes) and related facilities are conditionally acceptable provided:

i. The proposed location and site design of the electric generating facility is the alternative which has the least practicable impacts to the coastal zone, based on a comparative evaluation of alternative sites within the coastal zone and inland.

ii. Fossil fuel (coal, oil or gas) and hydroelectric generating stations are discouraged in scenic or natural areas that are important to recreation and open space purposes.

iii. Nuclear generating stations shall be located in generally remote, rural, and low density areas, consistent with the criteria of 10 CFR 100 (United States Nuclear Regulatory Commission rules on siting nuclear generating stations) and/or any other related Federal regulations. In addition, the nuclear generating facility shall be located in an area where the appropriate low population zone and population center distance are likely to be maintained around the nuclear generating facility, through techniques such as land use controls or buffer zones.

iv. The construction and operation of a nuclear generating station shall not be approved unless the proposed method for disposal of the spent fuel to be produced by the facility will be safe, conforms to standards established by the United States Nuclear Regulatory Commission, and will effectively remove danger to life and the environment from the radioactive waste material. This finding is required under present State law (N.J.S.A. 13:19-11) and will be made consistent with judicial decisions (see *Public Interest Research Group v. State of New Jersey*, 152 N.J. Super. 191 (App.Div., certif. Den., 75 N.J. 538 (1977)) and Federal law.

v. The cogeneration of electricity and process steam for industrial, community and commercial use is encouraged;

[v:] **vi.** The construction of electric generating facilities using renewable forms of energy such as solar radiation, wind, and water, including experimental and demonstration projects, is [~~encouraged in the coastal zone~~] **conditionally acceptable** provided that [~~the~~] **such** facilities do not significantly detract from scenic or recreational values, **and for wind energy facilities, comply with vii and viii below;** [~~The cogeneration of electricity and process steam for industrial, community and commercial use is also encouraged.~~]

vii. In order to minimize adverse effects on birds and bats, wind energy facilities located on land shall:

(1) For a wind turbine(s) 200 feet in height or taller or having a cumulative rotor swept area greater than 4,000 square feet on a site, be sited such that no portion of the wind turbine(s), including blades, towers and site disturbance shall be located in the areas identified on the Department's Large Scale Wind Turbine Siting Map, dated August 8, 2009, incorporated by reference into this chapter. This map is available on the Department's interactive mapping website at <http://www.nj.gov/dep/gis>. The Department may revise the Large Scale Wind Turbine Siting Map in accordance with (r)3 below. The rotor swept area is the area of a circle delineated by the tips of the blades of the wind turbine for a horizontal axis wind turbine, and the area determined by multiplying the rotor radius times the rotor height times 3.14 for a vertical axis wind turbine;

(2) Have no light(s) placed on or directed at the wind turbine(s), 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;

(3) Use a freestanding monopole tower if the wind turbine is more than 120 feet tall, measured from the ground surface to the tip of the blade at its highest position. Guy wires or lattice towers are prohibited for a wind turbine more than 120 feet in height;

(4) Perform pre and/or post construction monitoring in order to establish the flight patterns and distribution of avian species and bats and impacts of the operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior, and flight pattern heights, as well as collisions associated with wind turbine construction and/or operation. Pre and/or post construction monitoring is dependent upon the scope of the facility including the number, height and rotor swept area of the turbines. Pre and post-construction monitoring may include visual, radar and acoustic surveys. Post construction monitoring shall also include carcass searches as well as removal and efficiency trials. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse .

(5) Curtail operations of wind turbines, as directed by the Department pursuant to (A) 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 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).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational

limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse; and

viii. In order to minimize adverse effects on birds, bats, and marine organisms, wind energy facilities located in tidal waters shall:

(1) Have no light(s) placed on the wind turbine(s), except for lighting required by the Federal Aviation Administration and the United States Coast Guard. Shielded 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;

(2) Use a monopole tower or other tower design that does not provide perching or roosting opportunities or other obstructions to birds or bats;

(3) Perform a habitat evaluation, including species surveys, an impact assessment and post-construction monitoring in order to establish the movement corridors and distribution of avian species, bats, and marine organisms and impacts of the construction and/or operation of these facilities on these species. Information shall be gathered on species composition, abundance, distribution, behavior and, for avian species and bats, flight pattern heights, as well as collisions and behavioral changes associated with wind turbine construction and/or operation. The habitat evaluation, impact assessment and post construction monitoring are dependent upon the scope of the facility including the number, height and rotor swept area of the turbines. Habitat evaluations may include visual, radar and acoustic surveys. Post construction monitoring may include visual surveys and other collision detection systems. Habitat evaluations, impact assessments and post-construction monitoring and reporting requirements will be coordinated with the Department, US Fish and Wildlife Service, and National Marine Fisheries Service. The Department has prepared a technical manual titled, "Technical Manual for Evaluating Wildlife Impacts of Wind Turbines Requiring Coastal Permits," which provides guidance on habitat evaluations and assessments, monitoring and reporting. The technical manual is available from the Department's Division of Land Use Regulation website www.state.nj.us/dep/landuse; and

(4) Curtail operations of wind turbines, as directed by the Department pursuant to (A) 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 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).

(A) Limitations on operation shall be developed by the Department based on monitoring results and published and unpublished studies or data. The Department shall notify the permittee in writing of the operational limitations by March 15th of the first year curtailment is required during the spring migration and by July 15th of the first year curtailment is required during the fall migration. These operational limitations shall remain in effect unless the Department notifies the permittee in writing by the above dates in subsequent years that changes to operational limitations are required. This information shall also be made available on the Department's website at www.state.nj.us/dep/landuse.

2. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest is conditionally acceptable provided it meets applicable State and Federal laws and standards.

3. The Large Scale Wind Turbine Siting Map identifies areas where large scale wind turbines cannot be constructed in accordance with N.J.A.C. 7:7E-7.4(r)1vii(1) and N.J.A.C. 7:7E-7.31 in order to 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. The Department shall publish notice of its intent to revise the Large Scale Wind Turbine Siting Map in the New Jersey Register, as well as in a newspaper of general circulation in each affected county and post the proposed revision of the map on the Department's interactive mapping website at www.nj.gov/dep/gis. The notice shall include:

(1) A description of the proposed revision;

(2) An explanation of why it is being proposed; and

(3) An invitation for interested parties to submit written comments for a period of 30 days.

ii. Upon consideration of the available information and public comments, if the Department concludes that revising the Large Scale Wind Turbine Siting Map is appropriate based on the potential risk to birds and bats associated with the operation of large scale wind turbines, the Department shall:

(1) Revise the map as the Department deems necessary;

(2) Publish a description of the revision in the New Jersey Register, including a response to any public comments;

(3) Publish a public notice describing the revision in a newspaper of general circulation in each affected county; and

(4) Post the revised map on the Department's interactive mapping website at www.nj.gov/dep/gis.

4. Rationale

7:7E-7.14 High Rise Structures

(a) – (b) (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; [øf]

2. Utility structures that have a demonstrated need[-]; **or**

3. Wind turbines.

(d) (No change.)

SUBCHAPTER 8. RESOURCE RULES

7:7E-8.12 Scenic resources and design

(a) – (c) (No change.)

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

1. Provide an open view corridor perpendicular to the water's edge in the amount of 30 percent of the frontage along the waterfront where an open view currently exists; and

2. Be separated from either the beach, dune, boardwalk, or waterfront, whichever is further inland, by a distance of equal to two times the height of the structure, **except for the following:**[-. ~~However, exceptions may be made for]~~

i. [i]Infill sites within existing commercial areas along a public boardwalk where the proposed use is commercial and where the set-back requirement is visually incompatible with the existing character of the area[-]; **and**

ii. Wind turbines.