

Rule Text

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

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Changes to existing rule text approved by OCRM are shown as follows:

Additions indicated in **underlined boldface**; and

Deletions shown in [~~bracketed strikethrough~~].

7:7E-1.1 Purpose and scope

Rule text subject to RPC with changes shown

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

7:7E-1.1 Purpose and scope

(a) (No change.)

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

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

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

1. Healthy coastal ecosystems.

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

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

2. Effective management of ocean and estuarine resources.

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

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

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

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

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

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

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

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

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

vi. Protect, enhance and promote waterfront parks.

4. Sustained and revitalized water-dependent uses.

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

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

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

iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredge material management practices and preserve historic dredged material placement sites;

5. Coastal open space.

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

(1) Provide opportunities for passive and active recreation,

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

(3) Minimize natural hazards, and

(4) Abate impacts from nonpoint sources of pollution,

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

iii. Promote strategies for the creation of open space.

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

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

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

(2) Promote concentrated patterns of development,

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

(4) Sustain coastal economies,

(5) Create vibrant coastal communities and waterfronts,

(6) Conserve water supply,

(7) Protect the natural environment,

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

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

and

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

iii. Maintain, enhance and encourage maritime uses;

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

v. Promote public health, safety and welfare;

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

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

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

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

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

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

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

v. Encourage the preparation of comprehensive plans, including:

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

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

8. Coordinated public education and outreach.

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

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

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

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

(e) The Location rules (subchapters 3 through 6), Use rules (subchapter 7) and Resource rules (subchapter 8) stem from the coastal goals at (c) above. The Department does not expect 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 provide a mechanism for integrating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a rule or a combination of rules, may vary depending upon the context of the proposed use, location, and design.

Entire rule text with changes included

(a) This chapter presents 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 in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq. (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). 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 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. 13:19-10f) and the Wetlands Act of 1970 (N.J.S.A. 13:9A-4d) as providing for full consideration of the national interest in the wise use of coastal resources as required under the Federal Coastal Zone Management Act (16 U.S.C. 1450).

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

1. Healthy coastal ecosystems.
 - i. Protect, enhance and restore coastal habitats and their living resources to promote biodiversity, water quality, aesthetics, recreation and healthy coastal ecosystems; and
 - ii. Manage coastal activities to protect natural resources and the environment;

2. Effective management of ocean and estuarine resources.
 - i. Develop and implement management measures to attain sustainable recreational and commercial fisheries;
 - ii. Manage commercial uses to reduce conflict between users and encourage water-dependent uses; and
 - iii. Administer the safe and environmentally sound use of coastal waters and beaches to protect natural, cultural and aesthetic resources, promote safe navigation, and provide recreational opportunities;
3. Meaningful public access to and use of tidal waterways and their shores.
 - i. Preserve public trust rights to tidal waterways and their shores;
 - ii. Preserve and enhance views of the coastal landscape to enrich aesthetic and cultural values and vital communities;
 - iii. Conserve and increase safe, environmentally sound, and meaningful public access from both the land and water to the tidal waterways and their shores for recreation and aesthetic experiences;
 - iv. Enhance public access by promoting adequate affordable public facilities and services;
 - v. Balance diverse uses of tidal waterways and their shores; and
 - vi. Protect, enhance and promote waterfront parks;
4. Sustained and revitalized water-dependent uses.
 - i. Encourage, sustain and enhance active port and other water-dependent facilities, and maritime uses;
 - ii. Encourage the redevelopment of inactive and under-utilized waterfront facilities for port, water-dependent and maritime uses;
 - iii. Conserve waterfront sites for water-dependent activities; and
 - iv. Manage dredging in an environmentally sound manner, promote environmentally sound and economically feasible dredge material management practices and preserve historic dredged material placement sites;
5. Coastal open space.
 - i. Preserve, enhance and restore open space including natural, scenic, historic and ecologically important landscapes that:
 - (1) Provide opportunities for passive and active recreation;
 - (2) Protect valuable wildlife and plant habitats and ecosystem health, foster aesthetic and cultural values;
 - (3) Minimize natural hazards; and
 - (4) Abate impacts from nonpoint sources of pollution;
 - ii. Promote and enhance public access to and use of open space where appropriate; and
 - iii. Promote strategies for the creation of open space;
6. Safe, healthy and well-planned coastal communities and regions.
 - i. Manage coastal activities and foster well-planned communities and regions that:
 - (1) Encourage mixed-use redevelopment of distressed waterfront communities including underutilized, abandoned and contaminated sites;
 - (2) Promote concentrated patterns of development;
 - (3) Ensure the availability of suitable waterfront areas for water dependent activities;
 - (4) Sustain coastal economies;
 - (5) Create vibrant coastal communities and waterfronts;
 - (6) Conserve water supply;
 - (7) Protect the natural environment;
 - (8) Minimize the threat of natural hazards to life and property;
 - (9) Provide meaningful public access to tidal waterways and their shores; and
 - (10) Preserve and restore significant historic and cultural resources and aesthetic coastal features;
 - iii. Maintain, enhance and encourage maritime uses;
 - iv. Preserve and enhance beach and dune systems and wetlands, and manage natural features to protect the public from natural hazards;
 - v. Promote public health, safety and welfare;
 - vi. Promote and implement strategies for the development of hazard mitigation plans; and

- vii. Promote and implement strategies that eliminate or reduce risks to human health and the ecosystem from coastal activities;
- 7. Coordinated coastal decision-making, comprehensive planning and research.
 - i. Promote the attainment of the New Jersey Coastal Management Program goals by encouraging other government agencies to employ the policies which supplement the goals;
 - ii. Encourage incorporation of the coastal goals and supplemental policies into State, regional and municipal land use management, funding and acquisition programs within the coastal zone;
 - iii. Coordinate cooperative government sponsored and academic coastal research and information dissemination to foster informed decision-making;
 - iv. Ensure opportunities for public participation in coastal decision-making;
 - v. Encourage the preparation of comprehensive plans, including:
 - (1) Land acquisition plans that further the goals and supplemental policies of New Jersey's Coastal Management Program; and
 - (2) Special area management plans that protect significant natural resources and provide the opportunity for sound coastal dependent economic development; and
- 8. Coordinated public education and outreach.
 - i. Coordinate education and outreach activities on coastal issues; and
 - ii. Encourage coastal related education and participation opportunities for the public.

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

(e) The Location rules (subchapters 3 through 6), Use rules (subchapter 7) and Resource rules (subchapter 8) stem from the coastal goals at (c) above. The Department does not expect 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 provide a mechanism for integrating professional judgment by Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process. In this process, interpretations of terms, such as "prudent," "feasible," "minimal," "practicable," and "maximum extent," as used in a rule or a combination of rules, may vary depending upon the context of the proposed use, location, and design.

7:7E-1.5 CAFRA Findings

Rule text subject to RPC with changes shown

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

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

~~as authorizing arbitrary decision-making or unrestrained administrative discretion. Rather, the limited flexibility intentionally built into the Coastal Zone Management rules provides a mechanism for incorporating professional judgment by the Department officials, as well as recommendations and comments by applicants, public agencies, specific interest groups, corporations, and citizens into the coastal decision-making process.~~

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

~~i. Protect and enhance the coastal ecosystem.~~

~~ii. Concentrate rather than disperse the pattern of coastal residential, commercial, industrial, and resort development, encourage the preservation of open space, and ensure the availability of suitable waterfront areas for water dependent activities.~~

~~iii. Employ a method for decision-making which allows each coastal location to be evaluated in terms of both the advantages and the disadvantages it offers for development.~~

~~iv. Protect the health, safety and welfare of people who reside, work and visit the coastal zone.~~

~~v. Promote public access to the waterfront through protection and creation of meaningful access points and linear walkways and at least one waterfront park in each waterfront municipality.~~

~~vi. Maintain active port and industrial facilities, and provide for necessary expansion in adjacent sites.~~

~~vii. Maintain and upgrade existing energy facilities, and site additional energy facilities in a manner consistent with the rules of this Coastal Management Program.~~

~~viii. Encourage residential, commercial, and recreational mixed-use redevelopment of the developed waterfront.]~~

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

Entire rule text with changes included

(a) The Department shall issue a permit pursuant to the Coastal Area Facility Review Act (CAFRA) only upon a finding as required by N.J.S.A. 13:19-10 that the development:

1. Conforms with all applicable air, water and radiation emission and effluent standards and all applicable water quality criteria and air quality standards;

2. Prevents air emissions and water effluents in excess of the existing dilution, assimilative, and recovery capacities of the air and water environments at the site and within the surrounding region;

3. Provides for the collection and disposal of litter, recyclable and solid waste in such a manner as to minimize adverse environmental effects and the threat to the public health, safety, and welfare;

4. Would result in minimal feasible impairment of the regenerative capacity of water aquifers or other ground or surface water supplies;

5. Would cause minimal feasible interference with the natural functioning of plant, animal, fish, and human life processes at the site and within the surrounding region;

6. Is located or constructed so as to neither endanger human life or property nor otherwise impair the public health, safety, and welfare; and

7. Would result in minimal practicable degradation of unique or irreplaceable land types, historical or archaeological areas, and existing public scenic attributes at the site and within the surrounding region.

7:7E-1.6 Mitigation

Rule text subject to RPC with changes shown

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

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

(b) (No change.)

Entire rule text with changes included

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should be similar in type and location to the resource disturbed or destroyed, that is, replacement in kind within the same watershed. The Department will, however, consider proposals for mitigation that differ in type and/or location from the disturbed or destroyed resource provided the mitigation would provide a major contribution to meeting the coastal goals and supplemental policies at N.J.A.C. 7:7E-1.1(c). Requirements for mitigation of a particular resource are addressed more specifically in each applicable Special Area Rules (N.J.A.C. 7:7E-3.1 through 3.49).

(b) Rationale: This rule is intended to conserve those physical and biological values described under applicable Special Area rules, while allowing development consistent with acceptability criteria. Use of this mitigation rule will result in real gain, or no net loss of habitat productivity or resource value.

7:7E-1.8 Definitions

Rule text subject to RPC with changes shown

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

...

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

...

Entire rule text with changes included

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

“Acceptable” means that a proposed use of coastal resources is likely to be approved.

“Action”, “activity”, “project”, “proposal”, or “use” are used interchangeably to describe the proposed use of coastal resources that is under scrutiny using the Coastal Zone Management rules.

“Area”: See definition for "site" below.

“Bulkhead” means a vertical shore protection structure installed to withstand the forces of waves and currents. A bulkhead is not a “revetment” or a “gabion” as defined elsewhere in this section.

“CAFRA area” means the “coastal area” defined in the Coastal Area Facility Review Act at N.J.S.A. 13:19-4.

“Coastal permit” or “permit” means a permit or authorization, including a Federal Consistency and Water Quality Certificate, issued by the Department under N.J.A.C. 7:7

pursuant to any of the following statutes: the Waterfront Development Law, N.J.S.A. 12:5-3, the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq.; Section 307 of the Federal Coastal Zone Management Act, 16 §§1451 et seq.; or Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 et seq.

“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 or other merchandise, or any establishment used for providing professional, financial or other commercial services.

“Conditionally acceptable” means that a proposed use of coastal resources is likely to be acceptable, provided that conditions specified in the rules are satisfied.

“Conservation restriction” means a restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural state, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or for public access to tidal waterways and their shores, or as suitable habitat for fish or wildlife, to forbid or limit any or all of the following:

1. Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;
2. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;
3. Removal or destruction of trees, shrubs or other vegetation;
4. Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;
5. Surface use except for the purposes permitting the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation; and
7. Other acts or uses detrimental to the retention of land or water areas according to the purposes of this chapter.

“Development” means any activity for which a Wetlands Act of 1970 Permit, Waterfront Development Permit, or Federal consistency determination is required, including site preparation and clearing. Development, for an application under the CAFRA, means the construction, relocation, or enlargement 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. 7:7-2.1(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 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 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.

“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 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).

“11-digit hydrologic unit code area” means an area within which water drains to a particular receiving surface water body, which area is identified by an 11-digit hydrologic unit boundary designation, as shown on the map included in the United States Geological Survey, Water Resources Investigations Report 95-4134, 1995, entitled “Development of a 14-digit Hydrologic Coding Scheme and Boundary Data Set for New Jersey.” The HUC codes for New Jersey can be downloaded from www.njgeodata.state.nj.us. The HUC 11 data is entitled “subwatersheds.” Software designed for use with Geographic Information Systems (GIS) will be required to view that downloaded data.

“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.

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

“Gabion” means a shore protection structure that is comprised of wire mesh basket(s) or mattress(es) filled with rock and used in multiples as a structural unit installed to withstand the forces of waves and currents. A gabion is not a “bulkhead” or a “revetment” as defined elsewhere in this section.

“Habitable structure” means a structure that is able to receive a certificate of occupancy from the municipal construction code official, or can be demonstrated to have been legally occupied as a dwelling unit for the most recent five years.

“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.

“Linear development” means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line.

“Location”: See definition for "site" below.

“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 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 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 the Coastal Area Facility Review Act (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.

“Navigable” means deep enough and wide enough to afford passage to watercraft, including canoes, 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.

“Program” means the Department of Environmental Protection’s Land Use Regulation Program.

“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.

“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 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. 7:7-2.1(c)4.

“Revetment” means a sloped shore protection structure consisting of a facing made of stone, placed on a bank, bluff, or shoreline to withstand the forces of waves and currents. A revetment is not a “gabion” or “bulkhead” as defined elsewhere in this section.

“Site” means the lot or lots upon which a proposed development is to be constructed.

“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.

“Spring high water line” is the intersection of the land with the water surface at the elevation of spring high tide.

“Water dependent” means development that cannot physically function without direct 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, 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.

“Watershed management area” means an aggregation of the 11-digit hydrologic unit codes designated by the Department as a watershed management area and shown on the map entitled “New Jersey’s Watersheds, Watershed Management Areas, and Water Regions,” dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department’s Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at www.state.nj.us/dep/gis.

7:7E-3.4 Prime fishing areas

Rule text subject to RPC with changes shown

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local ~~[quantity]~~ **intensity** of recreational or commercial fishing activity. ~~These areas include[s] all coastal jetties, [and] groins, public fishing piers or docks, and artificial reefs. Prime fishing areas also include features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell and tubeworms, slough areas and offshore canyons.~~ Prime fishing areas also include **areas identified in** ~~[all red line delineated features within the coastal waters illustrated in: B.L. Freeman and L.A. Walford (1974) Angler's Guide to the United States Atlantic Coast Fish; Fishing Grounds and Fishing Facilities, Section III and IV or as indicated on New Jersey's Specific Sport and Commercial Fishing Grounds Chart (page 14) contained in "New Jersey's Recreational and Commercial Ocean Fishing Grounds." Long and Figley (1984); recently developed artificial reefs off the New Jersey coast as identified in Figley (1989) "A Guide to Fishing and Diving New Jersey's Artificial Reefs", and The Fishing Grounds of Raritan, Sandy Hook and Delaware Bays as determined in Figley and McCloy (1988).] "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay" **Figley and McCloy (1988)** [-While this information source applies only to the Delaware and Raritan Bay and Atlantic Ocean shorefronts, Prime Fishing Areas do occur throughout the coastal zone] **and those areas identified on the map titled, “New Jersey’s Specific Sport Ocean Fishing Grounds.” This map is available through the Coastal Management Program’s website at www.nj.us/dep/cmp.**~~

(b) (No change.)

(c) Rationale: Natural bathymetric features, such as the Shrewsbury Rocks, ~~[and]~~ important sand ridges, and artificial structures act as congregation areas for many species of finfish, shellfish, and ~~[a diversity of]~~ **diverse** invertebrate species ~~[which]~~ **that** are essential to marine ecosystem functioning. These areas are heavily ~~[utilized]~~ **used** by recreational and commercial fishermen. Commercial fishing occurs primarily along the Delaware Bay and **in the Atlantic Ocean off the New Jersey coast.** ~~[Over 2.7 million] **Annually, more than 800,000** people [annually], of which 639,000 reside in New Jersey, participate in marine sport fishing and shellfishing ~~[in New Jersey]. [This represents the highest number of participants in any state, from Maine to Maryland. Of that total, 1.6 million reside in New Jersey, with the remaining number coming mostly from Pennsylvania and New York (792,000) and 300,000 respectively.]~~ **In a recent survey conducted by the National Marine Fisheries Service, New Jersey ranked first in the harvest of four of the five most important recreational fish species (summer flounder, bluefish, seabass, and tautog) and ranked second in the harvest of striped**~~

bass. The recreational fishery industry is worth \$1.5 billion annually to the economy of New Jersey. In 2001, New Jersey's commercial fisheries contributed \$590 million to the State's economy. [~~In 1979, \$178 million was spent on recreational fishing including party boats and the value of commercial fisheries landings totaled \$53 million (New Jersey Coastal Fisheries Management Strategy NJDEP, Division of Fish, Game and Wildlife, draft, 1982). The Mid Atlantic Regional Fisheries Management Council manages fishing activities seaward of the State's coastal zone.]~~

Entire rule text with changes included

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local intensity of recreational or commercial fishing activity. These areas include all coastal jetties, groins, public fishing piers or docks, and artificial reefs. Prime fishing areas also include features such as rock outcroppings, sand ridges or lumps, rough bottoms, aggregates such as cobblestones, coral, shell and tubeworms, slough areas and offshore canyons. Prime fishing areas also include areas identified in "New Jersey's Recreational and Commercial Fishing Grounds of Raritan Bay, Sandy Hook Bay and Delaware Bay and The Shellfish Resources of Raritan Bay and Sandy Hook Bay" Figley and McCloy (1988) and those areas identified on the map titled, "New Jersey's Specific Sport Ocean Fishing Grounds." This map is available through the Coastal Management Program's website at www.nj.us/dep/cmp.

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

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

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

(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 people, of which 639,000 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, New Jersey's commercial fisheries contributed \$590 million to the State's economy.

7:7E-3.21 Bay island

Rule text subject to RPC with changes shown

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

1. (No change.)

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

OCEAN COUNTY

Bonnett Island, Stafford Township

Chadwick Island, Dover Township

Channel Island, Mantoloking Borough

Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY

Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

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

West Wildwood, Wildwood City
West 17th Street, Ocean City

(b) – (d) (No change.)

Entire rule text with changes included

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

1. In cases where a bay island is also a Filled Water's Edge (N.J.A.C. 7:7E-3.23), 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 cover limits for these areas are determined under the Special Area rules at N.J.A.C. 7:7E-3 where applicable, and/or under N.J.A.C. 7:7E-5B.

OCEAN COUNTY

Bonnett Island, Stafford Township
Chadwick Island, Dover Township
Channel Island, Mantoloking Borough
Osborne Island, Little Egg Harbor Township
Pelican Island, Dover/Berkeley Townships
West Point Island, Lavallette Borough

ATLANTIC COUNTY

Chelsea Heights, Atlantic City
Venice Heights, Atlantic City
Ventnor Heights, Ventnor City

CAPE MAY COUNTY

Princeton Harbor, Avalon Borough

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

West Wildwood, Wildwood City
West 17th Street, Ocean City

(b) 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 cover does not exceed three percent of the bay island portion of the site (except pursuant to (d) below);

2. For a bay island portion of a site that is forested as determined at N.J.A.C. 7:7E-5.5, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(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, 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) 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 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, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(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, 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) 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 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, at least 30 percent of the existing forest shall be preserved in accordance with N.J.A.C. 7:7E-5.4(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, 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) 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 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 above, in which case the impervious cover limit shall not exceed 30 percent.

(d) Redevelopment or modification within an existing development on a bay island is conditionally acceptable provided that;

1. The construction of buildings and/or concrete asphalt pavement is located on the area covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department and does not exceed the existing development as to any one of the following:

i. Number of units; or

ii. Square footage of interior floor space; and

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) and (e).