LAND USE MANAGEMENT
LAND USE REGULATION
Coastal Zone Management rules; Coastal Permit Program rules; Ninety-Day Construction Permits rules
Proposed Readoption with Amendments: N.J.A.C. 7:7E
Proposed Amendments: N.J.A.C. 7:7-1.3, 1.8, 1.9, 1.10, 2.1, 3.1, 3.2, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.10, 5.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.13, 7.14, 7.15, 7.16; and the Ninety Day Construction Rules, N.J.A.C. 7:1C-1.2, 1.3, 1.5, 1.7, 1.8 and 1.9.
Proposed Repeals: N.J.A.C. 7:7E-2.1, 2.2, N.J.A.C. 7:7-Appendix D
Proposed New Rules: N.J.A.C. 7:7-7.3A and 10

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 13:19-1 et seq., 13:9A-1 et seq.,12:5-3 and 13:1D-9 and 13:1D-29 et seq.
DEP Docket Number: 34-01-12/71
Calendar Reference: 33 N.J.R. 3565, October 1, 2001
Proposal Number:

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

Friday February 1, 2002 at 10 am
New Jersey Department of Environmental Protection
Public Hearing Room
401 East State Street
Trenton, NJ 08625

Wednesday, February 6, 2001 at 6:30 pm
Ocean County Administration Building
101 Hooper Avenue
Room 119
Toms River, NJ

Submit written comments by March 8, 2002 to:

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

The Department of Environmental Protection (Department) requests that commenters submit comments on 31/2 inch diskettes as well as on paper. The Department will be able to upload the comments onto its office automation equipment.

The Department will use the paper version of the comments to ensure that the uploading was accomplished successfully. Submittal of comments on diskette is not a requirement. The Department prefers Microsoft Word 6.0 or above; however, other word processing software that can be read or used by Microsoft Word 6.0 is acceptable. MacIntosh formats should not be used.

The proposal can be viewed or downloaded on the Land Use Regulation Program website at http://www.state.nj.us/dep/landuse.

Summary

Pursuant to Executive Order No. 66(1978), the Coastal Zone Management rules, N.J.A.C. 7:7E, were scheduled to expire on June 23, 1999. The Department requested a waiver of Executive Order No. 66(1978) extending the expiration date of this chapter to March 31, 2001 to allow time to provide the public the opportunity to participate in the rulemaking process prior to a proposal being published in the New Jersey Register. Governor Whitman granted the Department's request for the waiver pursuant to Executive Order No. 66(1978), extending the expiration date of this Chapter from June 23, 2000 to March 31, 2001 (See 32 N.J.R. 2591(c)). A second waiver extending the expiration date of this Chapter from March 31, 2001 to March 31, 2002 was issued by Acting Governor Donald T. DiFrancesco on March 30, 2001 (See 33 N.J.R. 1370(a)). This extension was granted to allow the Department to complete the rulemaking process which includes full public review and opportunity for input and Departmental response as required by the Administrative Procedures Act. Pursuant to N.J.S.A. 52:14B-5.1, the March 31, 2002 expiration has been extended by 180 days to September 27, 2002.

The Department of Environmental Protection (Department) has reviewed the rules and has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. However, the Department recognizes that certain amendments to the rules are necessary and is therefore proposing herein to readopt the Coastal Zone Management rules with various amendments related to special areas, general water areas, general land areas, use, and resource rules. In addition, amendments are proposed to reflect the Department's current organizational structure, terminology, and definitions. For ease in reading and understanding this chapter, the chapter's organization is being amended to reduce confusing codifications.

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.
Further, where appropriate, existing references to various studies, reports and publications are being updated.

The Coastal Zone Management rules (N.J.A.C. 7:7E) represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. The existing rules at N.J.A.C. 7:7E are administered by the Department of Environmental Protection's Land Use Regulation Program, and are used to review permit applications submitted pursuant to the procedures contained in the Coastal Permit Program rules at N.J.A.C. 7:7. The rules at N.J.A.C. 7:7E constitute the State's Coastal Zone Management Plan and implement the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq., and the Waterfront Development Law, N.J.S.A. 12:5-3. In addition, the rules apply to decisions regarding consistency of proposed Federal actions with the State's Coastal Zone Management Plan under Section 307 of the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq., as well as to decisions on water quality certifications under Section 401 of the Federal Clean Water Act , 33 U.S.C. 1251 et seq. The rules are also used as a basis for making recommendations to the Tidelands Resource Council on applications for Tidelands instruments, and are applied in other Departmental decision-making processes in accordance with N.J.A.C. 7:7E-1.3.

As part of the proposal to readopt the Ninety-Day Construction Permits rules (See 32 N.J.R. 1273(a)) the Department indicated that it would be reorganizing the Chapter to relocate certain provisions pertaining to the coastal permitting programs (CAFRA, Waterfront Development and Wetlands Act of 1970) into the Coastal Permit Program rules. To facilitate this reorganization, amendments are being proposed to both the Coastal Permit Program rules and Ninety-Day Construction Permits rules.

As part of this proposal to readopt the Coastal Zone Management rules with amendments, the Department is proposing amendments to the Coastal Permit Program rules, N.J.A.C. 7:7, which establish the procedures by which the Department reviews permit applications and appeals from coastal permit decisions. The Coastal Permit Program rules also contain the coastal general permits, permits-by-rule, the Long Branch Redevelopment Zone Permit and the Sector Permits. The amendments proposed to this chapter focus on the notice requirements for coastal permit applications, modification requests and coastal general permits. In addition, minor changes are proposed to the information requirements for mitigation projects, the Long

Branch Redevelopment Zone Permit, the coastal general permits for beach and dune maintenance, the coastal general permits for the development, or reconstruction (with or without expansion) of a single family home or duplex, reconstruction of a legally existing bulkhead and hazardous waste cleanup.

The Department scheduled four meetings to solicit input and recommendations from the public on how the Coastal Zone Management rules could be amended to further the Department's goal of protecting and enhancing the coastal zone while allowing development in appropriate locations. The meetings were held on September 15, 2000 in the Department's Public Hearing Room, Trenton, September 19, 2000 at the Monmouth Beach Municipal Building, Monmouth Beach, September 21, 2000 at the Ocean County Agricultural Center, Toms River, and September 26, 2000 at the Ocean City Council Chambers, Ocean City. Notice of the public meetings was posted on the Department's website and was also published in the New Jersey Register on September 5, 2000 (see 32 N.J.R. 3208(a)). The notice solicited input on the entire chapter and the following specific provisions: Coastal bluff (N.J.A.C. 7:7E-3.31); Farmland Conservation (N.J.A.C. 7:7E-3.33); Critical Wildlife Habitat (N.J.A.C. 7:7E-3.39); and Stormwater Management (N.J.A.C. 7:7E-8.7). Members of the public commented only at the Ocean County meeting, which was attended by four people.

At the Ocean County meeting, discussion focused on farmland conservation, stormwater management, critical wildlife habitat, habitat mapping, vegetation, takings and enforcement . Commenters suggested that the history and presence of farming on a site should be used in the identification of farmland conservation areas rather than the current method using soil classification. Concerning stormwater management, commenters suggested that the Department propose provisions that would reduce and/or simplify the permitting process for innovative types of stormwater measures, thus encouraging municipalities and developers to try new ideas.

Commenters indicated that the Department should better define the term "critical wildlife habitat" and that the Department should produce maps on GIS which include the State's various habitat mappings, and mapping done by other agencies such as New Jersey Audubon to formulate an overlay to determine appropriate areas for development. This rule proposal incorporates the use of wildlife habitat mapping in identification of threatened and endangered species habitat, which maps will be made available on the Department's GIS system.

Commenters suggested that the Vegetation rule be amended to encourage the use of native vegetation in the coastal area to get away from the "green lawn syndrome." As a result of the above discussions, the Department is proposing to amend the vegetation rule, N.J.A.C. 7:7E-8.8 to clarify that vegetative plantings at a development site be a coastal species native to New Jersey. This proposed amendment would maintain diversity of vegetation throughout the coastal zone by precluding plantings of invasive species.

Commenters suggested that there should be a mechanism other than "takings" where there is an "out clause" for a property owner to sell their property at fair market value to either the State or conservation agencies, and that such a mechanism would be in keeping with Governor Whitman's open space goals. The Department's recently adopted (2000) provisions for relaxation of standards to prevent an extraordinary hardship does include a requirement that the property in question be offered to land conservancies, environmental organizations and governmental agencies. Finally, commenters suggested that the current rules could be more effective if they were better enforced and that there has been a decline in the Department's enforcement of the rules in the last ten years.

The rules proposed for readoption at N.J.A.C. 7:7E and amendments proposed to N.J.A.C. 7:7, and 7:1C are described below.

NINETY-DAY CONSTRUCTION PERMITS

N.J.A.C. 7:1C

On April 17, 2000 the Department published the proposed readoption of the Ninety-Day Construction Permits rules (see 32 N.J.R. 1273(a)). As part of that proposal, the Department indicated that it would be reorganizing that Chapter within the next two years. This entails the relocation of certain provisions relating specifically to Flood Hazard Area permits and Coastal permits from the Ninety-Day Construction Permits rules to either the Flood Hazard Area Control Act rules, N.J.A.C. 7:13 or the Coastal Permit Program rules, N.J.A.C. 7:7. To facilitate this reorganization, amendments are proposed to both the Coastal Permit Program rules and the Ninety-Day Construction Permits rules. A summary of the amendments proposed to the Ninety-Day Construction Permits rules follows.

N.J.A.C. 7:1C-1.2 Definitions

N.J.A.C. 7:1C-1.2 contains the definitions of the commonly used terms throughout the Ninety-Day Construction Permits rules. The definition of "appropriate agency," specifically, the Land Use Regulation Program" is being amended to delete sections i through iii which reference "coastal permits," that is, permits under the Coastal Area Facility review Act (CAFRA), Waterfront Development Law, and Wetlands Act of 1970. Since the applicable provisions of the Ninety-Day Construction Permits rules pertaining to coastal permits are being incorporated into the Coastal Permit Program rules, the Ninety-Day Construction Permits rules will no longer apply to coastal permits.

N.J.A.C. 7:1C-1.3 Pre-application procedure and requirements

N.J.A.C. 7:1C-1.3(a) describes the purpose and procedures of a pre-application review. If during the pre-application review the Department determines the proposed project is exempt from requiring a permit , the Department shall issue a written statement of such a finding that shall be binding on the agency. However, for the purposes of CAFRA, this written statement shall not constitute an exemption letter pursuant to N.J.A.C. 7:7-2.1(e). This provision is being deleted since the pre-application procedure and requirements contained in the Ninety-Day Construction Permits rules would no longer apply to coastal permits.

N.J.A.C. 7:1C-1.3(e) provides that applicants for CAFRA, Waterfront Development and Coastal wetlands permits shall follow the pre-application procedures set forth in the Coastal Permit Program rules. Again, this provision is being proposed for deletion since upon adoption of these amendments, the Ninety-Day Construction Permits rules would no longer apply to coastal permits.

N.J.A.C. 7:1C-1.5 Fees

The fees for the review of any application for a construction permit (that is, CAFRA, Waterfront Development, Coastal Wetlands, Flood Hazard Area Control Act, or Treatment works) are contained in N.J.A.C. 7:1C-1.5(a). The fees for applications for a Waterfront Development permit at N.J.A.C. 7:1C-1.5(a)1, Coastal Wetlands permit at N.J.A.C. 7:1C-1.5(a)2, and CAFRA permit at N.J.A.C. 7:1C-1.5(a)3 are proposed for deletion. These sections are being reproposed in Subchapter 10 of the Coastal Permit

Program rules, N.J.A.C. 7:7. A discussion of Subchapter 10 is found in the section-by-section summary of amendments proposed to the Coastal Permit Program rules.

N.J.A.C. 7:1C-1.5(b) provides that extensions of time for issued coastal permits will be granted in accordance with N.J.A.C. 7:7-1.5(d) of the Coastal Permit Program rules. Again, since all references and sections applicable to the coastal permitting programs are being relocated or added to the Coastal Permit Program rules, this provision is no longer necessary and is therefore proposed for deletion. Since the introductory paragraph to N.J.A.C. 7:1C-1.5(b)1 is proposed for deletion, a new introduction to the fees for extensions of Category 1, 2 and 3 treatment works approvals is proposed.

N.J.A.C. 7:1C-1.5(d) describes the process for requesting a modification to an issued permit. The description of a permit modification contained in this paragraph specifically excludes modifications to waterfront development and coastal wetland permits. Instead, this paragraph indicates that the standards and procedure for modifying coastal permits are found at N.J.A.C. 7:7-4.10. Further, this paragraph sets forth the fees for requesting modifications of coastal permits, N.J.A.C. 7:1C-1.5(d) 2 and 3. Since all fees will be relocated in the Coastal Permit Program rules and the standards for modifying coastal permits are already located in the Coastal Permit Program rules, the Department is proposing to delete the above references, including N.J.A.C. 7:1C-1.5(d) 2 and 3.

N.J.A.C. 7:1C-1.5(h) requires the Department to adjust the fees for Waterfront Development, Coastal wetlands and CAFRA permits annually through a fee adjustment factor. The provision for annual adjustments to the permit fees was adopted in March 1993 when the coastal program budget was based on fees. The annual adjustment provided a means to increase fees to reflect increasing costs of application review. Annual fee adjustments have not been made for more than five years and this provision is no longer required since the program is no longer fee based. Accordingly, under this proposal, reference to the coastal permitting programs is proposed for deletion from this subsection. Further, the language at N.J.A.C. 7:1C-1.5(h) will not be incorporated into the Coastal Permit Program rules since it is not the Department's practice to annually adjust the coastal permitting fees.

N.J.A.C. 7:1C-1.5(j) sets forth conditions under which the Department does not have to adjust the coastal permitting fees or prepare an Annual Ninety-Day Construction

Permits Fee Schedule report pursuant to N.J.A.C. 7:1C-1.5(h) and (i). As part of this proposal, the Department is proposing to delete references to the coastal permitting programs from this requirement since it is deleting the provision for adjusting coastal permit fees.

N.J.A.C. 7:1C-1.7 Review of application

This section details the review procedure s for applications subject to the Ninety-Day Construction Permits rules.

N.J.A.C. 7:1C-1.7(c) provides that applications for CAFRA, Waterfront Development and Coastal wetlands permits shall be reviewed in accordance with the procedures set forth at N.J.A.C. 7:7, the Coastal Permit Program rules. Since the Department is reorganizing the Ninety-Day Construction Permits rules so that the sections applicable to the coastal permitting program will be part of the Coastal Permit Program rules, this section and the cross-reference to the Coastal Permit Program rules are proposed for deletion.

N.J.A.C. 7:7-1.8 Decision on permit application-1.8 describes the consequences of decisions on permit applications.

N.J.A.C. 7:1C-1.8(a) describes the time frame in which the Department must act on a permit application, excluding however, CAFRA permits from the time frames. N.J.A.C. 7:1C-1.8(b) requires that applications for CAFRA permits are to be reviewed in accordance with the procedure set forth in the Coastal Permit Program rules. Since the CAFRA statute sets forth the time frames for decisions on CAFRA permits, these provisions are no longer necessary since upon adoption this Chapter will no longer apply to the coastal permitting program, including CAFRA.

N.J.A.C. 7:1C-1.9 Appeals

N.J.A.C. 7:1C-1.9(a) provides that appeals on actions by the Land Use Regulation Program shall be reviewed by the Commissioner in accordance with N.J.A.C. 7:7-5. This section is being proposed for deletion as part of this readoption since the Ninety-Day Construction Permits rules will no longer apply to the coastal permitting programs.

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

COASTAL PERMIT PROGRAM RULES

N.J.A.C. 7:7

In addition to proposing amendments to the Ninety-Day Construction Permits rules and Coastal Zone Management rules, N.J.A.C. 7:7E, the Department is proposing amendments to the Coastal Permit Program rules, N.J.A.C. 7:7. The Coastal Permit Program rules establish the procedures by which the Department reviews permit applications and hearing requests from coastal permit decisions. The Coastal Permit Program rules also contain the coastal general permits, permits-by-rule, the Long Branch Redevelopment permit and Sector permit.

On April 17, 2000, the Department proposed to readopt the Ninety-Day Construction Permits rules (90-day rules), N.J.A.C. 7:1C (see 32 N.J.R. 1273(a)). In that proposal the Department indicated that it anticipated reorganizing these rules in the next two years. This reorganization would remove provisions addressing flood hazard area permits and waterfront development and coastal permits from the 90-day rules and locate these provisions in the Flood Hazard Area Control Act rules (N.J.A.C. 7:13) and the Coastal Permit Program rules (N.J.A.C. 7:7), respectively.

Consolidating the portions of the 90-day rules that apply to coastal permits into the Coastal Permit Program rules will make it easier for the regulated public to understand and comply with the rules. Accordingly, the Department is proposing to amend the Coastal Permit Program rules to incorporate the applicable sections of the 90-day rules. This proposal will result in amendments to N.J.A.C. 7:7-1.8, Procedure where more than one permit is required; N.J.A.C. 7:7-1.9, Permit fees; N.J.A.C. 7:7-2.1, CAFRA; N.J.A.C. 7:7-3.2, Requests for pre-application review; N.J.A.C. 7:7-4.1, General; N.J.A.C. 7:7-4.2, Application contents; N.J.A.C. 7:7-4.3, Newspaper notice of application submission and availability of application for examination by the public; N.J.A.C. 7:7-4.4, Initial review of application; N.J.A.C. 7:7-4.5, Public hearings and public comment periods; N.J.A.C.:7-4.6, Final review of application; N.J.A.C. 7:7-4.7, Timetable for permit decisions; N.J.A.C. 7:7-4.8, Publication of the permit decision; N.J.A.C. 7:7-4.10, Requests for modifications; N.J.A.C. 7:7-7.3, Application procedure for a coastal general permit authorization; and, N.J.A.C. 7:7-7.3A, Requests for modifications of coastal general permit authorizations. A new Subchapter, N.J.A.C. 7:7-10, Coastal Permit application fees is being proposed. Amendments are also being proposed to the Ninety-Day Permit Construction rules to facilitate this reorganization.

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

As discussed under the section-by-section summary of changes to the Coastal Zone Management rules, Dune rule, the definition of "dune" is being amended for clarity and consistency with the Coastal Zone Management rules.

N.J.A.C. 7:7-1.8 Procedure where more than one permit is required

This section sets forth the procedures where more than one permit is required. N.J.A.C. 7:7-1.8(b) addresses the fee requirements for a project which requires more than one of the following permits provided the permit applications are submitted and processed simultaneously: CAFRA permits; waterfront development permits; coastal wetland permits; stream encroachment permits; or freshwater wetlands permits. The cross-reference to the formula for calculating the fee is being amended to replace the existing cross-reference to N.J.A.C. 7:1C-1.5(c) to reflect the proposed recodification of this paragraph to N.J.A.C. 7:7-10.5(a).

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

N.J.A.C. 7:7-1.9 provides that coastal permit fees are established by the Department pursuant to the Ninety-Day Construction Permits Law (N.J.S.A. 13:1D-29 et seq.) and are published in the New Jersey Administrative Code at 7:1C-1.5. Under this proposal, reference to N.J.A.C. 7:1C-1.5 is being replaced at N.J.A.C. 7:7-10, since the coastal permit application fees are being recodified into this chapter.

N.J.A.C. 7:7-1.10 Construction and relaxation of procedures or standards

The submittal requirements for a request to relax the standards of N.J.A.C. 7:7E include the submission of documentation that the subject property has been offered for sale in a letter sent by certified mail to all property owners within 200 feet of the property. To ensure that all property owners within 200 feet of the property have been identified and provided notice, the Department is adding a provision at N.J.A.C. 7:7-1.10(e)4 requiring that a list certified by the municipality of all property owners within 200 feet of the property be submitted with the relaxation request. This amendment will also make the relaxation request submission requirements consistent with the existing coastal permit application requirements at N.J.A.C. 7:7-4.2(a)4, the modification request

requirements proposed at N.J.A.C. 7:7-4.10(j)1ii, 3ii and 4iv, and the coastal general permit application requirements proposed at N.J.A.C. 7:7-7.3(a)5.

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

This subsection sets forth the Department's jurisdiction under CAFRA. N.J.A.C. 7:7-2.1(f) sets forth the procedure for requesting a written determination of a development's exemption from the requirements of this subchapter. The references to the fee for such a request at N.J.A.C. 7:7-2.1(f)1iii, 2iii and 3v are proposed for amendment to replace the existing reference to N.J.A.C. 7:1C-1.5(a)3v with the citation to the proposed recodification of this paragraph to N.J.A.C. 7:7-10.4(e).

SUBCHAPTER 3. PRE-APPLICATION REVIEW

N.J.A.C. 7:7-3.1 Purpose

N.J.A.C. 7:7E-3.1 sets forth the purpose of pre-application reviews. Although currently these reviews are not mandatory, the Department under this proposal is proposing to amend N.J.A.C. 7:7-3.1(a) to require that pre-application reviews for potential applications involving the installation of submarine cables in the Atlantic Ocean are mandatory. This proposed amendment was recommended by the Cable Task Force. This Task Force was developed by the Commissioner of the Department pursuant to Administrative Order #2000-07 in response to an increased number of applications and pre-application requests for the installation of submarine cables in the Atlantic Ocean. The Task Force was charged with recommending guidelines for the installation of submarine cables to minimize conflicts with coastal fisheries. Because the design of potential cable routes must consider means to minimize the impacts associated with the crossing of existing cables on the commercial fishing industry, this meeting will initiate the coordination process with the Department and the commercial fishing industry.

N.J.A.C. 7:7-3.2 Request for pre-application review

N.J.A.C. 7:7-3.2 sets forth the information necessary when requesting a pre-application review. Since the Department is proposing to make pre-application reviews mandatory for potential applications for the installation of submarine cables in the

Atlantic Ocean, N.J.A.C. 7:7-3.2(a) is proposed for amendment to make it clear that pre-application review of these proposals are not discretionary. Proposed N.J.A.C. 7:7E-3.2(b) sets forth the information requirements for a pre-application review for potential applications involving the installation of submarine cables. The pre-application review for submarine cable installation in the Atlantic Ocean must be initiated early in the design process in order to minimize the impacts associated with the crossing of existing cables. The information necessary for a pre-application conference for submarine cables is found at proposed N.J.A.C. 7:7-3.2(b) and is in the form of a written description of the proposed project along with a NOAA nautical chart depicting potential cable routes in relationship to existing cable routes. Proposed N.J.A.C. 7:7-3.2(b) also requires that pre-application review requests for the installation of submarine cables in the Atlantic Ocean be sent to the attention of the Manager of the Department's Bureau of Coastal Regulation.

Existing N.J.A.C. 7:7-3.2(b), which explains the scheduling process for pre-application reviews and provides that a pre-application review will not be considered a declaration of intent to submit an application to the Department, is being recodified as N.J.A.C. 7:7-3.2(c) and amended to delete the cross-reference to N.J.A.C. 7:1C-1.3, Pre-Application Review since it is no longer necessary.

For pre-application conferences involving the installation of submarine cables in the Atlantic Ocean only, proposed N.J.A.C. 7:7-3.2(d) requires that written notice be provided by the potential applicant to specific organizations listed at proposed N.J.A.C. 7:7-3.2(d) 1 through 7. These organizations include the Garden State Seafood Association, National Fisheries Institute, North Atlantic Clam Association, Rutgers Cooperative Extension, New Jersey Shellfisheries Council, New Jersey Marine Fisheries Council, and Commercial Fishing Communications Association. The notice must be provided to these organizations a minimum of 15 days prior to the meeting and shall consist of a narrative listing the time, date and location of the pre-application meeting and a copy of the NOAA Nautical chart depicting the proposed cable route. This notice is intended to foster discussion between the cable and fishing industries early in the cable route design.

N.J.A.C. 7:7-4.1 General

N.J.A.C. 7:7-4.1(c) provides that the Ninety-Day Construction Permit Law and its implementing regulations establish certain uniform permit review requirements for five types of construction permits including, Waterfront Development, CAFRA, and Coastal Wetlands. As stated previously, the Department is amending and/or recodifying the sections that pertain specifically to the coastal permitting programs and incorporate these sections into the Coastal Permit Program rules, N.J.A.C. 7:7. Thus the appropriate sections of the Ninety-Day Construction Permits rules which pertain to the review of permit applications are being incorporated into N.J.A.C. 7:7. As a result, reference to N.J.A.C. 7-1C-4.1(c) is being deleted.

N.J.A.C. 7:7-4.2 Application contents

N.J.A.C. 7:7-4.2(a) describes the application contents for a coastal permit application. N.J.A.C. 7:7-4.2(a)2 requires the application submittal include a check, money order, or government voucher in the amount of the appropriate fee in accordance with N.J.A.C. 7:1C-1.5(g). The Ninety-Day Construction Permits rules at N.J.A.C. 7:7-7:1C-1.5(g) require that all fees be made payable to the "Treasurer of the State of New Jersey—Environmental Services Fund." In light of the Department's proposal to recodify appropriate sections of the Ninety-Day Construction Permits rules to this Chapter, it is proposed that N.J.A.C. 7:7-4.2(a)2 be amended to specify to whom the check, money or, or government voucher shall be made payable. Further, it is proposed that N.J.A.C. 7:7-4.2(a) is being amended to replace the existing cross-reference to the fees section of the Ninety-Day Construction Permits rules with reference to proposed N.J.A.C. 7:7-10.

The notice requirements at N.J.A.C. 7:7-4.2(a)3 are proposed for amendment to add a new requirement at N.J.A.C. 7:7-4.2(a)3ii pertaining to waterfront development permits for installing submarine cables or sand mining in the ocean. In addition to sending three complete copies of the application to the municipal clerk, verification that a copy of the site plan and completed LURP application form have been sent to organizations specified at proposed N.J.A.C. 7:7-4.2(a)3ii(1) through (7) will be required. For the purposes of this notice requirement, the site plan shall be a NOAA Nautical Chart depicting the proposed cable route or limits of the proposed sand mining area. Commercial fisheries such as surf clams and ocean quahog fisheries, are likely to have a substantial interest in these projects. Since representatives of these fisheries do not

typically receive individual notice of a pending application for these activities that could have an impact on their industry, the Department is proposing the notice requirements described above. This proposed notice requirement was a result of the Cable Task Force. The new notice requirements will ensure that the affected parties have been afforded the opportunity to participate in the public process set forth in this section. Further, the public notice requirements for modification requests at N.J.A.C. 7:7-4.10(j) are being amended to reflect the above notice requirements.

In addition to adding the notice requirements at proposed N.J.A.C. 7:7-4.2(a)3ii, the existing requirement that a complete copy of the application package be sent to the Pinelands Commission is being recodified as N.J.A.C. 7:7-4.2(a)3i with no changes in text.

The notice requirements for property owners and county agencies at N.J.A.C. 7:7-4.2(a)4 are proposed for amendment to clarify that the provisions of (a)4i through iv are the exceptions to the individual property owner notice requirements contained in this paragraph and not exceptions to the county agency notification requirements. In addition, for the reasons discussed in the summary of changes to N.J.A.C. 7:7-4.2(a)4, the Department is specifying that the certified list of property owners within 200 feet of the subject property must be certified by the municipality.

To eliminate confusion, N.J.A.C. 7:7-4.2(a)4iii is being amended to specify that the language of the public notice is found at (a)4, and that a copy of the public notice language must be submitted to the Department as part of the coastal permit application.

Proposed N.J.A.C. 7:7-4.2(a)6 requires that all coastal permit applications for individual permits include the state plane coordinates for the approximate center point of the site except for applications for development at a single family or duplex property. For linear developments or shore protection developments including beach nourishment, beach and dune maintenance or dune creation of one-half mile or more in length, proposed N.J.A.C. 7:7-4.2(a)6ii(1) requires that the state plane coordinates be provided 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. For linear developments or shore protection developments including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, proposed N.J.A.C. 7:7-4.2(a)6ii(2) requires that the state plane coordinates be provided for the end points of the development. N.J.S.A. 51:3-7 provides that the official survey base for New Jersey is a

system of plane coordinates also known as New Jersey State Plane Coordinates with measurements in meters in North American Datum of 1983 or the most recently published adjustment by the National Geodetic Survey. State plane coordinates provide the geographic location of any physical feature of the State, similar in concept to that of degrees Latitude or Longitude. By requiring the center point coordinates of a site, or coordinates every 1000 feet for linear developments over 2000 feet in length, the Department will be able to accurately identify the mitigation site using the Geographic Information System (GIS).

Existing N.J.A.C. 7:7-4.2(a)8 (proposed N.J.A.C. 7:7-4.2(a)9) contains a requirement that any application for development in an area under the jurisdiction of the Pinelands Commission submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission. This provision is intended to ensure that the Department coordinates its review with the Pinelands Commission, and that it does not deem any application requiring the approval of the Pinelands Commission complete until that application has been deemed complete by the Pinelands Commission, as required by N.J.A.C. 7:50-4.81(b). The terms "Certificate of Filing," "Notice of Filing" and "Certificate of Completeness" are used in conjunction with applications for private development and certain applications for public development that have been deemed complete by the Pinelands Commission. “Certificate of Filing” and “Notice of Filing” are the documents issued when the Pinelands Commission deems an application complete that involves development in a municipality that has received certification of its master plan and land use ordinances by the Pinelands Commission. This proposal would amend existing N.J.A.C. 7:7-4.2(a)8 (proposed N.J.A.C. 7:7-4.2(a)9)to replace the term "Certificate of Compliance" with "Certificate of Completeness." “Certificates of Completeness” are the documents currently being issued when the Pinelands Commission deems an application complete that involves development in a municipality that has not received certification of its master plan or land use ordinances by the Pinelands Commission. The proposal would also add the phrase "a resolution approving an application for public development" for public projects that have been approved by the Pinelands Commission.

Existing N.J.A.C. 7:7-4.2(e) which addresses mitigation proposal submission requirements, is being amended to include reference to mitigation proposals required under the Intertidal and subtidal shallows rule, N.J.A.C. 7:7E-3.15. Similar to N.J.A.C.

7:7-4.2(e)2, new N.J.A.C. 7:7-4.2(e)3 provides that mitigation is not required for certain types of development within intertidal and subtidal shallows listed in N.J.A.C. 7:7E-3.15(g) (see discussion in the section-by-section summary at N.J.A.C. 7:7E-3.15) . Existing N.J.A.C. 7:7-4.2(e)3 (proposed N.J.A.C. 7:7-4.2(e)4) which lists the information required for any mitigation proposal is being amended to delete the specific information requirements and instead, cross-reference N.J.A.C. 7:7E-3B.2, Tidal wetland and intertidal and subtidal shallow mitigation proposal requirements. Subchapter 3B of the Coastal Zone Management rules contains the requirements for submission of mitigation proposals to the Department. A detailed comparison of the existing mitigation proposal requirements and proposed requirements is found in the section-by-section summary at N.J.A.C. 7:7E-3B.2, Tidal wetlands and intertidal and subtidal mitigation proposal requirements.

N.J.A.C. 7:7-4.3 Newspaper notice of application submission and availability of application for examination by the public.

N.J.A.C. 7:7-4.3(d) provides that the status of all permit applications shall be published in the DEP Bulletin pursuant to N.J.A.C. 7:1C-1.6 and that publication in the DEP Bulletin shall constitute notice to all interested persons, except as provided at N.J.A.C. 7:7-4.8, Publication of the Permit Decision. Under this proposal, N.J.A.C. 7:7-4.3(d) is being amended to clarify that the report the Department publishes in the DEP Bulletin includes receipt of each new application and each agency action on applications currently before it. Further, amendments proposed to N.J.A.C. 7:7-4.3(d) clarify that publication in the DEP Bulletin constitutes constructive notice to all interested persons of Department actions on construction permits, except as provided in N.J.A.C. 7:7-4.8. This language is similar to that at N.J.A.C. 7:1C-1.6.

N.J.A.C. 7:7-4.4 Initial review of application

N.J.A.C. 7:7-4.4(a) and (b) set forth the initial application review standards for CAFRA and Waterfront Development applications, respectively. N.J.A.C. 7:7-4.4(a)3ii and N.J.A.C. 7:7-4.4(b)4ii provide that the re-submission of a previously canceled coastal permit application more than one-year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:7-1.5. References to the fees section of the Ninety-Day Construction Permits rules are being replaced with

references to N.J.A.C. 7:7-10, Coastal permit application fees, since the fees at N.J.A.C. 7:1C-1.5 will be incorporated into the Coastal Permit Program rules in proposed Subchapter 10. In general, the framework of the mitigation proposal requirements under proposed N.J.A.C. 7:7E-3B.2 are the same as those codified at existing N.J.A.C. 7:7-4.2(e). However, since under this proposal the mitigation Subchapter will apply to both wetlands and intertidal and subtidal shallows, the mitigation proposal requirements have been expanded to address both types of mitigation. Further, based on the Department's experience with mitigation proposals, further clarification and explanation of the necessary information is being proposed.

N.J.A.C. 7:7-4.5 Public hearings and public comment periods

N.J.A.C. 7:7-4.5 sets forth the standards for public hearings and public comment periods. The public notice requirements for public hearings are found at N.J.A.C. 7:7E-4.5(f). N.J.A.C. 7:7-4.5(f)5 specifies the proof of notice requirements an applicant must submit to the Department to demonstrate that the notice provisions have been satisfied. This paragraph is being amended to clarify the proof of notice shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate.

The notice requirement for the municipal clerk, planning board and environmental commission announcing the commencement of the public comment period at N.J.A.C. 7:7-4.5(g)5 is being amended to clarify that the notice shall consist of the information described at N.J.A.C. 7:7-4.5(g)2; that is, the site plan, a letter announcing the commencement date of the public comment period, and a copy of the completed LURP application form. N.J.A.C. 7:7-4.5(g)6 is being amended to require a list certified by the municipality of all owners of real property, including easements as shown on the current tax duplicate. By obtaining a list certified by the municipality of property owners within a given area, the Department is ensuring that all persons listed in N.J.A.C. 7:7-4.5(g)6 have received proper notice of the public comment period and the opportunity to provide comments.

N.J.A.C. 7:7-4.5(i) sets forth the responsibilities of the applicant when a public hearing is held. The Ninety-Day Construction Permits rules at N.J.A.C. 7:1C-1.5(f) provide that where a public hearing is held, the applicant shall be responsible for the costs thereof, including, but not limited to the court reporter attendance fees, transcript

costs, hearing officer fees and hearing room rental unless otherwise determined by the Department for good cause shown. This provision is proposed to be incorporated into N.J.A.C. 7:7-4.5(i). Since this provision does not contain standards for when the Department would not require the applicant to assume all costs of the pubic hearing, this provision is not being proposed at N.J.A.C. 7:7-4.5(i). Currently N.J.A.C. 7:7-4.5 references the provision concerning the costs of the public hearing as N.J.A.C. 7:1C-1.5(e) instead of (f). However, since the language of the Ninety-Day Construction Permits rules public hearing costs is being incorporated into N.J.A.C. 7:7-4.5(i), the cross-reference to the Ninety-Day Construction Permits rules is proposed for deletion.

N.J.A.C. 7:7-4.6 Final review of the application

The standards for the final review of a coastal application are found at N.J.A.C. 7:7-4.6. N.J.A.C. 7:7-4.6(d)2 provides that a re-submission of a previously canceled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. 7:1C-1.5. Reference to the fees section of the Ninety-Day Construction Permits rules is proposed to be replaced with reference to proposed Subchapter 10 of the Coastal Permit Program rules to reflect the recodification discussed previously in this summary.

N.J.A.C. 7:7-4.7 Timetable for permit decisions

N.J.A.C. 7:7-4.7 sets forth the time frames for decisions on coastal permit applications. Currently, N.J.A.C. 7:7-4.8(c) provides that the permit application review process may be extended pursuant to N.J.A.C. 7:1C-1.8(e) or by mutual agreement. The Department is proposing to delete N.J.A.C. 7:7-4.8(C) and recodify it as N.J.A.C. 7:7-4.7(c). Further, the language of existing N.J.A.C. 7:7-4.8(c) is being replaced with that of N.J.A.C. 7:IC-1.8(e) and the standards set forth in the Ninety-Day Law. Accordingly, proposed N.J.A.C. 7:7-4.7(c) provides that the prescribed time frame for a coastal permit may be extended for a 30-day period by the mutual consent of the applicant and the Department provided the request for the extension is made prior to the expiration date for the approval, conditioning or disapproval of such an application.

Existing N.J.A.C. 7:7-4.7(c) is being recodified as N.J.A.C. 7:7-4.7(d) with no changes in text.

N.J.A.C. 7:7-4.8 Publication of the permit decision

Existing N.J.A.C. 7:7-4.8(b) describes the procedure by which an applicant may publish notice of a permit decision by the Department prior to publication of the permit decision in the DEP Bulletin to expedite the commencement of the time period under which a permit decision may be contested. Currently a permittee, if they choose not to wait for the permit decision to be published in the DEP Bulletin, may publish notice of the permit decision in a newspaper provided notice by certified mail to any person who commented on the application during the review process. Since the DEP Bulletin is now available on-line, the Department believes that publishing notice in the newspaper to accelerate the hearing request procedure is unnecessary. Further, the Department is proposing to streamline the time period for requesting an adjudicatory hearing (N.J.A.C. 7:7-5.1), by consolidating the timeframe for submitting a hearing request and supporting documentation. Based on the above, the Department is proposing to delete N.J.A.C. 7:7-4.8(b) and the cross-reference to this section at N.J.A.C. 7:7-4.3(d). This proposed amendment would make the Coastal Permit Program rule's standards for hearing requests consistent with those of the Freshwater Wetlands Protection Act rules.

Existing N.J.A.C. 7:7-4.8(c) is being recodified as (b) with no changes in text.

N.J.A.C. 7:7-4.10 Modification Requests

N.J.A.C. 7:7-4.10 which sets forth the "road map" for modification requests is proposed for amendment to include a reference to proposed N.J.A.C. 7:7-7.3A, Requests for modifications of coastal general permits.

N.J.A.C. 7:7-4.10(i) contains the information that must be included in a request to modify a valid coastal permit. Existing N.J.A.C. 7:7-4.10(i)6 requires the submittal of the appropriate fee contained in the Ninety-Day Construction Permits rules at N.J.A.C. 7:1C-1.5. To facilitate the reorganization of the Ninety-Day Construction Permits rules, this requirement is being amended to reference the proposed fees section, N.J.A.C. 7:7-10.

N.J.A.C. 7:7-4.10(i)7 requires proof, in the form of white mailing receipt or other written receipt, that notice was provided in accordance with N.J.A.C. 7:7-4.10(j). The Department is amending this provision to also require that a list certified by the municipality of all owners of real property including easements as shown on the tax duplicate to which individual notice was provided in accordance with N.J.A.C. 7:7-4.10(j) be provided. By obtaining a list certified by the municipality of property owners within a

given area, the Department is ensuring that all persons listed at N.J.A.C. 7:7-4.10(j) have received proper notice of the modification request and the opportunity to provide comments.

The public notice requirements for a modification request are found at N.J.A.C. 7:7-4.10(j). For the reasons discussed in the section-by-section summary of changes proposed to N.J.A.C. 7:7-4.2(a)3i and ii above, existing N.J.A.C. 7:7-4.10(j)i is being amended to include new notification requirements for modifications to waterfront development permits for installing submarine cables of sand mining in the ocean.

When submitting a modification request for a major modification of a CAFRA or Waterfront Development permit for a development located landward of the mean high water line, notice must be provided to property owners and local government agencies in accordance with (j)1ii. Notice to property owners within 200 feet of the property or properties on which the proposed modified development would occur is required unless the modified development is located at an industrial, commercial or residential development of at least 50 acres. In addition, the Department is also clarifying that the property owner notice described at (j)1ii, modifications to linear developments of one-half mile or more in length, or shore protection developments (for example, beach nourishment) of one-half mile or more in length, is excluded since (j)4 contains the public notice requirements for those types of developments. Further, the requirement that the property owner notice include a list certified by the municipality of property owners within 200 feet is being deleted. As currently written, this provision implies that the list of property owners certified by the municipality must be sent along with the notice. Instead, as discussed in the summary of changes proposed to N.J.A.C. 7:7-4.10(i)7, the Department is requiring that the certified list of property owners by the municipality is provided as part of the verification that notice was provided in accordance with N.J.A.C. 7:7-4.10(j).

N.J.A.C. 7:7-4.10(j)3 sets forth the public notice requirements for modification of a coastal wetlands permit, or waterfront development permit for a development located outshore of the mean high water line. Currently, this paragraph only requires that a copy of the site plan, the public notice required at N.J.A.C. 7:7-4.10 (j)1ii and a completed LURP application form be sent to all property owners surrounding and sharing a common property boundary with the property on which the modified development would occur. Notice to the municipal governmental entities is not required. Under this

proposal, notice to the municipal clerk, planning board and environmental commission would be required in accordance with N.J.A.C. 7:7-4.10(j)3i. The information for notice to these entities is the same as N.J.A.C. 7:7-4.10 (j)1i. For consistency with the notice requirements of Subchapter 4, the description of the amended site plan required at N.J.A.C. 7:7-4.10 (j)3ii is being added. In addition, the Department is clarifying that the language for the notice required at N.J.A.C. 7:7-4.10 (j)3ii is found at N.J.A.C. 7:7-4.10 (j)1ii, and that a copy of the notice must be submitted with the modification requests.

N.J.A.C. 7:7-4.10(j)4 sets forth the notice requirements for modifications to linear development. Currently, N.J.A.C. 7:7-4.10(j)4 requires that the notice to individual property owners contain the information required at N.J.A.C. 7:7-4.10(j)3. This reference is proposed to be replaced with the individual notice requirements specific to linear developments.

Proposed N.J.A.C. 7:7-4.10 (j)4i contains the newspaper notice requirements currently codified as N.J.A.C. 7:7-4.10(j)4. To correct an oversight, proposed N.J.A.C. N.J.A.C. 7:7-4.10(j)4ii requires that notice be provided to the municipal clerk, planning board and environmental commission in accordance with N.J.A.C. 7:7-4.10(j)4iii. In addition, proposed N.J.A.C. 7:7-4.10(j)4ii requires that notice be provided to the municipal construction code official, and county planning board and environmental commission. This paragraph is also being amended to correct an error in the notice requirements for proposed above ground structures associated with a linear development of greater than ½ mile in length adopted in the October 16, 2000 New Jersey Register (see 32 N.J.R. 3784(b)). As adopted, the individual notice requirement for property owners does not specify a distance from the proposed above ground structure in which all property owners must be notified. Further, as currently promulgated, this requirement is inconsistent with the summary of the amendment published in the March 20, 2000 New Jersey Register (see 32 N.J.R. 864(a)) and the notice requirements for linear and shore protection developments of greater than ½ mile in length throughout this Chapter. As a result, this individual notice provision is being amended to require that individual notice must be provided to property owners within 200 feet of a proposed above ground structure rather than all property owners within 200 feet of the proposed linear or shore protection development.

N.J.A.C. 7:7-5.1 Hearing request

N.J.A.C. 7:7-5.1 sets forth the procedure for requesting a hearing on a coastal permit decision. Existing N.J.A.C. 7:7-5.1(a) provides that within 10 days of publication of notice of the permit decision in the DEP Bulletin or within 10 days of publication of notice by the permittee, which ever occurs first, any interested person who finds themselves aggrieved by the permit decision may submit a written request for an adjudicatory hearing. Within 14 days of the date on which the hearing request was postmarked, the appellant must submit an additional statement describing in detail how that person is aggrieved by the decision, and the findings of fact and conclusions of law that are being challenged. In an effort to streamline the procedures to request an adjudicatory hearing, the Department is proposing to amend N.J.A.C. 7:7-5.1(a) to provide that any person aggrieved by the permit decision must submit to the Department a written request for an adjudicatory hearing within 30 days of publication of notice of the permit decision in the DEP Bulletin, including a completed Administrative Hearing Request Checklist. By consolidating the two steps for submitting a hearing request, the hearing request procedure is being simplified through the elimination of the confusing two-tier approach. In addition, the hearing requests provision for the coastal permitting program will be consistent with the hearing request provisions included in the readoption of the Freshwater Wetlands Protection Act rules (see 33 N.J.R. 3045(a)). Further, since the DEP Bulletin is now available on-line, the Department believes that publishing notice in the newspaper to accelerate the hearing request procedure is unnecessary. The Administrative Hearing Request Checklist and Tracking Form for Permits referenced at N.J.A.C. 7:7-5.1(a)1 and included as Appendix D, is being for proposed for deletion since it is duplicative. N.J.A.C. 7:7-5.1(a) provides a general listing of the information required as part of the written request for an adjudicatory hearing. Proposed N.J.A.C. 7:7-5.1(a)1 requires that the written adjudicatory hearing request include all information required by the "Adjudicatory Hearing Request Checklist and Tracking Form." This form is available from the Department's Land Use Regulation Program and is posted on their website in a printable downloadable form. Proposed N.J.A.C. 7:7-5.1(a)1i through vii describe the information required in the checklist. The adjudicatory hearing request checklist requires basic information regarding the person requesting the hearing and the decision being appealed, a copy of the decision document, and the legal and factual bases for the appeal. In addition, the checklist requires information regarding the issues being appealed, whether they were discussed during the review process and

suggestions to settle these issues. The checklist also requires information regarding any special hearing requirements. If the person requesting the hearing is not the applicant, proposed N.J.A.C. 7:77-5.1(a)2i through iii describe the information requested beyond that identified proposed N.J.A.C. 7:7-5.1(a)1i through vii. The additional information required is evidence of notice to the permit applicant, information regarding the person's participation in the application review process, information necessary for the Department to determine whether the appellant has a legal right to an adjudicatory hearing.

Existing N.J.A.C. 7:7-5.1(a)2 which requires the appellant submit an additional statement describing how that person is aggrieved by the decision and the findings of fact and conclusions of law being challenged is proposed for deletion since this information is redundant. This information is required as part of the checklist.

N.J.A.C. 7:7-5.1 sets forth the procedure for requesting a hearing on a coastal permit decision. Existing N.J.A.C. 7:7-5.1(a) provides that within 10 days of publication of notice of the permit decision in the DEP Bulletin or within 10 days of publication of notice by the permittee, which ever occurs first, any interested person who finds themselves aggrieved by the permit decision may submit a written request for an adjudicatory hearing. Within 14 days of the date on which the hearing request was postmarked, the appellant must submit an additional statement describing in detail how that person is aggrieved by the decision, and the findings of fact and conclusions of law that are being challenged. In an effort to streamline the procedures to request an adjudicatory hearing, the Department is proposing to amend N.J.A.C. 7:7-5.1(a) to provide that any person aggrieved by the permit decision must submit to the Department a written request for an adjudicatory hearing within 30 days of publication of notice of the permit decision in the DEP Bulletin. The written notice shall include: a completed Administrative Hearing Request Checklist; the appropriate agency project number, and, where the hearing request is submitted by someone other than the applicant, evidence that a copy of the request has been mailed to the applicant. The notice must also include a statement describing in detail how that person is aggrieved by the decision and which findings of fact and conclusion of law are being challenged. By consolidating the two steps for submitting a hearing request, the hearing request procedure is being simplified through the elimination of the confusing two-tier approach. In addition, the hearing requests

provision for the coastal permitting program will be consistent with the hearing request provisions included in the readoption of the Freshwater Wetlands Protection Act rules (see 33 N.J.R. 3045(a)). Further, since the DEP Bulletin is now available on-line, the Department believes that publishing notice in the newspaper to accelerate the hearing request procedure is unnecessary. The Administrative Hearing Request Checklist and Tracking Form for Permits referenced at N.J.A.C. 7:7-5.1(a)1 and included as Appendix D, is being for proposed for deletion since it is duplicative. N.J.A.C. 7:7-5.1(a) provides a general listing of the information contained in the checklist. Proposed N.J.A.C. 7:7-5.1(a)1 requires that the written adjudicatory hearing request include all information required by the "Adjudicatory Hearing Request Checklist and Tracking Form." This form is available from the Department's Land Use Regulation Program and is posted on their website in a printable downloadable form.

N.J.A.C. 7:7-5.1(b) requires copies of the request for a hearing from a decision on a CAFRA permit application be mailed to the clerk of the county of the municipality in which the project site is located. Evidence of such mailing shall be included with the hearing request submitted to the Department. The Department is proposing to delete this provision since the Department has determined that requiring an additional copy be filed with the County Clerk is unnecessary.

N.J.A.C. 7:7-7.2 Permits-by-rule

N.J.A.C. 7:7-7.2(a) details the activities authorized by a Permit-By-Rule. N.J.A.C. 7:7-7.2(a)5 and 6 , the Permits-By-Rule for the construction of residential and non-residential docks, piers and boat ramps located landward of the mean high water line are being amended to reference the current title of Chapter 7E, that is the Coastal Zone Management rules.

N.J.A.C. 7:7-7.3 Application procedure for a coastal general permit authorization

N.J.A.C. 7:7-7.3(a) contains the information requirements for a coastal general permit application. N.J.A.C. 7:7-7.3(a)2 requires that the application submittal contain photographs of the site for which authorization is being requested. For the purposes of consistency with the coastal permit application submittal requirements contained at N.J.A.C. 7:7-4.2, this paragraph is being amended to specify that these photographs

must show the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation.

Existing N.J.A.C. 7:7-7.3(a)3 describes the public notice requirements for coastal general permit applications. Currently, the notice requirements for a coastal general permit application are more stringent than those of an individual coastal permit application. Since the premise of the coastal general permit is that it is a simpler and more straightforward process, this section is being amended to further simplify the coastal general permit application process and make it consistent with the coastal permit application requirements at N.J.A.C. 7:7-4.2(a). To accomplish this, N.J.A.C. 7:7-7.3(a)3 (proposed N.J.A.C. 7:7-7.3(a)4) is being divided into two separate notice provisions, similar to those at N.J.A.C. 7:7-4.2(a) 3 and 4. Proposed N.J.A.C. 7:7-7.3(a)4 describes the requirements for notice to the municipal clerk, planning board and environmental commission. Under this proposal, the applicant would be required to send three copies of the complete application package accompanied by a letter requesting that the clerk maintain one copy in the clerk's office and distribute the remaining two copies to the planning board and environmental commission. This replaces the requirement that the application be sent individually to the municipal clerk, planning board and environmental commission.

Proposed N.J.A.C. 7:7-7.3(a)3 requires that a general site location map of the proposed development site be included in the application package. This site location map may be a county or local road map or insert from a local U.S. Geological Survey topographic quadrangle map. This map is necessary to assist the Department staff in determining the location of the site.

Proposed N.J.A.C. 7:7-7.3(a)5 describes the requirements for public notice to the municipal construction code official, county planning board and environmental commission and adjacent property owners. Currently, a complete application package must be sent to the municipal construction code official, county planning board and owners of property surrounding and sharing a common property boundary at any point on the perimeter of the proposed development. Under this proposal, notice in the form of a completed LURP application form and a copy of the site plan(s) must be provided to the above property owners and governmental agencies. The site plan need not include a full set of plans but must depict the proposed development in relationship to the existing site conditions.

N.J.A.C. 7:7-7.3(a)3i (proposed N.J.A.C. 7:7-7.3(a)5i) describes the notice requirements for beach and dune maintenance coastal general permit applications which involve more than one single family lot. For this coastal general permit, newspaper notice and individual property owner notice to property owners within 200 feet of a proposed dune walkover structure is required. The Department is proposing to amend this paragraph to specify that the newspaper notice must be a display advertisement of at least 4 inches in width. This requirement is consistent with the newspaper notice requirements of Subchapter 4 of the Coastal Permit Program rules and with the requirements of the municipal Land Use Law. Further, proposed N.J.A.C. 7:7-7.3(a)5i is being amended to clarify that the notice to property owners described above shall be in the form of a copy of the site plan and completed LURP application form. Again, as discussed above, the site plan need not be a full set of plans, but must depict the proposed development in relationship to the existing site conditions. These proposed amendments would make this paragraph consistent with the newspaper notice requirements and individual notice requirements for property owners within 200 feet of a proposed above ground structure contained in Subchapter 4.

As discussed in greater detail above, proposed N.J.A.C. 7:7-4.2(a)6 requires that all coastal permit applications include the state plane coordinates for the approximate center point of the site except for specific coastal general permits related to development proposed a single family or duplex property or shore protection development. For shore protection developments including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length, proposed N.J.A.C. 7:7-7.3(a)6ii(1) requires that the state plane coordinates be provided 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. For shore protection developments including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, proposed N.J.A.C. 7:7-7.3(a)6ii(2) requires that the state plane coordinates be provided for the end points of the development. N.J.S.A. 51:3-7 provides that the official survey base for New Jersey is a system of plane coordinates also known as New Jersey State Plane Coordinates with measurements in meters in North American Datum of 1983. State plane coordinates provide the geographic location of any physical feature of the State, similar in concept to that of degrees Latitude or Longitude. By requiring the center point coordinates of a site, or coordinates every 1000 feet for linear developments over

2000 feet in length, the Department will be able to accurately identify the mitigation site using the Geographic Information System (GIS).

Existing N.J.A.C. 7:7-7.3(a)4, which contains the fee requirements for the coastal general permits, is proposed for amendment and recodification as N.J.A.C. 7:7-7.3(a)7. Reference to the fees section of the Ninety-Day Construction Permits rules (N.J.A.C. 7:1C-1.5) is being replaced with reference to the new fees section proposed at N.J.A.C. 7:7-10 of the Coastal Permit Program rules.

N.J.A.C. 7:7-7.3(a)8 (existing N.J.A.C. 7:7-7.3(a)5) is being amended to correct a typographical error in the reference to the coastal general permits. The coastal general permits are found at N.J.A.C. 7:7-7.5 through 7.26, not 7.5 through 7.25.

N.J.A.C. 7:7-7.3(e) contains the procedure for canceling an incomplete coastal general permit application. N.J.A.C. 7:7-7.3(e)2 provides that a re-submission of a previously canceled application more than one year after the date of cancellation shall be accompanied by the appropriate fee at N.J.A.C. 7:1C-1.5. Reference to the fees section of the Ninety-Day Construction Permits rules is being replaced with reference to N.J.A.C. 7:7-10, Coastal permit application fees.

N.J.A.C. 7:7E-7.3A Requests for modifications of coastal general permits

Currently, the Coastal Permit Program rules do not contain a provision for the modification of a coastal general permit. Under this proposal, the Department is proposing provisions to allow the modification of a coastal general permit. The standards and procedure for requesting a modification of a coastal general permit are proposed at N.J.A.C. 7:7-7.3A.

Proposed N.J.A.C. 7:7-7.3A(a) provides that modification of a coastal general permit may occur during the term of validity of the permit authorization established pursuant to N.J.A.C. 7:7-7.3(k).

Proposed N.J.A.C. 7:7-7.3A(b) lists the standards for a modification to a coastal general permit. Proposed N.J.A.C. 7:7-7.3A(b)1 requires that the changed project must continue to be authorized under the same coastal general permit. Proposed N.J.A.C. 7:7-7.3A(b)2 provides that the proposed change can not result in a significant change in the scale, use or impact to special areas. Changes that result in less impact to special areas than the original permit will not be considered a significant change. The determination as to whether a change is deemed significant will be based on a review of

the original application file and new information submitted by the permittee, which describes all proposed changes. Examples of significant changes include increased filling, grading or impervious cover and reduction of buffers.

If a proposed change does not meet the standards of N.J.A.C. 7:7-7.3A(b)1 and 2 above, then in accordance with proposed N.J.A.C. 7:7-7.3A(c), a new coastal general permit or individual permit will be required.

Proposed N.J.A.C. 7:7-7.3A(d) sets forth the information that must be submitted with a request for modification of a coastal general permit. This information includes: a completed LURP application form; applicable fee; amended site plan(s); a copy of the original permit and approved site plan(s); fee; verification that notice of the request has been provided in accordance with N.J.A.C. 7:7-7.3A(e); and any additional information the applicant believes will assist the Department in reviewing the proposed modification.

Proposed N.J.A.C. 7:7-7.3A(e) contains the public notice requirements . Proposed N.J.A.C. 7:7-7.3A(e)1 sets forth the public notice requirements for all coastal general permits with the exception of the coastal general permit for beach and dune activities. Proposed N.J.A.C. 7:7-7.3A(e)1i requires that copies of the request be submitted to the clerk of the municipality in which the proposed modified development would occur, along with a letter requesting that the clerk distribute copies to the planning board and environmental commission, or any public agency with similar responsibilities. Thus a complete copy would be available for public review at the municipal clerk's office, and the planning board and environmental commission, or any public agency with similar responsibilities, would be made aware of and have the opportunity to review and comment on proposed developments in the municipality. Additionally, notice is required at proposed N.J.A.C. 7:7-7.3A(e)1ii to the planning board and environmental commission of the county in which the proposed modified development would occur, and to owners of real property including easements, surrounding and sharing a common property boundary at any point on the perimeter of the development to be modified. This notice would consist of a letter inviting public comment and a plan generally depicting the proposed modified development.

Proposed N.J.A.C. 7:7-7.3A(e)1iii provides that the Department may in limited circumstances limit the requirement to notify adjacent property owners to those owners the Department determines are likely to be affected by the modification(s) to the previously approved development. Notice may be reduced only if the modification is to

proposed on the site of a previously approved park facility if at east 50 aces in size. This determination will be based on the size of the proposed modification and its proximity to adjacent properties. These notice requirements are consistent with those required under N.J.A.C. 7:7-7.3(a)3i.

Proposed N.J.A.C. 7:7-7.3A(e)2 establishes the notice requirements for the modification of activities authorized under the coastal general permit for beach and dune maintenance (N.J.A.C. 7:7-7.6) which involves more than one single family lot. For this type of development, notice in the form of a display advertisement in the local newspaper and notification to property owners within 200 feet of a proposed dune walkover structure is required.

Proposed N.J.A.C. 7:7.3A(f) provides that notice of receipt of a request for modification of a coastal general permit and the Department's decision on the request shall be published in the DEP Bulletin. This will provide the public the opportunity to comment on a request for a modification, or contest the Department's decision.

The fee for a modification of a valid coastal general permit is $100.00 and is proposed at N.J.A.C. 7:7-10.6, Application fees for requests for modifications of coastal general permits.

N.J.A.C. 7:7-7.4 Long Branch Redevelopment Permit

The references to the Rules on Coastal Zone Management at N.J.A.C. 7:7-7.4(e) are being replaced with the Coastal Zone Management rules to reflect the correct title of Chapter 7E.

N.J.A.C. 7:7-7.5 Coastal general permit for amusement piers

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 specific criteria are met. Under this proposal, the Department is proposing to amend this coastal general permit to require that the proposed expansion be consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15. This proposed requirement ensures compliance with the Coastal Zone Management rules at N.J.A.C. 7:7E-8.4, which prohibits coastal development that is inconsistent with an approved Water Quality Management Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

N.J.A.C. 7:7-7.6 Coastal general permit for beach and dune maintenance activities

To reflect the proposed reorganization of Subchapter 3A of the Coastal Zone Management rules, the cross-references to the Department's Best Management Practices for beach and dune maintenance at N.J.A.C. 7:7-7.6(a)1 and (b)2 are being updated.

For the purposes of consistency with the other coastal general permits, the additional information requirements specified at N.J.A.C. 7:7-7.6(b)1 are being amended to require three copies of the site plan(s) showing the specific location of all proposed beach and dune maintenance activities be submitted to the Department. Three copies of the site plan are necessary in order for the Department to maintain one copy of the approved plan in the permit file, and to send copies of the approved plan to both the permittee and municipal clerk.

N.J.A.C. 7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development

This coastal general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential of commercial development landward of the existing footprint of development provided specific standards are met. Under this proposal, a new standard requiring that the development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15 is being proposed. This proposed requirement ensures compliance with the Coastal Zone Management rules at N.J.A.C. 7:7E-8.4, which prohibits coastal development that is inconsistent with an approved Water Quality Management Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

N.J.A.C. 7:7-7.8 Coastal general permit for the development of a single family home or duplex

The coastal general permit for the development of a single family home or duplex is being proposed for amendment to reflect the change proposed to the standards for single family homes or duplexes at N.J.A.C. 7:7E-7.2(e).

N.J.A.C. 7:7-7.9 Coastal general permit for the expansion or reconstruction (with or without expansion) of a single family home or duplex

The coastal general permit for the expansion or reconstruction (with or without expansion) of a single family home or duplex is being proposed for amendment to reflect the change proposed to the standards for single family homes or duplexes at N.J.A.C. 7:7E-7.2(f).

N.J.A.C. 7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating marinas

This coastal general permit authorizes the construction of support facilities at legally existing and operating marinas operated by public agencies, commissions and authorities provided specific requirements are met. Existing N.J.A.C. 7:7-7.13(b)4iv(2) requires that any proposed sewer line be consistent with the 208 Water Quality Management Plan. This provision is being recodified as N.J.A.C. 7:7-7.13(c)4 and amended to reflect a change in terminology.

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

The title of this coastal general permit is being amended to be consistent with the titles of the other coastal general permits in this Chapter.

N.J.A.C. 7:7-7.15 Coastal general permit for investigation, cleanup, removal or remediation of hazardous substances

The title of the coastal general permit is being amended to reflect all activities for to which this coastal general permit applies.

N.J.A.C. 7:7-7.16 Coastal general permit for landfall of utilities

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 Waterfront Development Law or Flood Hazard Area Control Act provided specific conditions are met. Proposed N.J.A.C. 7:7-7.16(b)9 requires that the development be consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

This requirement ensures compliance with the Coastal Zone Management rules at N.J.A.C. 7:7E-8.4, which prohibits coastal development that is inconsistent with an approved Water Quality Management Plan under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.

SUBCHAPTER 10. COASTAL PERMIT APPLICATION FEES

As discussed in the general summary of the proposed amendments to the Coastal Permit Program rules, the Department is proposing to incorporate provisions of the Ninety-Day Construction Permits rules applicable to the coastal program into the Coastal Permit Program rules. As a result, the Department is proposing Subchapter 10, which sets forth the application fees for coastal permits, including CAFRA, Waterfront Development and Coastal Wetlands.

The applicable application fee sections found at N.J.A.C. 7:1C-1.5 are being proposed for deletion from the Ninety-Day Construction Permits rules and recodification with amendment in proposed Subchapter 10 of the Coastal Permit Program rules. In general, minor wording changes are proposed to facilitate the incorporation of the coastal permit application fees in the Coastal Permit Program rules. Other than proposing a fee for the modification of a coastal general permit, no changes in the amount of application fees are proposed.

N.J.A.C. 7:7-10.1 Purpose and scope

Proposed N.J.A.C. 7:7-10.1(a) sets forth the proposed codification of the various types of coastal permit application fees including, Waterfront Development, CAFRA and Coastal Wetlands permit application fees; standards for assessing a single permit fee; and fees for requesting a modification of a coastal permit.

Proposed N.J.A.C. 7:7-10.1 (b) defines the term “construction cost” for the purposes of this Subchapter. “Construction cost” means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a permit pursuant to CAFRA, the Waterfront Development Law and Wetlands Act of 1970. This definition is similar to the definition contained in the Ninety-Day Construction Permits rules at N.J.A.C. 7:1C-1.2. Only minor changes to tailor this definition to the coastal permitting programs are being proposed.

Proposed N.J.A.C. 7:7-10.1(c) provides that any fee required under Subchapter 10 that is subject to N.J.A.C. 7:1L, Payment schedule for permit application fees, can be paid in installments in accordance with N.J.A.C. 7:1L. This provision is the same as N.J.A.C. 7:1C-1.5(k).

N.J.A.C. 7:7-10.2 Application fees for waterfront development permits

Proposed N.J.A.C. 7:7-10.2 sets forth the application fees for waterfront development permits. Currently, the application fees for these types of permits are found in the Ninety-Day Construction Permits rules at N.J.A.C. 7:1C-1.5(a).

The Ninety-Day Construction Permits rules at N.J.A.C. 7:1C-1.5(a)1i set forth the types of development which have an application fee of $250.00. Under this proposal, this provision would be recodified as N.J.A.C. 7:7-10.2(a). This section is being broken into smaller paragraphs for clarity with minor wording changes to facilitate the reorganization.

Under this proposal, N.J.A.C. 7:1C-1.5(a)1ii and 1ii(1) through (4) would be recodified as N.J.A.C. 7:7-10.2(b) and (b)1 through 4 respectively. Only minor changes are proposed to facilitate incorporation into this new Subchapter.

The application fee for any development located below the mean high water line at N.J.A.C. 7:1C-1.5(a)1iii is proposed to be recodified as N.J.A.C. 7:7-10.2(c). The examples of shore protection structures considered to be “residential site improvements” under N.J.A.C. 7:1C-1.5(a)1iii(1) (proposed N.J.A.C. 7:7-10.2(c)1 is being amended to replace “rip-rap” shore protection structures with “revetments” and gabions”) since these are the specific types specific types of “rip-rap” shore protection structures. N.J.A.C. 7:1C-1.5(a)1iii(2) is proposed to be recodified as N.J.A.C. 7:7-10(c)2 with no substantive changes proposed.

N.J.A.C. 7:7-10.3 Application fees for coastal wetland permits

The application fee for a permit under the Wetlands Act of 1970 is currently codified as N.J.A.C. 7:1C-1.5(a)2. Under this proposal, the fees would be recodified as N.J.A.C. 7:7-10.3. The application fee for a “Coastal wetlands permit” other than those subject to authorization under a coastal general permit (existing N.J.A.C. 7:1C-1.5(d)2) is being proposed at N.J.A.C. 7:7-10.3(a). The application fee for a coastal general permit authorization is proposed at N.J.A.C. 7:7-10.2(b).

N.J.A.C. 7:7-10.4 Application fees for CAFRA permits

The application fees for CAFRA permits codified at N.J.A.C. 7:1C-1.5(a)3 are proposed to be recodified as N.J.A.C. 7:7-10.4.

The application fee for residential development at N.J.A.C. 7:1C-1.5(a)3i is proposed to be recodified as N.J.A.C. 7:7-10.4(a) with no substantive changes proposed. Similarly, the fee for non-residential development at N.J.A.C. 7:1C-1.5(a)3ii is proposed to be recodified as N.J.A.C. 7:7-10.4(b) with only minor wording changes to facilitate this section's recodification.

Proposed N.J.A.C. 7:7-10.4(c) (existing N.J.A.C. 7:1C-1.5(a)3iii) sets forth the application fee for mixed residential and non-residential development.

The application fee for a coastal general permit authorization for a development subject to CAFRA is found at proposed N.J.A.C. 7:7-10.4(d) (currently codified as N.J.A.C. 7:1C-1.5(a)3iv).

Under this proposal, the application fee for a written exemption letter certifying that a development is exempt from CAFRA at N.J.A.C. 7:1C-1.5(a)3ii is being recodified as N.J.A.C. 7:7-10.4(e).

N.J.A.C. 7:7-10.5 Standards for assessing a single permit application fee

The standards for assessing a single permit application fee at N.J.A.C. 7:1C-1(c) are proposed to be recodified as N.J.A.C. 7:7-10.5(a) with no substantive changes proposed. A single permit fee will be assessed for a development which requires more than one of the following permits, if the permits are submitted and processed simultaneously: CAFRA, Waterfront Development; Coastal Wetlands; Stream encroachment; or Freshwater wetlands.

N.J.A.C. 7:7-10.6 Application fee for requests for modifications of coastal permits

The fees for requests to modify coastal permits currently codified at N.J.A.C. 7:1C-1.5(d) are proposed for recodification to N.J.A.C. 7:7-10.6.

The fee for a minor modification to a Waterfront Development, Coastal wetlands or CAFRA permit at N.J.A.C. 7:1C-1.5(d)2 and the fee for a major modification to an upland waterfront development or CAFRA permit at N.J.A.C. 7:1C-1.5(d)3 are proposed to be recodified at N.J.A.C. 7:7-10.6(a)1 and 2. Proposed N.J.A.C. 7:7-10.6((a)3 sets

forth the fee for a request to modify a coastal general permit. As described in the section-by-section summary at N.J.A.C. 7:7-7.3A, the Department is proposing a procedure to modify authorization under a coastal general permit.

COASTAL ZONE MANAGEMENT RULES
N.J.A.C. 7:7E

General

For the purposes of consistency throughout the Coastal Zone Management rules, several minor changes in terminology and punctuation are proposed as follows. These changes are being proposed throughout this Chapter, including: replacing the title of the "Hackensack Meadowlands Development Commission" with "New Jersey Meadowlands Commission" to reflect the August 28, 2001 amendments to the Hackensack Meadowlands Reclamation and Development Law (N.J.S.A. 13:17-3); replacing the title of the Department's "Division of Fish, Game and Wildlife" with Division of "Fish and Wildlife" to reflect the Department's current organization; replacing the term "policy" with the term "rule" to reflect that these are the "rules" for development within the coastal zone of New Jersey; replacing references to "DEP" or "DEPE" with "Department;" replacing the past titles of this Chapter, including "Rules on Coastal Zone Management" and "Rules on Coastal Resources and Development" with "Coastal Zone Management rules" to reflect the current title of this chapter; and, deleting extraneous quotation marks (") in the description section of several rules.

SUBCHAPTER 1. INTRODUCTION

This subchapter sets forth the purpose, jurisdiction and scope of the rules, describes the coastal decision-making process, contains definitions of terms, and discusses the rationale for requiring mitigation.

The sections of this subchapter pertaining to Severability, N.J.A.C. 7:7E-1.3; Review, revision and expiration, N.J.A.C. 7:7E-1.4; Mitigation, N.J.A.C. 7:7E-1.6; and, Correspondence with the Department, N.J.A.C. 7:7E-1.7 are not being amended as part of this proposal.

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

This section explains the purpose and scope of the Chapter and provides a history of its initial adoption.

N.J.A.C. 7:7E-1.1(b) lists the adoption dates of amendments to this Chapter. Under this proposal, this listing is being deleted since it is unnecessary and is typically out of date.

Existing N.J.A.C. 7:7E-1.5(a) is being recodified as N.J.A.C. 7:7E-1.1(d) since it explains how these rules are used in the coastal decision-making process and thus is more appropriately located in the opening of this chapter. As a result of this change, the title of this subsection is being amended to include "scope."

N.J.A.C. 7:7E-1.2 Jurisdiction

This section defines the geographic scope of New Jersey's coastal zone, and explains the chapter's role in federal consistency determinations, financial assistance decisions, and Department management and planning activities within New Jersey's coastal zone.

N.J.A.C. 7:7E-1.2(a) incorrectly references five, rather than six categories of actions or decisions by the Department for uses of coastal resources within or affecting the coastal zone to which this Chapter applies. This incorrect reference is being amended and the incorrect reference to N.J.A.C. 7:7E-1.3(c) through (g) is being replaced with N.J.A.C. 7:7E-1.2(c) through (h).

N.J.A.C. 7:7E-1.2(b) defines the geographic scope of New Jersey's coastal zone. The term "jurisdiction" at N.J.A.C. 7:7E-1.2(b)1 and (b)3 is being deleted since the use of this term implies that if a proposed development on a site is not under the jurisdiction of the Coastal Area Facility Review Act or the Waterfront Development Law, then that site is not located within New Jersey's coastal zone. As a result, N.J.A.C. 7:7E-1.2(b)1 is being amended to provide that the coastal zone includes the coastal area as defined in the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. and 7:7E-1.2(b)3 is being amended to define upland waterfront development area using the current definition at N.J.A.C. 7:7-2.3(d). N.J.A.C. 7:7E-1.2(b)2 is being amended to further clarify the geographical extent of the State's tidal water areas. In addition, N.J.A.C. 7:7E-1.2(b)5 is being amended to change the title of the Hackensack Meadowlands Development Commission District to the Hackensack Meadowlands District for consistency with N.J.S.A. 13:17-3.

N.J.A.C. 7:7E-1.2(c) which lists the types of coastal permits to which this chapter applies, is being amended to specify at (c)2 that the wetlands permits (N.J.S.A. 13:9A-1 et seq.) are those wetlands permits for tidal wetlands.

N.J.A.C. 7:7E 1.2(e) outlines the policy of the State of New Jersey to request a determination of federal consistency under section 307 of the Federal Coastal Zone Management Act (16 U.S.C. 1451). Federal consistency applies to federal projects, permits, licenses, and/or plans that take place in the waters of the United States, that can affect New Jersey's coastal zone as described in N.J.A.C. 7:7E-1.2(b). Federal consistency provides that federal activities be consistent, to the maximum extent practicable, with the enforceable policies of the State's approved coastal zone management plan. For example, submerged cables occurring in waters of the United States, which require a federal permit and license, may have an affect on the New Jersey-based fishing industry, that operates in federal waters. The Submerged cable rule, proposed N.J.A.C. 7:7E-4.20, contains standards to minimize such affects. These standards would be applied for federal consistency reviews both within and beyond the State's territorial sea, where the cable may have an affect on New Jersey's coastal zone. N.J.A.C. 7:7E-8.2 includes provisions to protect Marine Fish and Fisheries by discouraging activities that adversely impact either marine fish or fisheries. These provisions would be used to review Federal Fishery Management Plans, which would affect the New Jersey coastal zone. Thus, through the federal consistency process, state coastal management rules can and should be applied to such activities in coastal waters, including waters beyond New Jersey's territorial sea where the activities may have an affect on the coastal zone. It is the policy of the State of New Jersey to utilize these coastal management rules to request federal consistency determinations for federal actions that affect its coastal zone. N.J.A.C. 7:7E-1.2(e) is being modified to correct an incorrect statement. This chapter applies to decisions on the consistency or compatibility of proposed actions by Federal, State and local agencies within the coastal zone, not with the Coastal Zone Management rules as the current language implies.

N.J.A.C. 7:7E-1.2(g) lists the management activities to which the Coastal Zone Management rules apply. This subsection is proposed for amendment to clarify that Department Management actions include permit decisions, approvals, certifications and conveyances. References to permits, approvals and certifications are proposed for deletion from N.J.A.C. 7:7E-1.2(g)1 through 11 since the use of these terms implies that

affirmative decisions on these actions are always made on the management actions listed in this section.

Existing N.J.A.C. 7:7E-1.2(g)3i and ii are being recodified as N.J.A.C. 7:7E-1.2(g)2vi and vii since these management actions are now under the purview of the Division of Water Quality and not the Land Use Regulation Program. The titles of the Water Supply Administration at N.J.A.C. 7:7E-1.2(g)4, Air Quality Regulation at N.J.A.C. 7:7E-1.2(g)6, and Solid and Hazardous Waste at N.J.A.C. 7:7E-1.2(g)7 are being updated.

The Coastal Zone Management rules provide the basic policy direction for various planning actions. N.J.A.C. 7:7E-1.2(h) lists these planning actions undertaken by the Department in the coastal zone. As a result of the Department's recent reorganization, N.J.A.C. 7:7E-1.2(h)3 is being amended to replace the Land and Water Planning Office with the Division of Watershed Management since that Division is now responsible for the first two planning actions under this paragraph: i. the areawide water quality management plans; and ii. the 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.).

Existing N.J.A.C. 7:7E-1.2(h)3iii is being recodified as N.J.A.C. 7:7E-1.2(h)7 and revised to reflect that the Division of Water Quality is responsible for the allocation of wastewater treatment construction grants. In addition, this paragraph is being reworded to more clearly reflect the actions covered by this paragraph.

Existing N.J.A.C. 7:7E-1.2(h)3iv is being recodified as N.J.A.C. 7:7E-1.2(h)8. The implementation and coordination of the Federal Coastal Zone Management Program is under the purview of the Office of Coastal Planning and Program Coordination.

N.J.A.C. 7:7E-1.5 Coastal decision-making process

As previously discussed in the summary at N.J.A.C. 7:7E-1.1, existing N.J.A.C. 7:7E-1.5(a) is being recodified as N.J.A.C. 7:7E-1.1(d) since this paragraph sets forth the scope of the Chapter, and thus is more appropriately located at N.J.A.C. 7:7E-1.1.

Existing N.J.A.C. 7:7E-1.5(c), definitions, is being recodified as N.J.A.C. 7:7E-1.8 for the purposes of clarity**,** as described in further detail below.

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

This rule contains the rationale for requiring mitigation. This rule is intended to conserve those physical and biological values described under the applicable special area rules, while allowing development consistent with the applicability criteria.

The reference to specific requirements for mitigation of a particular resource at N.J.A.C. 7:7E-1.6(a) is proposed for amendment. This provision incorrectly cites the special area rules as N.J.A.C. 7:7E-3.1 through 3.48, when in fact, a new special area rule for Atlantic City, N.J.A.C. 7:7E-3.49, was adopted on February 7, 2000. The proposed amendment corrects this reference.

7:7E-1.8 Definitions

To make this Chapter easier to utilize, Subchapter 1 has been reorganized to add a new definition section at N.J.A.C. 7:7E-1.8. Currently, the definitions section for the entire Chapter is codified as N.J.A.C. 7:7E-1.5(c). Codifying the definitions in their own section will assist the reader in easily locating these terms. Except for the changes described below**,** the terms and their meaning are the same. To facilitate the recodification of the definition section**,** all cross-references to N.J.A.C. 7:7E-1.5(c) are proposed to be changed to N.J.A.C. 7:7E-1.8.

New definitions for the “11-digit hydrologic unit code area” and “Watershed management area” are being proposed. These terms are being used at N.J.A.C. 7:7E-3.15, Intertidal and Subtidal Shallows, for determining where mitigation for the loss of intertidal and subtidal shallows is appropriate. The Department’s Division of Watershed Management has divided the State into watershed management areas for the purposes of water quality planning and other environmental programs. Each watershed management area is further divided into smaller management areas including the “11-digit hydrologic unit code area.” The proposed mitigation requirements at N.J.A.C. 7:7E-3.15 recognize this watershed-based approach.

Definitions for three types of shore protection structures, “bulkheads,” “gabions,” and “revetments,” are being proposed since these terms are used throughout the Chapter and are currently undefined. These structures are defined based on the materials and the manner in which they are constructed, as well as their function and potential impact on coastal resources. A “bulkhead” is a vertical shore protection structure typically constructed of timber or vinyl sheathing, and designed primarily to

retain soil. A "gabion" is a sloped shore protection structure constructed of mesh baskets filled with rock, designed to dissipate wave and current energy and minimize impacts to coastal resources. A "revetment" is a sloped shore protection structure made of stone, similar to a gabion. These definitions are consistent with those in the Coastal Permit Program rules, N.J.A.C. 7:7-1.3.

To facilitate amendments proposed to the Energy use rule, N.J.A.C. 7:7E-7.4, the existing definition of "CAFRA area" at N.J.A.C. 7:7E-5.2 is proposed to be recodified to this section, with no changes in text.

A minor clarifying amendment that does not affect the meaning of the term "discouraged" is being proposed.

The existing definition of "spring tide" currently contains two definitions: "spring tide" and "spring high water line." For purposes of clarity, this definition is being broken into two distinct definitions, with no changes in meaning.

SUBCHAPTER 2. LOCATION, USE AND REOURCE RULES

Subchapter 2 defines and classifies all land and water locations into General Land Areas and one or more Special Areas. The Department proposes to repeal Subchapter 2 of the Coastal Zone Management rules in its entirety. When this subchapter was originally drafted in 1978, it included the Coastal Location Acceptability Method (CLAM) which was used in determining whether a proposed activity on a specific site would comply with the coastal policies. In 1994, N.J.A.C. 7:7E-2.3, Mapping and acceptability determinations, which contained the CLAM process, was deleted from this Chapter (see 26 N.J.R. 2990(a)) since it was difficult to use and was no longer considered necessary by the Department.

As a result of the deletion of N.J.A.C. 7:7E-2.3, Subchapter 2 currently contains only two subsections, N.J.A.C. 7:7E-2.1, Introduction, and N.J.A.C. 7:7E-2.2, Classification of Water Types. N.J.A.C. 7:7E-2.1 is unnecessary and redundant since N.J.A.C. 7:7E-1.1 sets forth the format of the Chapter, and N.J.A.C. 7:7E-3.1, 4.1, 5.1, 6.1, 7.1, and 8.1 explain the types of rules contained within each subchapter respectively. For the same reasons, N.J.A.C. 7:7E-2.2(a) is unnecessary and redundant. Existing N.J.A.C. 7:7E-2.2(a)1 which explains why special areas are important, is being incorporated into N.J.A.C. 7:7E-3.1(a). Existing N.J.A.C. 7:7E-

2.2(a)2 is repetitive since N.J.A.C. 7:7E-3.1(b) discusses General Areas and their relationship with Special Areas.

SUBCHAPTER 3. SPECIAL AREAS

This subchapter describes the various types of special areas that are so naturally valuable, important for human use, hazardous, sensitive to impact or particular in their planning requirements that they merit focused attention and special management rules. Special areas are divided into four categories: Special Water Areas, Special Water's Edge Areas, Special Land Areas, and Coastwide Special Areas.

Special Water Areas extend landward to the spring high water line or the level of normal flow in non-tidal waters. Special Water Area rules include: N.J.A.C. 7:7E-3.2, Shellfish habitat; N.J.A.C. 7:7E-3.3, Surf clam areas; N.J.A.C. 7:7E-3.4, Prime fishing areas; N.J.A.C. 7:7E-3.5, Finfish migratory pathways; N.J.A.C. 7:7E-3.6, Submerged vegetation habitat; N.J.A.C. 7:7E-3.7, Navigation channels; N.J.A.C. 7:7E-3.8, Canals; N.J.A.C. 7:7E-3.9, Inlets; N.J.A.C. 7:7E-3.10, Marina moorings; N.J.A.C. 7:7E-3.11, Ports; N.J.A.C. 7:7E-3.12, Submerged infrastructure routes; N.J.A.C. 7:7E-3.13, Shipwrecks and artificial reefs; N.J.A.C. 7:7E-3.14, Wet borrow pits; and N.J.A.C. 7:7E-3.15, Intertidal and subtidal shallows. Under this proposal, the Department is not proposing to amend the Finfish Migratory pathways and Submerged infrastructure rules, N.J.A.C. 7:7E-3.5 and 3.12 respectively. A summary of the Special Water Area rules which are being amended as part of this readoption are summarized below.

Special Water's Edge areas are divided into 3 subcategories depending on their location: Oceanfront, and Raritan and Delaware Bayfront; Barrier and Bay Island; and Coastwide.

The Oceanfront, and Raritan and Delaware Bayfront Special Water's Edge Areas are only found along tidal waters. The rules which are included in this category are: N.J.A.C. 7:7E-3.16, Dunes; N.J.A.C. 7:7E-3.17, Overwash Areas; N.J.A.C. 7:7E-3.18, Coastal High Hazard Areas; and N.J.A.C. 7:7E-3.19, Erosion Hazard Areas. Under this proposal, amendments are proposed to both the Dunes and Overwash area rules, N.J.A.C. 7:7E-3.16 and 3.17, respectively, and are summarized below. Amendments to the Coastal high hazard areas and Erosion hazard areas rules, N.J.A.C. 7:7E-3.18 and 3.19 are not being proposed as part of this readoption with amendments.

Similar to the Oceanfront, and Raritan and Delaware Bayfront Special Water's Edge Areas, Barrier island and Bay island Special Water's Edge Areas are only found along tidal waters. The rules which pertain to this special area category include the Barrier Island Corridor rule, N.J.A.C. 7:7E-3.20 and the Bay Islands rule, N.J.A.C. 7:7E-3.21. These special areas are defined based on their location on oceanfront barrier islands, spits and peninsulas. These rules set forth development standards and impervious cover limits and vegetative cover percentages. No changes to the Barrier island corridor rule are proposed as part of this readoption with amendments. A summary of the amendments proposed to the Bay island rule, N.J.A.C. 7:7E-3.21, is found below.

Coastwide Special Water's Edge Areas are found adjacent to tidal waters as well as non-tidal waters and consist of the following rules: N.J.A.C. 7:7E-3.22, Beaches; N.J.A.C. 7:7E-3.23, Filled water's edge; N.J.A.C. 7:7E-3.24, Existing Lagoon edges; N.J.A.C. 7:7E-3.25, Flood hazard areas; N.J.A.C. 7:7E-3.27, Wetlands; N.J.A.C. 7:7E-3.28, Wetlands buffers; N.J.A.C. 7:7E-3.31, Coastal bluffs; and, N.J.A.C. 7:7E-3.32, Intermittent Stream corridors. Under this proposal, amendments are not proposed to the Wetlands buffer rule, N.J.A.C. 7:7E-3.28, Coastal bluffs rule, N.J.A.C. 7:7E-3.31, and Intermittent stream corridor rule, N.J.A.C. 7:7E-3.32. A summary of changes to the other Coastwide Special Water's Edge Areas is found below.

The third category of Special Areas is Special Land Areas. These special areas are landward of Special Water's Edge Areas. Special Land Area rules include: N.J.A.C. 7:7E-3.33, Farmland Conservation areas; N.J.A.C. 7:7E-3.34, Steep Slopes; and N.J.A.C. 7:7E-3.35, Dry Borrow Pits. The Department is not proposing to amend the Farmland conservation area rule, N.J.A.C. 7:7E-3.33, as part of this readoption. A summary of the proposed amendments to both the Steep slope rule, N.J.A.C. 7:7E-3.34 and Dry borrow pits rule at N.J.A.C. 7:7E-3.35 follows.

The last category of special areas is the Coastwide Special Areas, which may include Special Water Areas, Special Waters Edge Areas, or Special Land Areas. Coastwide Special Areas rules consist of the following: N.J.A.C. 7:7E-3.36, Historic and archaeological resources; N.J.A.C. 7:7E-3.37, Specimen trees; N.J.A.C. 7:7E-3.38, Endangered or threatened wildlife or vegetation species habitats; N.J.A.C. 7:7E-3.39, Critical Wildlife Habitats; N.J.A.C. 7:7E-3.40, Public open space; N.J.A.C. 7:7E-3.41, Special hazard areas; N.J.A.C. 7:7E-3.42, Excluded Federal lands; N.J.A.C. 7:7E-3.43,

Special urban areas; N.J.A.C. 7:7E-3.44, Pinelands National Reserve and Pinelands Protection Area; N.J.A.C. 7:7E-3.45 Hackensack Meadowlands District; N.J.A.C. 7:7E-3.46, Wild and Scenic River Corridors; N.J.A.C. 7:7E-3.47, Geodetic control reference marks; N.J.A.C. 7:7E-3.48, Hudson River waterfront area; and N.J.A.C. 7:7E-3.49, Atlantic City. Amendments are not proposed to the Historic and archaeological resources rule, N.J.A.C. 7:7E-3.36; Critical wildlife habitat rule, N.J.A.C. 7:7E-3.39; Geodetic control reference marks rule, N.J.A.C. 7:7E-3.47; and Atlantic City rule, N.J.A.C. 7:7E-3.49, as part of this readoption with amendments.

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

For consistency throughout this chapter, the title of this subsection is being changed from “Introduction” to “Purpose and scope.”

As discussed previously, N.J.A.C. 7:7E-3.1(a) is being proposed for amendment to add language from existing N.J.A.C. 7:7E-2.2(a)1 which is being proposed for deletion. The language being added further explains why special areas are important and thus require focused attention and special management. To improve readability, cross references to the rules applicable to each type of special area are proposed to be moved from the lead-in language at N.J.A.C. 7:7E-3.1(a) to the appropriate paragraph for each type of special area. The reference to the 48 types of special areas is proposed for deletion since this reference is unnecessary and is inaccurate.

N.J.A.C. 7:7E-3.1(a)2 is being amended to add language from existing N.J.A.C. 7:7E-3.1(a)3 to explain where Special Water’s Edge and Coastwide Water’s Edge Areas are located. As a result, N.J.A.C. 7:7E-3.1(a) 3 is being deleted. Minor wording changes are proposed to N.J.A.C. 7:7E-3.1(a)3 and 4 (currently codified as 3.1(a)4 and 5) for clarity and do not change the meanings of these paragraphs.

N.J.A.C. 7:7E-3.2 Shellfish Habitat

N.J.A.C. 7:7E-3.2 sets forth the Department’s rules for the protection of shellfish habitat. The shellfish habitat special area includes estuarine bay or river bottoms, which have a history of production for hard clams, soft clams, eastern oysters, bay scallops, or blue mussels. Shellfish habitat areas are defined as areas that have a specific shellfish density or areas that appear on certain maps.

A proposal is pending that would further amend the shellfish habitat rule with regard to non-commercial recreational docks at single family lots and construction materials for all docks within shellfish. This proposal was published in the New Jersey Register on May 21, 2001 (see 33 N.J.R. 1524(a)).

To reflect the reorganization of Subchapter 4, the cross-references at N.J.A.C. 7:7E-3.2(d), (e), (f) and (g) to the Recreational Docks and Piers, Maintenance Dredging and New Dredging rules are being amended.

N.J.A.C. 7:7E-3.3 Surf Clams

N.J.A.C. 7:7E-3.3 sets forth the Department's rules to protect surf clam areas. Surf clams areas are areas of the Atlantic Ocean within the State's territorial jurisdiction which support significant commercially harvestable quantities of surf clams or are important areas for recruitment of surf clams stocks.

The definition of surf clam areas at N.J.A.C. 7:7E-3.3(a) is being proposed for amendment to clarify that in addition to being subject to the surf clam special area rules, surf clams are considered a marine fish and therefore are subject also to the Marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.

N.J.A.C. 7:7E-3.3(b)1 and 2 are being amended to set forth standards for development that is conditionally acceptable in surf clam areas**,** that is development that is of the national interest and sand and gravel mining to obtain material for beach nourishment. All development that does not meet N.J.A.C. 7:7E-3.3(b)1 or 2 which destroys, condemns or contaminates surf clam areas is prohibited. In accordance with proposed N.J.A.C. 7:7E-3.3(b)1, development in surf clam areas that is of the national interest is conditionally acceptable provided there are no prudent and feasible alternative sites and the impacts to the surf clam areas are minimized.

Proposed N.J.A.C. 7:7E-3.3(b)2 provides the standards for sand mining to obtain material for beach nourishment. The State has an interest in maintaining beaches for public recreational use and shore protection. The main component of the State's shore protection program is beach nourishment. Very often the primary resource for the sand used in these projects is surf clam areas. Thus, there is a potential conflict between the need for the sand and protection of the resource. In order to address this conflict and minimize impacts to this special area, the Department is proposing N.J.A.C. 7:7E-

3.3(b)2. These conditions have been designed to minimize the impacts to surf clam areas associated with beach nourishment projects.

The rule rationale at N.J.A.C. 7:7E-3.3(c) is being amended to update the information concerning the value of surf clams to New Jersey, explain the importance of beach nourishment projects and why sand and gravel extraction operations are acceptable in surf clam areas. Further, the rationale concerning the regulation for harvesting surf clams is proposed for deletion since this issue is proposed to be addressed in the rationale to the Marine fish and fisheries rule, N.J.A.C. 7:7E-8.2, in the discussion of the rationale for Fishery Management Plans.

N.J.A.C. 7:7E-3.4 Prime Fishing Areas

N.J.A.C. 7:7E-3.4 contains the Department's rule designed to protect prime fishing areas. These are areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity and include areas such as coastal jetties and groins, public fishing piers and public docks. This section specifies permissible uses of these areas as well as activities prohibited to protect these special areas.

N.J.A.C. 7:7E-3.4(a) is being amended to include artificial reefs in the list of areas considered prime fishing areas, since these areas function as congregation, refuge, feeding and nursery areas for migratory species and thus support extensive fisheries.

For consistency throughout the Chapter, N.J.A.C. 7:7E-3.4(b) is being amended to replace "policy" with "standard."

The rule rationale at N.J.A.C. 7:7E-3.4(c) is being amended to delete the last paragraph concerning navigational channels which was erroneously incorporated into this section.

N.J.A.C. 7:7E-3.6 Submerged vegetation habitat

N.J.A.C. 7:7E-3.6 contains the Department's rules for protection of submerged vegetation habitat. This special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants, including but not limited to, widgeon grass, sago pondweed, horned pondweed and eelgrass.

The references to "regulated activities" at N.J.A.C. 7:7E-3.6(b) and (c) are being replaced with "development" since this chapter is used for reviewing coastal permit applications made in accordance with the Coastal Permit Program rules, N.J.A.C. 7:7, and thus the term "regulated" is unnecessary. In addition, as part of the recodification of existing N.J.A.C. 7:7E-4.2, the cross-references to the maintenance and new dredging rules are being amended.

N.J.A.C. 7:7E-3.6(c) prohibits development in upland or waters adjacent to submerged vegetation habitat which results in erosion or turbidity increases in the water's supporting submerged vegetation, unless mitigating measures are provided. This paragraph is proposed for amendment to include prop wash and hull scour associated with the use of a dock or mooring, as activities which may, through erosion or turbidity increases in the waters supporting the habitat, adversely affect the habitat. Accordingly, these activities would be prohibited in this special area unless mitigation measures were provided. It has been the Department's experience based on aerial photographs and site inspections, that access through submerged vegetation habitat to docks or moorings located outside of the habitat adversely impact the habitat. Thus, this amendment is proposed to address this situation.

N.J.A.C. 7:7E-3.7 Navigation Channels

N.J.A.C. 7:7E-3.7 contains the Department's rule for the protection of navigational channels. Navigational channels are tidal water areas, including the Atlantic Ocean, inlets, bays, rivers and tidal guts, with sufficient depth to provide safe navigation.

The definition of navigation channels at N.J.A.C. 7:7E-3.7(a) is being amended to ensure that all navigation channels are subject to the provisions of this rule, regardless of who maintains the channel, and to define the navigation channel as all areas between the top of the channel's slopes on either side. This section of the rule is also being amended to clarify that only major channels are shown on NOAA/National Ocean Service charts. In addition, the definition is being amended to delete reference to specific NOAA/National Ocean Service charts, thereby eliminating the need to amend this rule as new charts are established and/or existing charts are deleted in the future. This paragraph is also being amended to update the name of the agency responsible for

production of the nautical charts, from “National Ocean Survey” to “National Ocean Service.”

The standards relevant to navigation channels at N.J.A.C. 7:7E-3.7(b) are being amended to delete the standard requiring that new or maintenance dredging in navigational channels comply with the appropriate sections of this Chapter, since this standard is redundant. If the proposed development includes dredging, the proposed dredging would have to comply with all applicable sections of the Coastal Zone Management rules. As a result of the proposed deletion of N.J.A.C. 7:7E-3.7(b)1, N.J.A.C. 7:7E-3.7(b)2 through 5 are proposed to be recodified as (b) 1 through 4 with no changes in text.

N.J.A.C. 7:7E-3.8 Canals

The Department’s rules protecting canals are found at N.J.A.C. 7:7E-3.8. Under this rule, canals are those navigation channels for boat traffic through land areas, which are created by cutting and dredging or other human construction techniques and may include enlarging existing natural surface water channels.

The term “Bay Head-Manasquan canal” at N.J.A.C. 7:7E-3.8(a) is being replaced with “Point Pleasant Canal” since the proposed term accurately reflects the title of this waterway as referenced on the applicable NOAA/National Ocean Survey chart.

Existing N.J.A.C. 7:7E-3.8(b) provides that development in canals must be consistent with the General Water Area policies for Tidal Guts, N.J.A.C. 7:7E-4.7. The rule for tidal-guts at N.J.A.C. 7:7E-4.7 was deleted from this Chapter in 1994 (see 26 NJR 2990(a)). Prior to its deletion, this rule prohibited dredged material disposal and solid waste or sludge dumping in canals. N.J.A.C. 7:7E-3.8(b)1 prohibits aquaculture, filling, dams and impoundments, and any other use which would interfere with existing or proposed canal boat traffic, and encourages maintenance dredging. Under this proposal for the purposes of clarity, the Department is proposing to replace existing (b) and (b)1 with a standard that prohibits any use that would interfere with existing or proposed canal boat traffic.

Existing N.J.A.C. 7:7E-3.8(b)2 which provides that development proposed in the Delaware and Raritan Canal and in the surrounding Review Zone be consistent with the regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C.

7:45), is being recodified as N.J.A.C. 7:7E-3.8(c) with a minor change in the citation of the regulations.

The rule rationale at existing N.J.A.C. 7:7E-3.8(c) is being recodified as N.J.A.C. 7:7E-3.8(d) with no changes in text.

N.J.A.C. 7:7E-3.9 Inlets

N.J.A.C. 7:7E-3.9 contains the Department's rules for protecting inlets. Inlets are defined as natural channels through barrier islands allowing movement of fresh and salt water between the ocean and the back bay system. Inlets naturally have delta fans of sediment seaward and landward, deposited by the ebb and flow of the tide.

The classification of inlets into oceans and semi-enclosed back bays at N.J.A.C. 7:7E-3.9(b) is being proposed for deletion since it is duplicative of the description already contained in N.J.A.C. 7:7E-3.9(a). N.J.A.C. 7:7E-3.9(b) is also being amended to delete the requirement that development in inlets be consistent with the General water area policy for one of these water types, since these policies were deleted from this Chapter in 1994 (see 26 NJR 2990(a)).

N.J.A.C. 7:7E-3.10 Marina moorings

The Department's standards for development within marina moorings is codified as N.J.A.C. 7:7E-3.10. Marina moorings are areas of water that provide mooring, docking and boat maneuvering room as well as access to land and navigational channels for five or more recreational boats.

N.J.A.C. 7:7E-3.10(d) which provides that new or maintenance dredging in marina mooring areas and access channels is conditionally acceptable provided the dredging complies with the appropriate sections of the Coastal Zone Management rules is being proposed for deletion. Any development which requires a coastal permit must comply with all appropriate sections of the Coastal Zone Management rules. Thus if dredging is proposed, it must comply with the new or maintenance dredging rule. Existing N.J.A.C. 7:7E-3.10(e)**,** the rule rationale**,** is being recodified as (d) with no changes in text.

N.J.A.C. 7:7E-3.11 Ports

N.J.A.C. 7:7E-3.11 contains the Department's rules for development within port areas. Ports are water areas having, or lying immediately adjacent to, concentrations of shoreside terminals and transfer facilities for the movement of waterborne cargo (including fluids), and including facilities for loading, unloading and temporary storage.

The reference at N.J.A.C. 7:7E-3.11(a)2 to the Docks and piers (commercial) rule, N.J.A.C. 7:7E-4.2**,** is being replaced with the new title and codification of that subsection, Docks and Piers for cargo and commercial fisheries, N.J.A.C. 7:7E-4.4, to reflect the proposed reorganization of Subchapter 4.

N.J.A.C. 7:7E-3.13 Shipwreck and artificial reef habitats

N.J.A.C. 7:7E-3.13 contains the rules governing the shipwrecks and artificial reefs special area. This special area includes all permanently submerged or abandoned remains of vessels which serve as a special marine habitat or are fragile historic and cultural resources. The Department is proposing to readopt this rule with the changes described below.

The title of this special area rule is being proposed for amendment to reflect that this special area rule protects the shipwreck and artificial reef habitat which currently exists. As part of this proposal, the Department is proposing an Artificial Reef rule at N.J.A.C. 7:7E-4.21 which would set forth the Department's standards for constructing an artificial reef. This is similar to the Submerged infrastructure routes rule at N.J.A.C. 7:7E-3.12 and the Submerged cable rule at N.J.A.C. 7:7E-4.20.

The description of this special area at N.J.A.C. 7:7E-3.13(a) is being amended to provide a definition of "artificial reef" and to include examples of artificial reefs.

N.J.A.C. 7:7E-3.13(a)1 cites documents in which known shipwrecks are listed. This paragraph is being amended to add to the list of publications which describe the locations of artificial reefs in the ocean waters off the coast of New Jersey a new publication, *A Guide to Fishing and Diving New Jersey Reefs*, B. Preim, J. Carlson, B. Figley, (2000). In addition, this paragraph is being amended to cross-reference the Historic and archaeological resource rule, N.J.A.C. 7:7E-3.36(f) which contains the standards for recovery of historic shipwrecks.

Existing N.J.A.C. 7:7E-3.13(b) contains the acceptability conditions for use and standards for construction of new or expanded artificial reefs. The phrase "these submerged habitats" is proposed to be replaced with the term "shipwreck and artificial

reef habitats" to reflect the new name of this special area. Moreover, this paragraph is being proposed for amendment to delete the standards for construction, since as described above, a new general water area rule for the construction of artificial reefs is being proposed at N.J.A.C. 7:7E-4.21.

N.J.A.C. 7:7E-3.13(c) prohibits any use (except archeological research) which would significantly affect the usefulness of this special area as a fisheries resource. The term “fisheries resource” is proposed to be replaced with “fish habitat” to clarify that this provision protects the fish and their habitat and not solely the industry aspects of the resource as may be implied through the use of the term “fishery resource.”

Amendments are proposed at N.J.A.C. 7:7E-3.13(d), the rule rationale, to include additional information concerning the importance and location of shipwrecks and artificial reefs along the ocean shoreline. In addition, a discussion of the importance of artificial reefs as a measure of enhancing habitat is being proposed. Further a discussion of the potential for regulation of fishing of artificial reefs by the Department, Atlantic States Marine Fisheries Commission and/or Mid Atlantic Fisheries Management Council is being proposed.

N.J.A.C. 7:7E-3.14 Wet borrow pits

N.J.A.C. 7:7E-3.14 contains the Department’s standards for development within wet borrow pits. 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. Wet borrow pits include, but are not limited to, flooded sand, gravel and clay pits, and stone quarries.

Amendments are proposed at N.J.A.C. 7:7E-3.14 (a) and (d) to revise and update and the existing cross-references to the Wetland and Wetland Buffers rules.

N.J.A.C. 7:7E-3.14(g)4, which requires the designation of a water quality buffer zone, is being amended to clarify that a water quality buffer zone is designated around any water areas remaining after filling of the pit in accordance with N.J.A.C. 7:7E-3.14 (j). Existing N.J.A.C. 7:7E-3.14(g)7, which requires the filling of wet borrow pits comply with all requirements of the Freshwater Wetlands Protection Act, is proposed for deletion since N.J.A.C. 7:7E-3.14(b) requires that all proposed dredging and filling activities comply with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A.

Under this proposal, existing N.J.A.C. 7:7E-3.14(j) and (k) are being combined for clarity since both sections pertain to the water quality buffer and acceptable activities in that area. In accordance with proposed N.J.A.C. 7:7E-3.15(j), a water quality buffer is required to be provided around the perimeter of wet borrow pit (a minimum of 100 feet for coarse sands and gravel and 50 feet elsewhere). Proposed N.J.A.C. 7:7E-3.14(j) also specifies that limited recreational uses are acceptable within the water quality buffer area. However, structures and paving not associated with the limited recreational uses are prohibited in the buffer area. The remainder of the buffer area, that is where limited recreational uses are not located, shall be maintained in a natural state.

N.J.A.C. 7:7E-3.15 Intertidal and subtidal shallows

The Department's rules protecting the intertidal and subtidal shallows special area are codified at N.J.A.C. 7:7E-3.15. The description of intertidal and subtidal shallows at N.J.A.C. 7:7E-3.15(a) is being proposed for amendment to provide that these areas do not have to be submerged twice daily, but must instead be temporarily submerged, since in the higher elevations they may be submerged only by spring tides (twice a month). In addition, it is being clarified that the submerged areas are measured from the spring high water line to a depth of four feet below mean low water.

Existing N.J.A.C. 7:7E-3.15(b) is being divided into (b) and (c) for clarity. Proposed N.J.A.C. 7:7E-3.15(b) discourages development, filling, new dredging, or other disturbance in intertidal and subtidal shallows unless the proposed activity complies with the specific standards at (c) through (f) and meets proposed N.J.A.C. 7:7E-4.2 through 4.20 (existing N.J.A.C. 7:7E-4.2(b) through (t)). New N.J.A.C. 7:7E-3.15(c) contains the standards for maintenance dredging in intertidal and subtidal shallows. Existing N.J.A.C. 7:7E-3.15(b)1 and 2 contain the acceptability conditions for dredging of intertidal and subtidal shallows.

The existing requirement that maintenance dredging of intertidal and subtidal shallows is acceptable for marinas with 25 or more slips, public launching facilities and ports is being deleted. The Department has determined that this provision is no longer necessary because the proposed definition of maintenance dredging applies to areas dredged within the last ten years or currently used for navigation or mooring of vessels requiring the proposed water depth. Because the areas are in current or recent use, the Department also proposes to delete the requirement that the area not be dredged to a

depth exceeding four feet below mean low water. Rather, the standard of the maintenance dredging rule, proposed N.J.A.C. 7:7E-4.6 (existing N.J.A.C. 7:7E-4.2(f)), that the previously dredged depth not be exceeded, shall apply.

Proposed N.J.A.C. 7:7E-3.15(d) sets forth the acceptability conditions for new dredging within intertidal and subtidal shallows. In general, new dredging in intertidal and subtidal shallows is discouraged, but may be acceptable provided specific conditions are met. The proposed standards require that there be a demonstrated need for the proposed facility that requires the dredging that cannot be met by other facilities; there is no alternative to the location for the facility that requires the dredging; and that the dredging project and facility that requires the dredging are designed to minimize disturbance to the intertidal and subtidal shallows. The existing requirement that new dredging of intertidal and subtidal shallows is acceptable only in marinas with 25 or more slips, public launching facilities and ports is not needed in light of these proposed standards.

Proposed N.J.A.C. 7:7E-3.15(e) sets forth the requirements for installation of submerged infrastructure within intertidal and subtidal shallows. Proposed N.J.A.C. 7:7E-3.15(e)1 requires that the installation of submerged infrastructure be accomplished through directional drilling unless it can be demonstrated that the use of directional drilling is not feasible. Proposed N.J.A.C. 7:7E-3.15(e)2 requires that, where directional drilling cannot be accomplished, there be no feasible alternative route that would not disturb intertidal and subtidal shallows. This standard, at existing (b)3i, will no longer apply to directionally drilled infrastructure, because such construction does not disturb intertidal and subtidal shallows. The provision that directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching at existing N.J.A.C. 7:7E-3.15(b)3iii is being deleted because this provision is being replaced with proposed (e)1. With the exception of proposed new N.J.A.C. 7:7E-3.15(e)1, only minor wording changes are proposed to the standards for the directional drilling of submerged infrastructure.

The acceptability conditions for fill of intertidal and subtidal shallows for beach nourishment are proposed at N.J.A.C. 7:7E-3.15(f) (currently N.J.A.C. 7:7E-3.15(b)4). Only minor wording changes and changes to cross-references in response to the reorganization of subchapter 4 are proposed.

Currently, N.J.A.C. 7:7E-3.15(c) requires mitigation for the destruction of intertidal and subtidal shallows at a ratio of one acre created to one acre lost, and that the mitigation project be located in the same estuary when feasible. The current rule exempts specific filling activities for bulkheads and beach nourishment projects; dredging activities at residential docks and dredging at marinas and ports provided the dredged area is reduced to the maximum extent practicable.

Under this proposal, the mitigation requirements are being recodified as N.J.A.C. 7:7E-3.15(g) and (h). Proposed N.J.A.C. 7:7E-3.15(g) provides that mitigation is required for the destruction of intertidal and subtidal shallows in accordance with the standards found at proposed N.J.A.C. 7:7E-3.15(h). In addition, proposed N.J.A.C. 7:7E-3.15(g) provides that mitigation proposals shall comply with the standards of Subchapter 3B, Information required in wetland and intertidal and subtidal shallows mitigation proposals. Further, proposed N.J.A.C. 7:7E-3.15(g) sets forth the activities performed in intertidal and subtidal shallows that do not require mitigation. These activities are maintenance dredging, beach nourishment, and new dredging to a depth not exceeding four feet below mean low water, construction of replacement bulkheads and filling in a man-made lagoon associated with infill bulkhead construction of no more than 75 feet in length. The current provision at N.J.A.C. 7:7E-3.15(c)1 does not require mitigation for dredging activities at residential noncommercial docks and in ports or anchorages. This is being proposed for deletion since these activities have the same impacts as those not performed in these areas. However, under this proposal, new dredging to a depth not exceeding four feet below mean low water would not require mitigation because the water area would continue to be classified as intertidal subtidal shallows.

Pursuant to proposed N.J.A.C. 7:7E-3.15(h), mitigation for the destruction 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 destruction where feasible. If mitigation through the creation of intertidal and subtidal shallows as proposed at N.J.A.C. 7:7E-3.15(h)2i and ii is not feasible, then mitigation shall be in the form of enhancement of a degraded wetland system, at an enhancement to loss ratio of 2:1 as prescribed at proposed N.J.A.C. 7:7E-3.15(h)2ii through v. Enhancement means actions performed to improve the characteristics, habitat and functions of an existing degraded wetland. This definition is the same as that found in the Wetlands rule, N.J.A.C. 7:7E-

3.27(g)6iii. The enhancement to loss ratio of 2:1 is higher than the creation to lost ratio since wetland functions are already present at the mitigation site but at a lesser ecological value and the intent of the mitigation is improvement of the ecological value of the degraded wetland to equal that which was lost through the proposed development.

The mitigation standards at proposed N.J.A.C. 7:7E-3.15(h) vary depending on whether the destruction takes place at a single family property or property other than a single family property. For single family properties only, if on site mitigation is not feasible, mitigation is required in the form of a monetary contribution in the amount of the value of the land filled and the cost of creation of intertidal subtidal shallows of equal ecological value to those being lost to the Wetlands Mitigation Fund. For the purposes of this paragraph, the value of the land filled is the appraisal of that land as buildable upland. Mitigation at sites other than a single family home property would be based on a mitigation hierarchy depending upon the type and location of the mitigation proposed. Mitigation through the creation of intertidal and subtidal shallows shall first occur on site. If onsite creation is not feasible, creation shall occur in the same HUC-11 (a subdivision of a larger watershed management area). If this is not feasible, creation shall then occur in an adjacent HUC-11. If creation of intertidal subtidal shallows is not feasible as described above, mitigation shall then be in the form of enhancement of a degraded wetland system on site. If enhancement of a degraded wetland system is not feasible on site, then enhancement of a degraded wetland system shall occur in the same HUC-11; if this is not feasible, then enhancement of a degraded wetland system shall occur in an adjacent HUC-11. If mitigation as prescribed in the above hierarchy is not feasible, mitigation shall be in the form of either creation of intertidal shallows or enhancement of a degraded wetland system within the same watershed management area.

The proposed amendment to the rule rationale at existing N.J.A.C. 7:7E-3.15(d) (proposed N.J.A.C. 7:7E-3.15(i)) explains that the purpose of the mitigation requirement is to offset habitat losses associated with destruction of intertidal and subtidal shallows.

N.J.A.C. 7:7E-3.16 Dunes

The Department's rules for protecting dunes are codified at N.J.A.C. 7:7E-3.16. Dunes are wind or wave deposited or man-made formations of sand (mound or ridge), that lie generally parallel to, and landward of, the beach, and between the upland limit of the beach and the foot of the most inland dune slope.

Under this proposal, the definition of dune at N.J.A.C. 7:7E-3.16(a) is being amended to clarify that all dune ridges and mounds landward of the secondary or tertiary dune are still classified as dunes and therefore subject to this rule. As discussed previously, the definition of dune at N.J.A.C. 7:7-1.3 is also being amended for the purposes of consistency.

The reference to N.J.A.C. 7:7E-7.11 at N.J.A.C. 7:7E-3.16(b)6 is being amended to add the title of that rule, Coastal Engineering, for the purposes of clarity.

Further, under this proposal, the Department is proposing to amend the rationale of the Dune rule to include an explanation of the importance of dunes in providing habitat, supporting biodiversity and as an aesthetic resource.

N.J.A.C. 7:7E-3.17 Overwash Areas

The Department's rule for protecting overwash areas is codified at N.J.A.C. 7:7E-3.17. This special area includes areas that are 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.

For the purposes of clarity, it is proposed that the title of N.J.A.C. 7:7E-7.11, Coastal Engineering, be added to the existing citation of the rule.

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

The Department's Bay island rule is found at N.J.A.C. 7:7-3.21. Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland or barrier island by elevated or fill supported roads. This rule sets forth standards for development on bay islands, including impervious cover limits and vegetative cover requirements.

A proposed amendment at N.J.A.C. 7:7E-3.21(a) corrects the tense of an existing term.

N.J.A.C. 7:7E-3.23 Filled Waters Edge

The Filled water's edge rule at N.J.A.C. 7:7E-3.23 contains the Department's standards for development within the filled water's edge. The filled water's edge areas are existing filled 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.

N.J.A.C. 7:7E-3.23(c) requires that for filled water's edge sites with direct water access, the waterfront portion (that is, a contiguous area at least equal in size to the area within 100 feet of a navigable water measured from the mean high water line) of the site be either developed with a water dependent use or left undeveloped for future water dependent uses. A water dependent use as defined at existing N.J.A.C. 7:7E-1.5(c) (proposed N.J.A.C. 7:7E-1.8), is a use that cannot physically function without direct access to the body of water along which it is proposed and includes for example, docks and piers and rack systems for boat storage. Water dependent uses do not include hotels, motels or restaurants. Under this proposal, N.J.A.C. 7:7E-3.23(c)1 is being recodified and amended to provide three options for the waterfront portion of the site. Proposed N.J.A.C. 7:7E-3.23(c)1i provides that the waterfront portion of the site may be developed with a water dependent use; proposed (c)1ii provides that this area may be developed with an at-grade deck provided certain conditions are met; and, proposed (c)1iii provides that the site may be left undeveloped for future water dependent activities. The inclusion of the construction of at-grade decks as an acceptable activity within the waterfront portion of the site is intended to support water oriented tourism related uses, without precluding the future development of water dependent uses in these areas.

The rule rationale at N.J.A.C. 7:7E-3.23(j) is being amended to reflect the addition of decks as an acceptable development within the waterfront portion of a filled water edge site. In addition, the rationale references to various studies which are now outdated are proposed either for amendment or deletion.

N.J.A.C. 7:7E-3.24 Existing lagoon edges

Existing Lagoon edges are existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development. The Department's standards for development in existing lagoon edges are found at N.J.A.C. 7:7E-3.24.

The cross-references to the Filling and Structural Shore Protection rules at N.J.A.C. 7:7E-3.24(b)3 are being updated as part of this proposal.

N.J.A.C. 7:7E-3.25 Flood Hazard Areas

Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by the Department under the Flood Hazard Area Control Act; and areas defined or delineated as an A or V zone by the Federal Emergency Management Agency (FEMA). Flood hazard areas are areas subject to tidal or fluvial flooding.

Amendments proposed at N.J.A.C. 7:7E-3.25(a), (c) and (e) correct existing terminology.

N.J.A.C. 7:7E-3.25(a)3 provides that in instances where portions of the flood hazard area meet the definition of another Special water's edge type, the Special Water's Edge Area rule applies in terms of location acceptability and the flood hazard area rule applies in terms of setback and flood proofing requirements. This provision is being amended to delete reference to the alluvial flood margin special area since the special area rule for alluvial flood margins was repealed on July 18, 1994 (see 26 N.J.R. 2990(a)).

N.J.A.C. 7:7E-3.25(b) encourages the dedication of flood hazard areas for the purposes of public open space especially in areas that are designated in the New Jersey Wild and Scenic Rivers System. In 1995, the rules concerning the New Jersey's Wild and Scenic Rivers System at N.J.A.C. 7:38 expired and where not readopted. Thus, reference to these areas has been deleted. It should be noted however, that the Wild and Scenic Rivers rule at N.J.A.C. 7:7E-3.46 sets forth standards for the Federal Wild and Scenic Rivers in New Jersey.

The reference to the Stormwater Management rule at N.J.A.C. 7:7E-3.25(e) is being updated as part of this proposal.

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

The Department's special area rule for the protection of wetlands is codified at N.J.A.C. 7:7E-3.27. A wetlands is 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.

N.J.A.C. 7:7E-3.27(h) describes the mitigation requirements for the disturbance or destruction of wetlands subject to this Chapter. N.J.A.C. 7:7E-3.27(h)3 which describes the finical assurance requirements for wetland mitigation proposals, is being replaced with a cross-reference to the new section proposed at N.J.A.C. 7:7E-3B.3. New N.J.A.C. 7:7E-3B.3 describes the financial assurance requirements for mitigation proposals.

N.J.A.C. 7:7E-3.34 Steep slopes

The Department's rule for preservation of steep slopes is found at N.J.A.C. 7:7E-3.34. Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline and therefore not considered coastal bluffs. Steep slopes include natural swales and ravines, as well as man-made areas, such as those created through mining for sand, gravel, fill, or road grading.

At N.J.A.C. 7:7E-3.34(a), the citation for the Coastal bluffs rule is being corrected. In addition, the reference to the Resource Policy on Soil Erosion and Sedimentation, N.J.A.C. 7:7E-8.8 is being deleted since this rule no longer exists.

Currently, the steeps slope rule at N.J.A.C. 7:7E-3.34(b) provides that development on steep slopes is discouraged unless it is essential to a reasonable use of the site. Under this proposal, development on steep slopes would be discouraged where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered wildlife or vegetation species habitats or water areas are located adjacent to or at the base of the steep slope and on steep slopes which are forested. Proposed N.J.A.C. 7:7E-3.34(c) provides that development on steep slopes other than those listed above, is conditionally acceptable provided the steep slope is revegetated with native woody vegetation to the maximum extent practicable, and stabilization measures such as terracing are used. These amendments will provide greater protection where there is an environmentally sensitive feature, such as a stream or wetland, at the base of a steep slope and will allow development on steep slopes in areas where these environmentally sensitive features are not present provided appropriate stabilization measures including natural vegetation and man-made controls are utilized. Existing 7:7E-3.34(b)3 and 5 are being deleted since, once a steep slope is developed, the slope will not be consistent with the natural contour of the site. Further, as stated throughout this summary, a proposed development must be consistent with all applicable sections of this rule, thus

the reference to the Resource rules at N.J.A.C. 7:7E-8.7 and 8.8 is unnecessary. The rule rationale at existing 7:7E-3.34(c) is being recodified as (d) with no change in text.

N.J.A.C. 7:7E-3.35 Dry borrow pits

The Department's rule pertaining to dry borrow pits is codified as N.J.A.C. 7:7E-3.35. Dry borrow pits are excavations for the purpose of extracting coastal minerals which have not extended below the groundwater level. These include, but are not limited to, dry sand, gravel and clay pits, and stone quarries.

Minor wording changes for clarity are proposed to existing N.J.A.C. 7:7E-3.35(b) with no changes in meaning.

For the purposes of consistency of terminology throughout this Chapter, the term "spoil" is being replaced with "dredged material" at N.J.A.C. 7:7E-3.35(f)

Existing N.J.A.C. 7:7E-3.35(g) provides that solid waste disposal other than clean dredge spoil, and not including radioactive or carcinogenic waste is conditionally acceptable on a case-by-case basis provided specific criteria at N.J.A.C. 7:7E-3.35(g)2 through 7 are satisfied. Under this proposal, N.J.A.C. 7:7E-3.35(g) is being amended to delete the specific types of solid waste for which this paragraph does not apply since N.J.A.C. 7:7E-3.35(f) contains the acceptability criteria for dredged material disposal and the definition of solid waste at proposed N.J.A.C. 7:7E-8.22 excludes hazardous waste. Further, the acceptability conditions at N.J.A.C. 7:7E-3.35(g)2, 3, 4, 6 and 7 are proposed for deletion. These conditions are found in either the Solid Waste Management rules, N.J.A.C. 7:26 or the Recycling regulations, N.J.A.C. 7:26A. As such, a cross-reference to the Solid and hazardous waste rule at proposed N.J.A.C. 7:7E-8.22 is proposed at N.J.A.C. 7:7E-3.35(g)3 since this proposed rule requires that a coastal development comply with the above regulations.

Existing N.J.A.C. 7:7E-3.35(g)5 is proposed to be recodified as N.J.A.C. 7:7E-3.35(g)2 with minor wording changes.

Because a proposed development must comply with all applicable sections of the Coastal Zone Management rules, the Department is proposing to delete N.J.A.C. 7:7E-3.35(h)1 which provides that filling or grading is conditionally acceptable when all other applicable rules are satisfied.

N.J.A.C. 7:7E-3.36 Historic and archaeological resources

The Department rules concerning the preservation of historic and archaeological resources are codified at N.J.A.C. 7:7E-3.36. This special area includes objects, structures, shipwrecks, buildings, neighborhoods, districts, and man-made or man-modified features of the landscape and seascape, including historic and prehistoric archaeological sites, which are either on or eligible for inclusion on the New Jersey or National Register of Historic Places.

Under this proposal, N.J.A.C. 7:7E-3.36(f), which sets forth the standards for the recovery of shipwrecks, is being proposed for amendment to add a cross-reference to the Shipwrecks and artificial reef rule, N.J.A.C. 7:7E-3.13.

In addition, the rule rationale at N.J.A.C. 7:7E-3.36(i) is being amended to explain the importance of New Jersey's cultural heritage as a component of the State's coastal tourism.

N.J.A.C. 7:7E-3.37 Specimen trees

The Department's rule for protection of specimen trees is found at N.J.A.C. 7:7E-3.37. Specimen trees are the largest known individual trees of each species in New Jersey.

The existing reference to the Department's "Bureau" of Parks and Forestry at N.J.A.C. 7:7E-3.37(a) is being replaced with "Division" of Parks and Forestry, in recognition of the Department's current organization.

N.J.A.C. 7:7E-3.38 Endangered or threatened wildlife or plant species habitats

The Endangered and threatened wildlife or plant species habitat rule contains the acceptability standards for proposed development that may affect endangered or threatened species habitats. This rule defines endangered or threatened wildlife or vegetation species habitats as 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 species identified on official Federal or State lists of endangered or threatened species, or under active consideration for State or Federal listing.

In the early 1990's the Division of Fish and Wildlife's Endangered and Nongame Species Program (ENSP) began work on a strategic plan for the long-term protection of endangered and threatened species in New Jersey. During the planning process

biologists realized that the current system for protecting endangered and threatened species could be improved in terms of data collection, compilation, mapping and distribution and that this improvement would enhance the Department's ability to protect these species over the long term.

The current system focuses on protecting individual sites as they become threatened by proposed development. This protection is based on known locations of endangered and threatened species as they are recorded in the Natural Heritage Program's Biological Conservation Database (BCD) or species and habitats otherwise identified by permit applicants. Specific habitat locations identified in the database as polygons and their associated buffer are considered an endangered or threatened wildlife species habitat and thus subject to this rule. Furthermore, all proposed development areas are evaluated to determine suitability as endangered or threatened species habitat and may also be subject to this rule. The Department has determined that this site-by-site approach does not protect the large, contiguous blocks of habitat needed by many endangered and threatened species. For many endangered and threatened species, habitat fragmentation results in increased levels of predation, competition from edge species and increased disturbance. Habitat alterations and loss caused by fragmentation may eventually reduce populations to dangerously low levels and may isolate them. Either of these results can lead to population instability and local extinction, especially in less mobile species.

Since many animals require large expanses of natural habitat for their long-term viability, the Division of Fish and Wildlife's ENSP began developing the Landscape Project in 1994. The Landscape Project focuses on large areas called landscape regions, which are ecologically similar with regard to plant and animal communities. The ENSP identified and mapped habitat for endangered and threatened species within each landscape region (Piedmont Plains, Skylands, Delaware Bay, Pinelands and Atlantic Coastal). This mapping initiative described below is based on extensive databases of endangered and threatened species locations and land use/land cover data.

It is widely accepted that protected areas such as state and national parks are often not sufficient to protect viable populations of endangered and threatened species and biological diversity as a whole. Advances in the field of conservation biology and landscape ecology have recognized the need for protecting large expanses of habitat as a means of effectively conserving biological diversity in the face of rapid human

population growth and habitat fragmentation. The Landscape Project was developed to identify endangered and threatened species wildlife habitats that need protection to maintain these species populations over the long term.

The Landscape Project was developed to provide state of the art mapping of endangered and threatened wildlife species habitat in New Jersey. This mapping will assist the Department and the regulated community in identifying areas that are considered endangered and threatened wildlife species habitat as defined in the Coastal Zone Management rules at N.J.A.C. 7:7E-3.38. The Landscape Project has undergone several peer reviews and the Department believes that this approach best depicts endangered or threatened wildlife species habitat in New Jersey.

The method for delineating endangered and threatened species habitat is a multi-step process. First, the relevant classes for each habitat type (forest, grassland, forested wetland, emergent wetland and beach/dune) were extracted from a satellite derived land use/land cover data layer. This data set was produced by the Rutgers University Center for Remote Sensing and Spatial Analysis by classifying 1995 Landsat Thematic Mapper imagery using a combination of computer classification approaches. Additional GIS data were used in the classification process as either pre-classification stratification or post-classification modification. For example, US Fish and Wildlife Service National Wetland Inventory, New Jersey Department of Environmental Protection Freshwater Wetlands and Natural Resource Conservation Service county soils data were used in the wetlands classification. The final land cover map includes 40 different classes of cover/habitat types. The minimum mapping unit is approximately 0.5 acres. For more information on the Landscape Project method, and a listing of the research used in developing the method, contact the Department's Division of Fish and Wildlife through their website at www.state.nj.us/dep/fgw/ensphome. In addition, a complete paper copy of the statewide maps and a CD containing the maps have been provided to all county libraries and county clerk's offices for use by the public. A CD containing the maps showing the areas in New Jersey Identified to date as threatened or endangered wildlife species habitat can be purchased from the Department's Office of Maps and Publications at (609) 777-1038. The Department anticipates providing the maps on its website by fall of 2002.

In the next step in the mapping process, boundaries between habitat types and major roads (500 level county roads and above, since these roadways represent

significant, identifiable boundaries between habitat areas) were used to delineate contiguous patches for each habitat type.

Literature reviews were conducted for each of the listed endangered and threatened species in order to develop models that are applied to each of the species location records in the Natural Heritage Database. The models are based on the current scientific literature available for the species and consider life history characteristics such as habitat preference and home range size. Endangered or threatened species location data were then intersected with the habitat patches, using appropriate models for each species to interpret the location data. Patches that contain records of endangered or threatened species are designated as endangered or threatened species habitat. The vast majority of the species data used in the mapping were derived from the Natural Heritage Program's Database. Gaps in this information were identified and additional endangered and threatened species surveys were conducted in areas that had suitable habitat but were not previously surveyed. All endangered and threatened species location records resulting from these surveys and used in creating the Landscape Maps are in the process of being entered into the Natural Heritage Database.

The contiguous patches for each habitat type were then classified based on the conservation status of species present. The highest rank (5) was assigned to habitat patches with Federally endangered or threatened species; the rank of (4) was assigned to State endangered wildlife species; the rank of (3) was assigned to State threatened wildlife species. To be included in ranks (2) and (1) parcels were required to meet minimum size criteria. The minimum size for forest and grassland habitat types is 10 hectares (100,000 square meters or 24.71 acres) of core habitat while wetlands (emergent and forested) and beach/dune habitat types do not have a minimum size. Habitat patches not meeting the minimum size criteria were eliminated from inclusion in rank (1) and (2) areas. The rank of (2) was assigned to parcels containing occurrences (using applicable models) of non-listed State priority species (these are species of statewide or regional concern that are not currently listed). The rank of (1) was assigned to habitat patches that met the minimum size requirement. For the purposes of identifying endangered or threatened wildlife species habitat under N.J.A.C. 7:7E-3.38, habitat patches ranked as 5, 4 and 3 shall be utilized. The main difference between the current and proposed approach for defining endangered or threatened wildlife species habitat is how the occurrences and sightings are interpreted and geographically

mapped. Therefore, the actual application of this rule to specific development proposals is not expected to change in a significant way.

The Department proposes to incorporate this new method for identifying endangered or threatened wildlife species habitat into this rule. This proactive mapping approach will allow the Department to provide information on known endangered and threatened species habitat to prospective permit applicants prior to the preparation of coastal permit applications. In this way, the information can be incorporated into the required EIS or Compliance Statement for use in addressing compliance with the rule. This process will provide a greater level of predictability regarding the Department's determination of endangered and threatened species habitat for specific areas, and will reduce the level of consulting services needed to prepare the permit application, specifically habitat assessments and impact analyses. In addition, since the mapping more clearly defines the location of suitable habitats, the need to conduct costly surveys to evaluate areas that are not mapped as habitat will be significantly reduced. Currently, regulatory issues related to endangered and threatened species habitats often require lengthy exchanges of information, including survey data and habitat mapping, between permit applicants and Department staff. Through the use of Landscape Mapping, the permit application review process will be simplified and the associated review time should also be reduced. In addition, the proposed rule includes a provision to allow permit applicants to dispute the Department's mapping or to demonstrate that a proposed development will not result in an adverse impact to the endangered or threatened wildlife species habitat. A section-by-section description of the proposed changes to the Endangered or threatened wildlife or plant species habitat rule follows.

As discussed in the general summary of proposed changes, all references to the Department's "Division of Fish, Game and Wildlife" are being replaced with "Division of Fish and Wildlife" reflecting the Department's current organizational structure. In addition, the terms "fauna" and "flora" are being replaced with "wildlife" and "plant" and the term "vegetation" replaced with "plant" for simplicity.

N.J.A.C. 7:7E-3.38(a) contains the definition of this special area. Under this proposal, the definition at N.J.A.C. 7:7E-3.38(a)1 is being amended to include the Landscape Maps as a source for identifying endangered or threatened wildlife species habitat. Proposed N.J.A.C. 7:7E-3.38(a) provides that the information on the areas mapped as endangered or threatened wildlife 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 at PO Box 404, Trenton, NJ 08625-0404. Existing N.J.A.C. 7:7E-3.38(a)1 is being recodified as (a)3 and amended to clarify that the required buffer area is based upon the home range and habitat requirements of that species and the anticipated impacts of proposed development on that habitat.

N.J.A.C. 7:7E-3.38(b) prohibits development of this special area unless it is demonstrated that the proposed development would not directly or through secondary impacts on the site or in the surrounding area, adversely affect the endangered or threatened wildlife or plant species habitat. Under this proposal, the applicant would be required to demonstrate compliance with this provision by conducting an endangered or threatened wildlife or plant species impact assessment in accordance with proposed N.J.A.C. 7:7E-3C.2.

Proposed N.J.A.C. 7:7E-3.38(c) provides that applicants whose sites are mapped as endangered or threatened wildlife species habitat pursuant to the Landscape Maps can either demonstrate compliance with or inapplicability of the rule. In accordance with proposed N.J.A.C. 7:7E-3.38(c)1 the applicant can demonstrate compliance with the rule by conducting an endangered or threatened wildlife species habitat impact assessment pursuant to proposed N.J.A.C. 7:7E-3C.2 to show that the proposed development will not adversely affect the endangered or threatened wildlife or plant species habitat. Proposed N.J.A.C. 7:7E-3.38(c)2 provides the applicant with the ability to dispute the mapping of an area by conducting an endangered or threatened wildlife species habitat evaluation pursuant to proposed N.J.A.C. 7:7E-3C.3 to demonstrate that the site does not contain suitable habitat, including sufficient buffers to ensure survival of the population of the species.

Proposed N.J.A.C. 7:7E-3.38(d) addresses the situation where the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped. Should the Department determine that the habitat on the site may be suitable for that species, the applicant would then be required to either demonstrate compliance with or inapplicability of the rule in accordance with proposed N.J.A.C. 7:7E-3.38(c) described above.

Similar to proposed N.J.A.C. 7:7E-3.38(d), proposed N.J.A.C. 7:7E-3.38(e) addresses the situation where the Department becomes aware of an occurrence of an

endangered or threatened plant species on a site, which is not in the Natural Heritage Program Database. However, unlike the provisions for endangered or threatened wildlife species, the applicant would have to demonstrate compliance with the rule by conducting an endangered or threatened plant species habitat impact assessment pursuant to proposed N.J.A.C. 7:7E-3C.3 rather than dispute the occurrence of that species on the site. Since the occurrence of an endangered plant species is based on the presence of a specific species, an endangered or threatened plant species habitat evaluation is not necessary.

The Department is proposing to delete the actual State and Federal lists of endangered or threatened wildlife and vegetation species habitats at existing N.J.A.C. 7:7E-3.38(c) and (d). Instead, proposed N.J.A.C. 7:7E-3.38(f) and N.J.A.C. 7:7E-3.38(g) (existing N.J.A.C. 7:7E-3.38(e)) will reference where the most current lists are codified and where copies may be obtained. This amendment will ensure the regulated public will utilize the most current lists in the regulatory process. Further, proposed N.J.A.C. 7:7E-3.38(g) is being amended to delete the reference to the number of native species contained on the Endangered Plant Species List because the list is subject to change on a routine basis. The Division of Parks and Forestry mailing address is also being amended to reflect the current address.

Existing N.J.A.C. 7:7E-3.38(f) specifies that for sites located in the Pinelands National Reserve or Pinelands Protection Area, the plant species listed in the Pinelands Comprehensive Management Plan are also considered endangered or threatened plant species under this rule. This provision is proposed to be recodified as N.J.A.C. 7:7E-3.38(h) and reworded for clarity.

Existing N.J.A.C. 7:7E-3.38(g), which provides the location of the guidelines for habitat assessments, is being proposed for deletion. This provision is no longer necessary since proposed N.J.A.C. 7:7E-3.38(b) through (e) explain when either a habitat evaluation or impact assessment is necessary.

The rule rationale at existing N.J.A.C. 7:7E-3.38(h) is being recodified as N.J.A.C. 7:7E-3.38(i) and is being amended for clarity.

N.J.A.C. 7:7E-3.40 Public open space

The Department's rule for preservation of public open space is codified at N.J.A.C. 7:7E-3.40. Public open space includes land areas owned or maintained by

State, Federal, county and municipal agencies or private groups (such as, conservation organizations or homeowners associations) and used for or dedicated to conservation of natural resources, public recreation, visual or physical public access, or wildlife protection or management.

N.J.A.C. 7:7E-3.40(d) requires that development within existing public open space is conditionally acceptable provided it complies with the Coastal Zone Management rules and is consistent with the character and purpose of public open space as described by the park master plan when such master plans exist. N.J.A.C. 7:7E-3.40(d) is being amended to delete the requirement that development within existing open space comply with the Coastal Zone Management rules, since all coastal permit applications must comply with the applicable sections of the Coastal Zone Management rules.

N.J.A.C. 7:7E-3.41 Special hazard areas

The Department's rule protecting development within special hazard areas is codified at N.J.A.C. 7:7E-3.41. Special hazard areas include areas with a known actual or potential hazard to public health, safety, and welfare, or to public or private property. Examples of special hazard areas include, such as 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.

N.J.A.C. 7:7E-3.41(c) is being amended to change the title of the Department's "Division of Hazardous Waste Management" to "Division of Solid and Hazardous Waste" to reflect the current organization of the Department.

N.J.A.C. 7:7E-3.42 Excluded Federal lands

The Department's rule pertaining to development on Federal lands is found at N.J.A.C. 7:7E-3.42. The Federal Coastal Zone Management Act excludes from the coastal zone those lands, the use of which is solely subject to the discretion of or held in trust by the Federal Government. The Federal Coastal Zone Management Act requires that actions of Federal agencies within or outside of the coastal zone that affect any land or water use or natural resource of the coastal zone be carried out in a manner that is consistent to the maximum extent with the state's approved coastal management

program through Federal consistency determinations. Federal consistency is a method of ensuring protection of coastal resources through the coastal management policies of states and by assisting states in managing coastal uses and resources. This rule requires that Federal actions on excluded Federal lands be consistent with the Coastal Zone Management rules to the maximum extent practicable.

The definition of excluded Federal lands at N.J.A.C. 7:7E-3.42(a) is being amended to reflect the changes made to the Federal definition as part of the reauthorization of the federal Coastal Zone Management Act in 1990. Further, the reference to the list of excluded Federal lands is being recodified as N.J.A.C. 7:7E-3.42(a)1.

N.J.A.C. 7:7E-3.42(b) requires that Federal actions on excluded Federal lands that significantly affect the coastal zone be consistent with the Coastal Zone Management rules to the maximum extent practicable. In 1990, the Coastal Zone Act Reauthorization Amendments of 1990 clarified that Federal consistency applies to any Federal activity, regardless of its location, that affects any land or water use, or natural resource. In addition the term ”effect” was defined to include direct, indirect, cumulative, secondary and reasonably foreseeable effects. N.J.A.C. 7:7E-3.42(b) is being amended to reflect the Federal changes.

The rule rationale at N.J.A.C. 7:7E-3.42(c) is being amended to include an explanation of Federal consistency and the Federal consistency process.

N.J.A.C. 7:7E-3.43 Special urban areas

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. These municipalities are also known as “qualifying municipalities.” The list of municipalities throughout the State qualifying for “urban aid” under N.J.S.A. 52:27D-178 is determined each State fiscal year by the Department of Community Affairs (DCA), and may vary from year to year. Rather than include what may become an inaccurate list of municipalities, N.J.A.C. 7:7E-3.43(a) is being amended to delete the list of municipalities and simply refer to where the list may be obtained.

For clarification purposes, the title of N.J.A.C. 7:7E-8.11 is being added at N.J.A.C. 7:7E-3.43(d).

N.J.A.C. 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

The Department's rule which addresses development within the Pinelands National Reserve and Pinelands Protection Area is codified as N.J.A.C. 7:7E-3.44. This special area includes both the Pinelands National Reserve and the Pinelands Protection area. The Pinelands National Reserve includes those lands and water areas defined in the National Parks and Recreation Act of 1978, Section 502 (P.L. 95-625). The Pinelands Area is a smaller area within the Pinelands National Reserve. It was designated for State regulation by the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.)

N.J.A.C. 7:7E-3.44(b)2 is being amended to provide that copies of the Memorandum of Agreement between the Pinelands Commission and Department of Environmental Protection are available from the Department's Land Use Regulation Program.

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

The Department's rule for development in the Hackensack Meadowlands District is codified at N.J.A.C. 7:7E-3.45. The Hackensack Meadowlands District is an approximately 19,700 acre area of water, coastal wetlands and associated upland designated for management by a State-level agency known as the Hackensack Meadowlands Commission, by the Hackensack Meadowlands Reclamation and Development Act of 1968.

The incorrect cross-reference to the GAPS section of Subchapter 4 is being deleted and replaced with a reference to the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263. In addition, for the purposes of consistency in terminology throughout the Chapter, N.J.A.C. 7:7E-3.45(b) is proposed for amendment to replace the existing term "Division" with "Department." As previously stated in the general summary, the existing title of the "Hackensack Meadowlands Development Commission" is being replaced with "New Jersey Meadowlands Commission" in response to legislative amendments.

N.J.A.C. 7:7E-3.46 Wild and scenic river corridors

In September 1995, New Jersey's Wild and Scenic River System regulations, which were codified at N.J.A.C. 7:38 expired. Therefore, as part of this rule proposal, N.J.A.C. 7:7E-3.46 is being deleted and replaced with a new section to address the expiration of State wild and scenic river system regulations and to provide standards specific for different uses on these rivers. This rule is also proposed for amendment to specify what the "wild and scenic river corridor" is depending upon whether the river is designated or being studied for possible designation under the National Wild and Scenic Rivers Act. Standards that apply to all development in this special area are also being proposed. In addition, standards for the development of docks, piers and moorings, shore stabilization, linear development, communication and cellular towers, bridges, and culverts are also being proposed. The rule as proposed was developed in cooperation with the United States National Parks Service, which is the Federal agency responsible for implementing the Federal Program.

Proposed N.J.A.C. 7:7E-3.46(a) defines wild and scenic river corridors based on the National Wild and Scenic Rivers Act (16 U.S.C. 1271-1287). Wild and scenic rivers are divided into two categories, those rivers that have been designated into the national system, and those rivers or segments under study for possible designation into the national system. The National Wild and Scenic Rivers Act (Section 3(a) and Section 4(d)) provides that the Federal boundary for the river can not exceed one-quarter mile from the mean high water line, or a boundary which does not exceed 320 acres, on average, per river mile. However, Local Management Plans may establish a different boundary, which can extend beyond the Federal boundary. Currently, there are two designated wild and scenic river corridors in the coastal zone: the Great Egg Harbor River and Maurice River.

Proposed N.J.A.C. 7:7E-3.46(b) sets forth the standards for development within this special area. The primary purpose of the National Wild and Scenic Rivers Act is to protect the free flowing character and the "outstandingly remarkable resource value(s)," of the wild and scenic river**;** that is, those extraordinary scenic, recreational, cultural or historical**,** and fish and wildlife attributes that distinguish a river from others. Further, the National Wild and Scenic Rivers Act requires that these resources be preserved and protected for the benefit and enjoyment of future generations. To qualify for protection under the National Wild and Scenic Rivers Act, the rivers must not only be free-flowing,

but also relatively undeveloped and possess one or more "outstandingly remarkable resource values" listed above. To be eligible for inclusion in the National Wild and Scenic Rivers System, a finding that the river corridor possesses at least one outstandingly remarkable resource value is required pursuant to the National Wild and Scenic Rivers Act. Proposed N.J.A.C. 7:7E-3.46(b) prohibits development that would have a direct and adverse effect on any "outstandingly remarkable resource value" of the river, except for linear developments which are in the public interest and comply with the standards proposed at N.J.A.C. 7:7E-3.46(e). Development must also comply with the standards set forth in the Federal River Management Plan if a plan exists.

Since the rivers subject to this rule are distinguished from other rivers by their "outstandingly remarkable resource value(s)," additional standards for specific types of development including docks and piers, shoreline stabilization, linear development, cellular towers, bridges and culverts, are necessary. These additional standards found at proposed N.J.A.C. 7:7E-3.46(c) through (h) will help assure that these resources will be preserved and protected for the benefit and enjoyment of future generations.

Proposed N.J.A.C. 7:7E-3.46(c) sets forth the standards for the development of docks, piers and moorings in New Jersey's wild and scenic river corridors. Proposed N.J.A.C. 7:7E-3.46(c)1 sets forth the length requirements for docks and piers on the Great Egg Harbor and Maurice Rivers and their tributaries based on both a depth criterion and a percentage of each river's width where the dock is proposed. The channels in both rivers and their tributaries can change location from year to year. Thus a standard based solely on distance from the channel at the time of application for a permit is insufficient to maintain uses of the river such as kayaking, canoeing and seine fishing. In order to ensure that docks are not constructed at a length which would adversely affect these uses, while still providing for dock construction, the standard at proposed N.J.A.C. 7:7E-3.46(c)1 limits dock length to 20% of the river width or to a depth of two feet at mean high water, whichever is less. Proposed N.J.A.C. 7:7E-3.46(c)2 and 3 provide setback distances for the proposed docks from the main channel, a 75 feet setback from the edge of a navigation channel on the Maurice and Great Egg Harbor Rivers and a 25 feet setback on their tributaries. These setbacks were established based on the width of the rivers and their tributaries and the need to ensure that docks are constructed in a manner that maintains adequate areas outside of the channel for use by kayaks and canoes.

In an effort to maintain these river corridors in a natural state to the maximum extent practicable, proposed N.J.A.C. 7:7E-3.46(d) encourages the use of biostabilization measures, such as live cuttings and earth buttresses, for shoreline stabilization. Chapter 16 "Streambank and Shoreline Protection" of the Natural Resources Conservation Service Engineering Field Handbook, National Engineering Handbook (NEH) Part 650, 1996 is available on the web at www.NTIS.gov for a fee. This document describes the methods for installing vegetative plantings, soil bioengineering and structural systems as a means of restoring and protecting banks of streams, lakes, rivers estuaries and channels against scour and erosion. It should be noted that a coastal general permit is available for the stabilization of eroded shorelines using biostabilization measures (see N.J.A.C. 7:7-7.21).

Proposed N.J.A.C. 7:7E-3.46(e) requires that linear developments such as roads, railroads, sewage pipelines, telephone or other transmission lines, be located within the right-of-way of an existing linear development route or outside the wild and scenic river corridor where feasible. For linear developments which are in the public interest only, if an alternatives analysis demonstrates that the linear development can not be located in the above areas, the development must be designed to minimize the adverse effects on the "outstandingly remarkable resource value(s)" of the rivers.

Due to the obtrusiveness of cellular towers on the natural landscape and scenic qualities of the river corridor, proposed N.J.A.C. 7:7E-3.46(f) prohibits the construction of cellular towers within wild and scenic river corridors.

Proposed N.J.A.C. 7:7E-3.46(g) sets forth the standards for the construction of bridges in this special area. Since bridges are a prominent fixture in the landscape and have the potential to significantly impact the scenic values of the river, standards are proposed to minimize this impact while maintaining access to the water by both motorized and non-motorized watercraft where appropriate. These standards address the design of the bridges in terms of vertical clearance, placement of structures in the water, orientation of the bridges relative to the shoreline and scenic attributes.

The construction of culverts may have an impact on the natural water flow of the river and its fisheries and therefore needs specific standards to ensure these resources are protected and maintained. Proposed N.J.A.C. 7:7E-3.46(h) sets forth the standards for construction of culverts in these special areas requiring, among other things, that structures utilized provide a natural streambed and that the width and volume of the

water body be maintained. It is further required that the culvert be constructed in a manner that minimizes disruption of the water body through construction of the culvert at a 90 degree angle to the shoreline and impacts to the fishery resources.

The rule rationale at proposed N.J.A.C. 7:7E-3.46(i) explains the basis for this special area rule.

N.J.A.C. 7:7E-3.48 Hudson River Waterfront Area

This rule contains the standards for development within this special area. N.J.A.C. 7:7E-3.48(d) provides that consultation is encouraged for proposed development on platforms (piers) which do not adhere to the standards of this section, as this form of development is a unique form of development. This concept of encouraging early consultation for developments which vary in detail from the standards of this rule is proposed to be expanded to all such applications and recodified to N.J.A.C. 7:7E-3.48(f), which provides the standards for such variations.

Subchapter 3A Standards for Beach and Dune Activities

Subchapter 3A contains the standards for Beach and Dune Activities. The rules which comprise this subchapter include: N.J.A.C. 7:7E-3A.1, Standards applicable to routine beach maintenance; N.J.A.C. 7:7E-3A.2, Standards applicable to emergency post-storm beach restoration; N.J.A.C. 7:7E-3A.3, Standards applicable to dune creation and maintenance; and N.J.A.C. 7:7E-3A.4, Standards applicable to the construction of boardwalks. The rules at N.J.A.C. 7:7E-3A.1 through N.J.A.C. 7:7E-3A.4 are also the standards for the coastal general permit for beach and dune maintenance. Under this proposal, a new subsection, N.J.A.C. 7:7E-3A.1, Purpose and scope, is proposed. Therefore, citations for existing N.J.A.C. 7:7E-3A.1, N.J.A.C. 7:7E-3A.2, N.J.A.C. 7:7E-3A.3 and N.J.A.C. 7:7E-3A.4 are being recodified as N.J.A.C. 7:7E-3A.2, N.J.A.C. 7:7E-3A.3, N.J.A.C. 7:7E-3A.4, and N.J.A.C. 7:7E-3A.5, respectively. Amendments are being proposed to N.J.A.C. 7:7E-3A.3, Standards applicable to dune creation and maintenance as described below.

N.J.A.C. 7:7E-3A.1 Purpose and scope

For consistency with the chapter, proposed N.J.A.C. 7:7E-3A.1 contains the purpose and scope of this subchapter. Proposed N.J.A.C. 7:7E-3A.1(a) provides a "road map" to this subchapter.

N.J.A.C. 7:7E-3A.3 Standards applicable to dune creation and restoration

The Department's standards for dune creation and maintenance activities are codified as N.J.A.C. 7:7E-3A.3. Dune creation and maintenance includes the placement and/or repair of sand fencing (including wooden support posts), 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. Bulldozing, excavation, grading, vegetation removal or clearing, and relocation of existing dunes are not authorized pursuant to this section.

The Department is proposing to recodify N.J.A.C. 7:7E-3A.3 to N.J.A.C. 7:7E-3A.4 and amend existing N.J.A.C. 7:7E-3A.3(d) to correct an existing reference to the Land Use Regulation Program mailing address.

SUBCHAPTER 3B. INFORMATION REQUIRED IN WETLAND AND INTERTIDAL AND SUBTIDAL SHALLOWS MITIGATION PROPOSALS

Subchapter 3B contains the requirements for mitigation proposals submitted to the Department. N.J.A.C. 7:7E-3B currently contains information requirements for wetland mitigation proposals. In order to make the Coastal Zone Management rules easier to use, the Department is proposing to consolidate information requirements for all mitigation projects both in wetlands and intertidal and subtidal shallows into Subchapter 3B.

As proposed, Subchapter 3B lists in one subchapter the information necessary to allow the Department to determine that the proposed project is appropriate in scope and design, that the project will be constructed properly and that post construction/planting monitoring will occur to assure the mitigation project is successful.

Further, in order to more accurately reflect the contents of the subchapter, reference to intertidal and subtidal shallows is added to the subchapter title.

N.J.A.C. 7:7E-3B.1 Purpose and scope

The existing mitigation requirements currently codified at N.J.A.C. 7:7E-3B.1 are being proposed for recodification to N.J.A.C. 7:7E-3B.2. New N.J.A.C. 7:7E-3B.1, Purpose and scope, provides that this section contains the standards for mitigation proposals required for intertidal and subtidal shallows, and wetlands in accordance with N.J.A.C. 7:7E-3.15 and N.J.A.C. 7:7E-3.27.

Proposed N.J.A.C. 7:7E-3B.1(a)1 and 2 list the rules applicable to mitigation for loss of tidal wetlands, intertidal and subtidal shallows and freshwater wetlands.

N.J.A.C. 7:7E-3B.2 Tidal Wetland and intertidal and subtidal shallows mitigation proposal requirements

Proposed N.J.A.C. 7:7E-3B.2 contains the information requirements for tidal wetland and intertidal and subtidal shallows mitigation projects which is currently codified at N.J.A.C. 7:7E-3B.1 with amendments as described below.

Proposed N.J.A.C. 7:7E-3B.2(a) (existing N.J.A.C. 7:7E-3B.1(a)) sets forth the items to be included in a mitigation proposal subject to Subchapter 3B. Proposed N.J.A.C. 7:7E-3B.2(a)1 (existing N.J.A.C. 7:7E-3B.1(a)) describes the information required for the introduction, and is being amended to address intertidal and subtidal shallows mitigation. The requirements proposed at N.J.A.C. 7:7E-3B.2(a)1i through v provide specific information necessary for the Department to evaluate the proposed mitigation proposal and determine that the proposed mitigation will offset the regulated disturbance by replacing the lost wetland values and functions, or will result in the creation of an intertidal and subtidal shallows. This information includes a USGS quad map showing the location of the permitted activity and showing the mitigation site with the New Jersey State Plane Coordinates of the mitigation site. Chapter 218, Laws of New Jersey 1989, requires all mapping in New Jersey to use New Jersey State Plane Coordinates in meters (or feet) in North American Datum 83. State plane coordinates provide the geographic location of any physical feature of the State, similar in concept to that of degrees Latitude or Longitude. By requiring the center point coordinates of a site, or coordinates every 1000 feet for linear developments over 2000 feet in length, the Department will be able to accurately identify the mitigation site using the Geographic Information System (GIS).

Proposed N.J.A.C. 7:7E-3B.2(a)2 (currently codified as N.J.A.C. 7:7E-3B.1(a)2) requires as part of the mitigation proposal**,** a description of the wetlands or intertidal and

subtidal shallows that are being destroyed or disturbed by the permitted activity. In addition to expansion of the existing provision to be applicable to mitigation projects for intertidal and subtidal shallows, it is proposed that the requirement be expanded to include a provision for information on wildlife use. Proposed N.J.A.C. 7:7E-3B.2(a)3 (existing N.J.A.C. 7:7E-3B.1(a)3) is proposed to be further refined to require that the photographs of the proposed mitigation site show the topography, vegetation, tidal streams and wetland features, as appropriate. The detailed information on the existing functions of the wetland system or intertidal and subtidal shallows required at proposed N.J.A.C. 7:7E-3B.2(a)2 and 3 is necessary to assure that the functions and values of these special areas are being replaced.

Proposed N.J.A.C. 7:7E-3B.2 (a)4 (existing N.J.A.C. 7:7E-3B.1(a)4) is being amended to clarify that the names and addresses of all current and proposed owner(s) of the mitigation site are required.

Proposed N.J.A.C. 7:7E-3B.2(a)5 requires that the lot, block, municipality and county of the proposed mitigation site be provided. This information must also be visible on the front page of the proposal and on the site plan required at N.J.A.C. 7:7E-3B.2(a)13.

The description of the existing ecosystem of the mitigation site, required at existing N.J.A.C. 7:7E-3B.1(a)5, is being recodified as N.J.A.C. 7:7E-3B.2(a)6 and will apply to both wetland and intertidal and subtidal shallows mitigation, with no changes in meaning.

Existing N.J.A.C. 7:7E-3B.1(a) 6 and 7 which require a discussion of the proposed mitigation site's hydrology, are being combined as proposed N.J.A.C. 7:7E-3B.2(a)7 and reworded for clarity. Proposed N.J.A.C. 7:7E-3B.1(a)7 requires that a projected water budget for the proposed mitigation site be submitted as part of the mitigation proposal. For wetland creation, restoration or enhancement, a water budget is necessary to ensure that the proposed wetland will possess wetland hydrology. Further, the proposed water budget should demonstrate that enough water will be present to sustain the proposed wetland hydrology. For intertidal and subtidal shallows, the water budget must demonstrate that the project will have a sustained tidal inundation. Necessary components of the water budget are proposed to continue to include the seasonal high water table, tidal range information, elevation information and salinity

information necessary to assure the proposed project provides appropriate, equivalent value mitigation.

Proposed N.J.A.C. 7:7E-3B.2(a)8 (existing 7:7E-3B.1(a)8) requires that information be submitted regarding the substrate of the proposed mitigation site. This information would only be required for wetland creation, restoration or enhancement since these types of wetland mitigation include the establishment or reestablishment of a vegetative community. This requirement is not necessary for intertidal and subtidal shallow mitigation because this type of mitigation does not require the establishment or reestablishment of a vegetative community. The requirement at existing N.J.A.C. 7:7E-3B.1(a)8 that the existing soil types, with soil borings, be provided to document seasonal high water tables is being deleted since this information is already required as part of the water budget at proposed N.J.A.C. 7:7E-3B.2(a)7. In addition to the detailed discussion on the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, a demonstration that the soil texture is appropriate for the proposed community is also required. This information is essential for determining the survivability of the targeted plant community.

Proposed N.J.A.C. 7:7E-3B.2(a)9 describes the required landscape plans for wetland creation, restoration or enhancement mitigation projects. The requirement that a planting scheme of the proposed vegetative community be depicted on the mitigation plan at existing N.J.A.C. 7:7E-3B.1(a)9 is being replaced with a requirement that a landscape plan be provided. The landscape plan must depict the vegetative community of the proposed mitigation site, including the transition area as described at N.J.A.C. 7:7E-3.28. Proposed N.J.A.C. 7:7E-3B.2(a)9i through vi contain additional information that must be shown on the landscape plan.

Proposed N.J.A.C. 7:7E-3B.2(a)10 requires that a preventative maintenance plan be provided for wetland creation, restoration or enhancement mitigation projects. This plan must detail how invasive or noxious vegetation will be controlled and how predation of the mitigation plantings will be prevented. The information required at proposed N.J.A.C. 7:7E-3B.2(a)9 and 10 is necessary to assess the ability of the proposed vegetative community to replace the lost community. The requirement that certain information be depicted on plans will assist the Department in monitoring the project after construction.

Proposed N.J.A.C. 7:7E-3B.2(a)11 (existing N.J.A.C. 7:7E-3B.1(a)10) requires that a draft conservation restriction be submitted as part of the mitigation proposal. This paragraph is being amended to delete the requirement that the mitigator submit proof that the conservation restriction was filed with the appropriate agency. This requirement is being proposed for recodification at N.J.A.C. 7:7E-3B.4(c) since it is more appropriately located in the rules concerning Department review and approval of the mitigation proposal. In addition, notice of the availability of a model conservation restriction from the Land Use Regulation Program is being added.

Minor wording changes are proposed to existing N.J.A.C. 7:7E-3B.1(a)11 (proposed N.J.A.C. 7:7E-3B.2(a)12) concerning the required metes and bounds description. A metes and bounds description is required for both wetland and intertidal and subtidal shallows mitigation. The metes and bounds description for wetlands mitigation projects must also include the wetlands buffer area.

Existing N.J.A.C. 7:7E-3B.1(a)12, which requires the mitigation proposal include the New Jersey Wetlands/Tidelands Map numbers for the development and mitigation sites; the development and mitigation site block and lot numbers; and the ownership of the mitigation site, is being recodified for clarity. The New Jersey Wetlands/Tidelands map requirement is being recodified as N.J.A.C. 3B.2(a)1v, while the block, lot and ownership information is being recodified as N.J.A.C. 7:7E-3B.2(a)5.

The requirement that a mitigation proposal include a cost estimate for constructing the mitigation site is proposed at N.J.A.C. 7:7E-3B.2(a)13 (existing N.J.A.C. 7:7E-3B.1(a)13). This section is being amended to further detail the associated costs that must be factored into the total cost estimate, including environmental consultant fees, attorney fees, and construction costs, supervising construction fees and monitoring costs.

Proposed N.J.A.C. 7:7E-3B.2(a)14 (existing N.J.A.C. 7:7E-3B.1(a)14) contains the requirements for the site plan of the proposed mitigation site. Existing N.J.A.C. 7:7E-3B.1(a)14i and ii are being consolidated into N.J.A.C. 7:7E-3B.2(a)14i.

Existing N.J.A.C. 7:7E- 3B.1(a)14iii (proposed N.J.A.C. 7:7E-3B.2(a)14ii) is proposed for amendment to require off-site elevations where the proposed mitigation site includes slopes greater than 15 percent, since the rules at N.J.A.C. 7:7E-3.34, Steep slopes, define steep slopes as land areas with slopes greater than 15 percent. Off-site elevations are required in certain cases to ensure the proposed mitigation site will not

have an adverse impact on the stability of the adjacent properties. In addition, this section has been amended to require that all existing and proposed elevations and grades be shown in at least one-foot intervals. For wetland, creation, restoration or enhancement only, a maximum slope of 10 vertical to one horizontal (10:1) is also proposed for buffer areas, any berms that are intended to function as water control structures, and berms created along streams. A maximum slope is being proposed since it has been the Department's experience with past mitigation projects that slopes greater than 10:1 do not provide the functions of a buffer. In addition, the Department has experienced problems with muskrats borrowing into berms with slopes greater than 10 vertical to one horizontal.

Existing N.J.A.C. 7:7E-3B.1(a)14iv (proposed N.J.A.C. 7:7E-3B.2(a)14iii) is proposed for amendment to require pre- and post- construction plan views of the mitigation site to assist the Department in evaluating the changes which will result from the construction of the mitigation site and determining the amount of earthwork (i.e. grading or excavation) that will occur. Proposed N.J.A.C. 7:7E-3B.2(a)14iv requires that for wetland creation, restoration or enhancement only, the buffer area must be depicted on the site plan.

It has been the Department's experience with past mitigation proposals that the mitigation site plan is referenced in construction contracts and is used in the field during construction of the mitigation project. Accordingly, proposed N.J.A.C. 7:7E- 3B.2(a)14v requires that the site plan contain a detail or statement indicating the soil amendments and seed stabilization mix if any is to be used on the mitigation site. This provision is intended to make the contractor aware of all construction requirements.

Existing N.J.A.C. 7:7E-3B.1(a)15 which requires that a copy of the USGS 7.5 minute quadrangle map showing the property and its general vicinity and proposed mitigation site and boundaries, is proposed for deletion. This requirement is being recodified as N.J.A.C. 7:7E-3B.2(a)1iv since it is background information and thus more appropriately included in the introductory information.

Proposed N.J.A.C. 7:7E-3B.2(a)15 provides that a construction schedule including projected dates of excavation, planting and fertilizing as appropriate to the type of mitigation, be submitted as part of the proposal. This schedule will assist Department staff in coordinating site inspections of the proposed mitigation site.

Proposed N.J.A.C. 7:7E-3B.2(a)16 requires certification that the proposed mitigation will not adversely affect properties that are listed or eligible for listing on the National Register of Historic Places. If before or during construction a historic property that has not been listed but may be eligible for listing is encountered, the Department must be notified to ensure the appropriate actions are undertaken. This requirement is intended to reduce possible delays in construction, which could occur if an object of historic significance is discovered through inspection and provide guidance should a potential historic or archaeological site be encountered.

Existing N.J.A.C. 7:7E- 3B.1(a)16 describes the financial assurance requirements for mitigation proposals. Because a new subsection containing the specific requirements for financial assurances is being proposed at N.J.A.C. 7:7E-3B.3, the specific amounts of financial assurance are being deleted and incorporated into N.J.A.C. 7:7E-3B.3. Accordingly, proposed N.J.A.C. 7:7E-3B.2(a)17 provides that a financial assurance which meets the requirements of N.J.A.C. 7:7E-3B.3 must be submitted as part of the mitigation proposal.

Proposed N.J.A.C. 7:7E-3B.2(a)18 requires that the mitigation proposal include any additional information necessary for the Department to review an individual mitigation project. This will allow the Department to tailor information requirements to the peculiar aspects of the particular project rather than require that all proposals include information that, in the majority of cases, is unnecessary.

N.J.A.C. 7:7E-3B.3 Financial Assurance Requirements

Proposed N.J.A.C. 7:7E-3B.3 contains the requirements for the acceptable financial assurance. Except as specified below, these requirements are similar to those currently codified at N.J.A.C. 7:7E-3B.1(a)16. A financial assurance is required prior to the approval of a mitigation proposal by the Department. Exceptions are provided for governmental agencies and entities that are exempt from this requirement under Federal Law. For example, a portion of a mitigation area may be subject to cleanup under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) or “Superfund”). In such case, CERCLA requires its own financial assurance, and precludes the Department from requiring any additional financial assurance. Therefore, under proposed N.J.A.C. 7:7E-3B.3(a), the mitigator would not be required to provide additional financial assurance in this instance.

Proposed N.J.A.C. 7:7E-3B.3(a)1 requires that the financial assurance be obtained from a firm licensed to do business in New Jersey**,** thus ensuring that they are qualified to provide financial assurance in New Jersey.

Proposed N.J.A.C. 7:7E-3B.3(b) sets forth the amount of the financial assurance. A construction assurance is required for both wetlands and intertidal and subtidal shallows mitigation projects. The construction assurance is the same amount as currently codified at N.J.A.C. 7:7E-3B.1(a)16**;** 115 percent of the estimated cost of completing the mitigation. For wetland creation, restoration or enhancement, it is proposed that a maintenance assurance continue to be required. Currently, the maintenance assurance is equal to 30 percent of the estimated cost of completing the required mitigation (see existing N.J.A.C. 7:7E-3B.1(a)16). Under this proposal, the maintenance assurance would be increased to 115 percent of the estimated cost of maintaining and monitoring the mitigation project**.** This amendment is proposed because experience has demonstrated that the cost of maintenance can be as high or higher than the cost of constructing the site making the 30 percent of estimated cost of completion inadequate in many cases to assure that maintenance will occur. A maintenance assurance is not required for intertidal and subtidal shallow mitigation since there is no vegetative community to maintain.

Proposed N.J.A.C. 7:7E-3B.3(c) (currently codified as part of N.J.A.C. 7:7E-3B.1(a)16) requires that the financial assurance be updated annually to reflect changing economic conditions.

Proposed N.J.A.C. 7:7E-3B.3(d) and (e) provide for the release of the financial assurance once certain milestones are met. In accordance with N.J.A.C. 7:7E-3B.3(d), the construction assurance pursuant to N.J.A.C. 7:7E-3B.3(b)1 will be released when the Department finds that the construction and planting phase of the mitigation project has been successfully completed. In accordance with N.J.A.C. 7:7E-3B.3(e), the maintenance assurance will be released when the Department finds that the mitigation project is successful in accordance with N.J.A.C. 7:7E-3B.4.

N.J.A.C. 7:7E-3B.4 Department Review of Mitigation Proposal and Monitoring Requirements

Proposed N.J.A.C. 7:7E-3B.4 sets forth the Department's procedure for reviewing mitigation proposals. In accordance with proposed N.J.A.C. 7:7E-3B.4(a), the

Department will, within 60 days of receipt of a mitigation proposal, either request additional information or declare the mitigation proposal complete. During this 60-day time period, Land Use Regulation Program staff may consult with other governmental agencies such as the Department's Division of Fish and Wildlife, State Historic Preservation Office, Site Remediation Program and the U.S. Fish and Wildlife Service to determine the suitability of the proposed mitigation site and design.

Proposed N.J.A.C. 7:7E-3B.4(b) provides that the Department will only approve mitigation proposals which meet all applicable provisions of Subchapter 3B.

Proposed N.J.A.C. 7:7E-3B.4(c) requires that once the Department approves the mitigation plan and prior to construction, the mitigator must submit proof that the conservation restriction required at N.J.A.C. 7:7E-3B.2(a)11 has been recorded with the County Clerk or Registrar of Deeds and Mortgages, as appropriate. This requirement will ensure that the mitigation site will be protected and preserved in perpetuity.

N.J.A.C. 7:7E-3B.5 Post-construction monitoring of the mitigation site

Proposed N.J.A.C. 7:7E-3B.5(a) sets forth the post-construction monitoring requirements for mitigation projects. Proposed N.J.A.C. 7:7E-3B.5(a)1 sets forth the post-construction monitoring requirements for tidal wetland mitigation sites while proposed N.J.A.C. 7:7E-3B.5(a)2 sets forth the post-construction monitoring requirements for intertidal and subtidal shallow mitigation sites.

Proposed N.J.A.C. 7:7E-3B.5(a)1 requires that tidal wetland mitigation sites demonstrate compliance with each full growing post-construction monitoring season specified at (b)1, 2 and 3. Post-construction monitoring of the mitigation site shall begin after completion of construction/planting. A full growing post-construction monitoring season is, in general, the period from April through the beginning of October. The Department will determine the appropriate post-construction monitoring season for a given mitigation site based on its location in the State.

Proposed N.J.A.C. 7:7E-3B.5(a)2 requires that intertidal and subtidal shallows mitigation sites demonstrate compliance with the post-construction monitoring standards at N.J.A.C. 7:7E-3B.5(c) for a lunar month after construction of the mitigation project is completed. A lunar month is the period between two successive full moons. The post-construction monitoring requirements over this period of time will provide the Department with assurance that the project is successful. These mitigation sites do not require the

post-construction monitoring period applicable to wetland mitigation because the mitigation required for intertidal and subtidal shallows consists of grading a site to ensure that it is permanently or twice daily submerged from the spring high tide to a depth of four feet below mean low water; whereas for wetland mitigation sites, a vegetative community with appropriate hydrology must be established and maintained.

The post-construction monitoring requirements for wetland mitigation projects are found at proposed N.J.A.C. 7:7E-3B.5(b), while the post-construction monitoring requirements for intertidal and subtidal shallows mitigation projects are found at N.J.A.C. 7:7E-3B.5(c). By providing clear predictable performance standards, the Department anticipates an increase in the timely success of mitigation projects.

As discussed previously, wetland mitigation projects must comply with specific standards. If any of the performance standards at proposed N.J.A.C. 7:7E-3B.5(b) for a given post-construction monitoring season were not satisfied, then that post-construction monitoring season must be repeated until all of the performance standards are met. Failure to meet the applicable standards for a given post-construction monitoring season will result in a remedial action. The Department, after consultation with the mitigator, will determine the remedial actions necessary to correct the unsatisfactory condition. Remedies may include, but will not be limited to, re-grading, replanting or relocation of the mitigation site. Similarly, an intertidal and subtidal shallows mitigation project must comply with the performance standards at proposed N.J.A.C. 7:7E-3B.5(c) for a lunar month. If either of the standards at proposed (**c**) are not satisfied, then the monitoring must be repeated in the following lunar month(s) until all of the standards are satisfied. Again, failure to meet the applicable standards for a given post-construction monitoring season will result in a remedial action. The Department, after consultation with the mitigator, will determine the remedial actions necessary to correct the unsatisfactory condition. Remedies may include, but will not be limited to re-grading of the site.

Proposed N.J.A.C. 7:7E-3B.5(b) describes the performance standards for the initial monitoring period for wetland mitigation projects. These standards are designed to demonstrate that wetland conditions are being achieved. The overall success of a wetland mitigation site is dependent upon the substrate, grading and water regime of the mitigation site. Proposed N.J.A.C. 7:7E-3B.5(b)1i requires that the monitoring report contain documentation demonstrating the appropriate soil substrate was used. Since the texture and depth of the substrate will vary depending upon the proposed vegetative

community, it is essential that the Department confirm that the approved substrate was used. As-built plans demonstrating that the site was graded and planted in accordance with the approved plan are required at proposed N.J.A.C. 7:7E-3B.5(b)1ii, thereby ensuring that the approved elevations are present on site. Proposed N.J.A.C. 7:7E-3B.5(b)1iii requires documentation based on the approved water budget that the site is a wetland. Without sufficient tidal flow, the proposed plant community is prone to failure. The rule provides for deviation from the approved water budget as necessary to provide sufficient tidal flow to ensure success of the wetlands community. Documentation is also required at proposed N.J.A.C. 7:7E-3B.5(b)1iv, demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved plan has been achieved. Wetland plants have varying growth rates as well as above-ground biomass which results in different coverage requirements depending on the target vegetative community. Accordingly, the coverage requirements will be determined on a case-by-case basis.

Once all the standards of proposed N.J.A.C. 7:7E-3B.5(b)1 have been satisfied for a full growing post-construction monitoring season, the next phase of the monitoring can begin. The standards for the second post-construction monitoring season are found at proposed N.J.A.C. 7:7E-3B.5(b)2. Similar to proposed N.J.A.C. 7:7E-3B.5(b)1iii, proposed N.J.A.C. 7:7E-3B.5(b)2i requires documentation based on the approved water budget, that the site continues to be a wetland. This will ensure that the approved water budget continues to be present on the mitigation site, thus ensuring that the plant community continues to thrive. For example, for a site whose hydrology is controlled by a ditch, the mitigator would have to demonstrate that the ditch is still functioning as predicted. Hydrology is the key to the success of a wetland community. With too much or too little water, the final wetland system could vary greatly from that which was approved and thus potentially result in a wetland system that does not adequately compensate for the permitted wetland loss. Proposed N.J.A.C. 7:7E-3B.5(b)2ii requires documentation demonstrating that the approved percent coverages of the planted vegetation and targeted hydrophytes have been achieved.

Once the first and second season post-construction monitoring season requirements at proposed N.J.A.C. 7:7E-3B.5(b)1 and 2 have been satisfied, the last post-construction monitoring season can begin. The standards for the final post-construction monitoring season are found at N.J.A.C. 7:7E-3B.5(b)3. This post-

construction monitoring season will demonstrate whether the wetland impacts have been compensated for at the mitigation site and a sustainable "replacement" wetland has been created, restored or enhanced. Documentation demonstrating that the goals of the wetland mitigation project have been achieved is required at N.J.A.C. 7:7E-3B.5(b)3i. This standard will ensure that the wetland acreage required as a condition of the permit as well as the wetland type have been compensated for on the mitigation site. The Department has an overall goal of a net increase in the wetland acreage and function. In order to achieve this goal, permitted wetland impacts need to be compensated for not only on an acreage basis but also on a functional basis. Accordingly, to make this assessment, information on the extent of wetlands on the site and the type of wetlands vegetation is required in accordance with N.J.A.C. 7:7E-3B.5(b)3ii through v. Proposed N.J.A.C. 7:7E-3B.5(b)3iv requires a field delineation of the wetlands at the wetlands mitigation project site, based on the techniques specified in the Manual for Identifying and Delineating Jurisdictional Wetlands (1989). This manual is available from the Department's Office of Maps and Publications at (609)-777-1038 for a fee. This manual provides the technical criteria, field indicators and other sources of information, and recommended methods for identifying and delineating wetlands.

Proposed N.J.A.C. 7:7E-3B.5(c) sets forth the post-construction monitoring requirements for intertidal and subtidal shallow mitigation projects. To demonstrate that intertidal and subtidal shallows have been created, the mitigator must demonstrate that the mitigation site is permanently or twice daily submerged from the spring high tide line to four feet below mean low water for a lunar month. Proposed N.J.A.C. 7:7E-3B.5(c)1 and 2 set forth the information necessary to demonstrate that an intertidal or subtidal shallow has been achieved. If the post-construction monitoring demonstrates that either N.J.A.C. 7:7E-3B.5(c) 1 or 2 is not satisfied during the required post-construction monitoring period, then remedial action must be accomplished and the monitoring must be repeated for the following lunar month(s) until both N.J.A.C. 7:7E-3B.5 (c)1 and (2) are satisfied.

Proposed N.J.A.C. 7:7E-3B.5(d) sets forth the information required for all post-construction monitoring reports. Proposed 7:7E-3B.5(d)1 through 4 requires general information including maps showing the location of the mitigation site, a copy of the permit requiring the mitigation site, a brief description of the mitigation project and photographs of the mitigation site.

Monitoring reports for wetland creation, restoration or enhancement must include an assessment of the planted vegetation and the species that are naturally colonizing the site, in accordance with proposed N.J.A.C. 7:7E-3B.5(d)5. This assessment will determine whether the mitigation project is maturing into the community that was envisioned for the site. In addition, the assessment highlights any significant changes in the complexion of the plant community which may require modification of the design. For example, if the goals of the mitigation site were to establish a low marsh complex predominantly vegetated with *Spartina alterniflora,* and *Baccharis halimifloia* occupies the greatest percentage of the site, then that may indicate that the elevations of the site need to be lowered.

In accordance with proposed N.J.A.C. 7:7E-3B.5(d)6, documentation demonstrating that the site is a wetland or intertidal subtidal shallow based on the approved water budget must also be included in the report. The assessment of he hydrology is of significant importance in determining if the project has been successful as compensation for a wetland or open water impact. This information will assist the Department in evaluating the long-term viability of the wetland or open water system established on the site. Without this information the Department can not make an accurate assessment of the likelihood that the site is becoming and will remain in the future, a wetland or intertidal and subtidal shallow. Proposed N.J.A.C. 7:7E-3B.5(d)7 requires documentation demonstrating that the goals of the mitigation are satisfied. An assessment of the site**,** including information on vegetation and hydrology **c**ompiled during on site inspections, is necessary to determine if the stated goals of the mitigation proposal at proposed N.J.A.C. 7:7E-3B.2(a)1ii are being achieved.

A narrative evaluating the success/failure of the mitigation project is required at proposed N.J.A.C. 7:7E-3B.5(d)8. An assessment of the success/failure of the site will aid the Department in determining which mitigation sites are obtaining the functions and characteristics of the wetland or intertidal and subtidal shallows and identify those sites that need immediate attention. Should it be determined that a given post-construction monitoring period is a failure in accordance with N.J.A.C. 7:7E-3B.5(b) and/or (c), proposed N.J.A.C. 7:7E-3B.5(d)9 requires a discussion of the actions that will be taken to permanently rectify the situation. As stated previously, failure to meet the standards of a given post-construction monitoring season will result in remedial action. The Department will consult with the mitigator to obtain input on the remediation options in

order for the Department to determine the necessary remedial action. After the remedial action has occurred, that post-construction monitoring period must be repeated.

SUBCHAPTER 3C STANDARDS FOR CONDUCTING AND REPORTING THE RESULTS OF 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

Existing N.J.A.C. 7:7E-3C, Assessing Impacts to Endangered and Threatened Wildlife Species in Environmental Impact Assessments, is being proposed for deletion. This subchapter was intended to be used for applicants that were required to conduct a habitat assessment of the endangered or threatened species on site. The rule however, did not provide standards for when such an assessment would be required. Under this proposal, the Department is proposing to rename this subchapter "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" to more accurately reflect the contents of the subchapter.

N.J.A.C. 7:7E-3C.1 Purpose and Scope

Proposed N.J.A.C. 7:7E-3C.1 contains the purpose and scope of this subchapter and provides a roadmap to N.J.A.C. 7:7E-3C.2, 3C.3 and 3C.4.

N.J.A.C. 7:7E-3C.2 Standards for conducting endangered or threatened wildlife or plant species habitat impact assessments

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.

Proposed N.J.A.C. 7:7E-3C.2(a) describes the purpose of the impact assessment for endangered or threatened wildlife species. The impact assessment would be used by applicants to demonstrate compliance with N.J.A.C. 7:7E-3.38(b). In order to demonstrate compliance, the applicant will be required to provide information that demonstrates that the proposed development will not negatively affect the

population 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.

Similarly, proposed N.J.A.C. 7:7E-3C.2(b) describes the purpose of the impact assessment for endangered or threatened plant species habitats. The impact assessment would be used by applicants to demonstrate compliance with N.J.A.C. 7:7E-3.38(b) when 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. In order to demonstrate compliance, the applicant will be required to provide information that demonstrates that the proposed development will not negatively affect the population or habitat of endangered or threatened plant species.

Proposed N.J.A.C. 7:7E-3C.2(c) describes the requirements for conducting an endangered or threatened wildlife or plant species habitat impact assessment. The impact assessment must consider the likely affects of the proposed development on the local populations of the particular species on or abutting the site. Further, the impact assessment shall consider both the direct and indirect impacts of the proposed development on the species and shall be conducted using accepted ecological principles and scientific literature. The reporting standards for impact assessments are proposed at N.J.A.C. 7:7E-3C.4.

N.J.A.C. 7:7E-3C.3 Standards for conducting endangered or threatened wildlife habitat evaluations

An endangered 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.

Proposed N.J.A.C. 7:7E-3C.3(a) describes the purpose of the habitat evaluation.

Proposed N.J.A.C. 7:7E-3C.3(b) describes the contents of the habitat evaluation. Proposed N.J.A.C. 7:7E-3C.3(b)1 requires the use of scientific methodology appropriate for the species or species group. Proposed N.J.A.C. 7:7E-3C.3(b)2 describes the information necessary to determine the site's suitability as endangered or threatened wildlife habitat. Aerial and/or appropriate land cover maps are required as part of the examination of the areas surrounding the site pursuant to proposed N.J.A.C. 7:7E-

3C.3(b)3. The above requirements will ensure that each site is properly evaluated, and thus not ruled out as threatened or endangered species habitat when it is in fact habitat. The reporting standards for habitat evaluations are found at proposed N.J.A.C. 7:7E-3C.4.

Proposed N.J.A.C. 77E-3C.3(c) discusses surveys an applicant may conduct 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. This type of survey will only be considered as supplemental information on habitat suitability. Moreover, if such a survey is conducted, it shall be conducted consistent with techniques established in the scientific literature.

N.J.A.C. 7:7E-3C.4 Standards for reporting the results of impact assessments and habitat evaluations

This section provides the requirements for reporting the results of impact assessments and habitat evaluations.

Proposed N.J.A.C. 7:7E-3C.4(a) lists the information required for both habitat evaluations and impact assessments. The information requirements at proposed N.J.A.C. 7:7E-3C.4(a)1 through 3 are the same for both habitat evaluations and impact assessments. This information includes an introduction, USGS quad map depicting the site including the State Plane Coordinates, and the block, lot, municipality and county in which the site is located.

For wildlife habitat evaluations and impact assessments only, proposed N.J.A.C. 7:7E-3C.4(a)4 requires a map identifying the site and the areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps on the site and abutting the site. A listing of the endangered or threatened wildlife species, which resulted in the mapping of these areas, shall also be provided. In contrast to wildlife, endangered and threatened plant species habitats are identified using the Natural Heritage Database rather than the Landscape Maps. Therefore, for impact assessments for plant species only, proposed N.J.A.C. 7:7E-3C.4(a)5 requires a map identifying the location of the species habitat on the site or abutting the site along with the potential plant species list from the Department's Natural Heritage Database. A description of the habitat requirements for the endangered or threatened species identified on the site, including appropriate literature citations is required pursuant to N.J.A.C. 7:7E-3C.4(a)6. The

names and qualifications of the investigators who performed the habitat evaluations, surveys and/or impact assessment are also required, to ensure that the investigator was qualified to evaluate the habitat and potential impacts of the development.

Proposed N.J.A.C. 7:7E-3C.4(b) contains the reporting standards for wildlife habitat evaluations only. For wildlife habitat evaluations, a narrative, including supporting documentation, that is maps, photographs and field logs, is required in accordance with proposed N.J.A.C. 7:7E-3C.4(b). Proposed N.J.A.C. 7:7E-3C.4(b)1 through 3 list specific items that must be included in the narrative for each species. A description of the findings of the habitat evaluation is required pursuant to proposed N.J.A.C. 7:7E-3C.4(b)1. If a survey was conducted in accordance with proposed N.J.A.C. 7:7E-3C.3(c), a description of the methodology used, including literature citations, surveyor(s) names, dates and times of survey, numbers of samples and replications is required in accordance with proposed N.J.A.C. 7:7E-3C.4(b)2. Proposed N.J.A.C. 7:7E-3C.4(b)3 requires a comparison of the findings of the habitat evaluation with the known habitat requirements of the species and a description of the attributes and characteristics of the site which makes the site unsuitable habitat for that species.

Proposed N.J.A.C. 7:7E-3C.4(c) contains the standards for reporting the results of an impact assessment. Since an impact assessment is required to demonstrate compliance with the endangered or threatened species habitat rule, proposed N.J.A.C. 7:7E-3C.4(a)1 requires a description of how the proposed development will alter the species habitat including vegetation, soils, hydrology, human disturbance and effects on competitor, parasite or predator species. Proposed N.J.A.C. 7:7E-3C.4(c)2 requires the literature citations used to reach the conclusions in proposed N.J.A.C. 7:7E-3C.4(c)1. These requirements will ensure that proper methodologies are employed in assessing and reporting of site conditions and potential impacts of development.

SUBCHAPTER 4. GENERAL WATER AREAS

Subchapter 4 defines water types, assigns General Water Area rules to each water type and summarizes the rationale and intent of the rules.

Existing N.J.A.C. 7:7E-4.2 defines 19 uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. To simplify this subsection and make it easier to understand, each of the 19 uses is proposed as its own subsection.

N.J.A.C. 7:7E-4.1 Purpose and Scope

The description of General water areas at N.J.A.C. 7:7E-4.1(a) is being amended to delete the reference to the water's edge since it is not a General water area and thus is confusing.

N.J.A.C. 7:7E-4.1(b) describes the scope of Subchapter 4. Existing N.J.A.C. 7:7E-4.1(b)2 which sets forth the geographical location of general water areas is being incorporated into existing (a) since it is more appropriately located in the description of this area. The introductory paragraph of N.J.A.C. 7:7E-4.1(b) is being replaced with existing (b)3 which sets forth the eight categories of General water areas since existing N.J.A.C. 7:7E-4.1(b) is redundant. Existing N.J.A.C. 7:7E-4.1(b)3i through viii which are the eight categories of general water areas is being recodified as N.J.A.C. 7:7E-4.1(b)1 through 8 with minor changes in text to facilitate the recodification.

The term "ocean" at existing N.J.A.C. 7:7E-4.1(b)3v (proposed N.J.A.C. 7:7E-4.1(b)1) is proposed to be replaced with "Atlantic Ocean" since this term is used throughout the Chapter. Further, the Department is clarifying that the seaward limit of the Atlantic Ocean includes all areas of the Atlantic Ocean to the limit of New Jersey's territorial sea, three nautical miles from the shoreline.

In addition, existing N.J.A.C. 7:7E-4.1(b)3viii (proposed N.J.A.C. 7:7E-4.1(b)8) which defines "tidal guts" is being amended to include canals as an additional example.

Proposed N.J.A.C. 7:7E-4.1(c) specifies that proposed N.J.A.C. 7:7E-4.2 through 4.20 contains the requirements for specific types of developments within General Water Areas. Existing N.J.A.C. 7:7E-4.1(b)1 is being recodified as N.J.A.C. 7:7E-4.1(c)1 with minor changes in text. In accordance with proposed N.J.A.C. 7:7E-4.1(c)1, where an area qualifies both as a Special Area and a General Water Area, the area is subject to both sets of rules. In cases where there is a conflict between the rules, the Special Area rules shall apply.

N.J.A.C. 7:7E-4.2 Acceptability Conditions for uses

Existing N.J.A.C. 7:7E-4.2 defines 19 uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. To simplify this subsection and make it easier to understand, each of the 19 uses is proposed as its own subsection. Further, the existing submerged infrastructure

rule at N.J.A.C. 7:7E-4.2(n) is being divided into two separate rules. A new Artificial reef rule is also being proposed as N.J.A.C. 7:7E-4.21.

Existing N.J.A.C. 7:7E-4.2(a) which describes the acceptability conditions for uses is being deleted since N.J.A.C. 7:7E-4.1(c) explains that proposed N.J.A.C. 7:7E-4.2 through 4.22 (existing N.J.A.C. 7:7E-4.2(b) through (t) plus the addition of two proposed rules) contain the standards for specific uses in General Water Areas.

N.J.A.C. 7:7E-4.2 Aquaculture

Currently, the Department's acceptability conditions for aquaculture activities within general water areas are codified at N.J.A.C. 7:7E-4.2(b). Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. As part of the restructuring of this subsection, the acceptability conditions for aquaculture will be codified as N.J.A.C. 7:7E-4.2. The Department is proposing language to clarify that all impediments to navigation, including access impediments, are discouraged. No substantive changes in the existing text are proposed. However, minor changes in language are proposed to reflect the restructuring of this subchapter.

N.J.A.C. 7:7E-4.3 Boat ramps

The acceptability conditions for boat ramps are currently codified as N.J.A.C. 7:7E-4.2(c), and under this proposal would be recodified as N.J.A.C. 7:7E-4.3(c). Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float.

The definition of "boat ramp" also includes examples of the most frequently used construction materials. The examples of frequently used construction materials at N.J.A.C. 7:7E-4.2(c)1 (proposed N.J.A.C. 7:7E-4.3(a)) are being amended to reflect current conditions. Currently, boat ramps are most frequently constructed of asphalt, concrete or crushed shell. Existing N.J.A.C. 7:7E-4.2(c)2i(1) through (4) which list the acceptability conditions for boat ramps are being recodified as 7:7E-4.3(b)1 through 4 with no changes in meaning.

Existing N.J.A.C. 7:7E-4.2(c)2ii which gives public use ramps priority over restricted and public use ramps is being recodified as N.J.A.C. 7:7E-4.3(c) with no changes in text.

The rule rationale currently codified as N.J.A.C. 7:7E-4.2(c)3 is being recodified as N.J.A.C. 7:7E-4.3(d) with no changes in text.

N.J.A.C. 7:7E-4.4 Docks and piers for cargo and commercial fisheries

The acceptability conditions for docks and piers for cargo and commercial fisheries are being recodified as N.J.A.C. 7:7E-4.4 (currently N.J.A.C. 7:7E-4.2(d)). Docks and piers for cargo and passenger movement and commercial fisheries are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with, a single industrial or manufacturing facility or to commercial fishing facilities.

Proposed N.J.A.C. 7:7E-4.4(a) (existing N.J.A.C. 7:7E-4.2(d)1) defines docks and piers for cargo and commercial fisheries. Only minor wording changes are proposed to this section.

The standards for docks and piers for cargo and commercial fisheries are found at proposed N.J.A.C. 7:7E-4.4(b)1 through 3 (existing N.J.A.C. 7:7E-4.2(d)2i through iii). Existing N.J.A.C. 7:7E-4.2(d)2ii (proposed N.J.A.C. 7:7E-4.4(b)2) requires that the dock or pier not pose a hazard to navigation. Under this proposal, the Department is further defining “a hazard to navigation” to mean potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers. The rule rationale at existing N.J.A.C. 7:7E-4.2(d)3 is being recodified as N.J.A.C. 7:7E-4.4(d) with no changes in text.

N.J.A.C. 7:7E-4.5 Recreational docks and piers

The acceptability standards for recreational docks and piers are proposed at N.J.A.C. 7:7E-4.5 (currently codified as N.J.A.C. 7:7E-4.2(e)). Recreational docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreation or fishing or for the mooring of boats used for recreation or fishing, except for commercial fishing, and house boats.

The definition of recreational docks and piers is being recodified as N.J.A.C. 7:7E-4.5(a) (existing N.J.A.C. 7:7E-4.2(e)1) and amended to clarify that jet ski ramps are classified as recreational docks.

N.J.A.C. 7:7E-4.2(e)2i through viii are being recodified as N.J.A.C. 7:7E-4.5(b)1 through 8. Existing N.J.A.C. 7:7E-4.2(e)2 has been amended to note that recreational docks and piers include jet ski ramps and that these ramps are subject to all of standards for recreational dock construction. Accordingly, existing N.J.A.C. 7:7E-4.2(e)5 which defined jet ski ramps as recreational docks and established an eight foot maximum width is being deleted. Existing N.J.A.C. 7:7E-4.2(e)2iii (proposed N.J.A.C. 7:7E-4.5(b)3) requires that the dock, pier and associated mooring piles not hinder navigation or conflict with overhead transmission lines. Since existing N.J.A.C. 7:7E-4.2(e)2viii and (e)7 require that the proposed structure not hinder navigation, the Department is proposing to delete the reference to navigation at existing N.J.A.C. 7:7E-4.2(e)2ii and delete existing N.J.A.C. 7:7E-4.2(e)7, and combine them with existing N.J.A.C. 7:7E-4.2(e)2viii (proposed 7:7E-4.5(b)8).

Existing N.J.A.C. 7:7E-4.2(e)3, 4, 6 and 8 are being recodified as N.J.A.C. 7:7E-4.5(c) through (f) with no changes in text.

The standards at proposed N.J.A.C. 7:7E-4.5(e) (existing N.J.A.C. 7:7E-4.2(e)6) for existing docks exceeding eight feet in width over water areas and/or wetlands constructed prior to September 1978 are being proposed for amendment. Under the current rules, the requirement that docks or piers exceeding eight feet in width be reduced is dependent on whether the applicant proposed to increase the coverage over water areas or wetlands by increasing the number or size of boat slips, docks or piers. The Department is proposing to amend the requirement that docks or piers exceeding eight feet in width be reduced in width in some circumstances. Currently, the docks must be reduced to eight feet in width if an increase in the number or size of the dock is proposed. This amendment would also require a reduction in dock width if the docks were to be relocated. It has been the Department's experience that large docks (greater than 8 feet in width) impact the water area through shading. Prior to 1978, the Department did not have regulations in place limiting the width of recreational docks to 8 feet in width. As such, any docks construction prior to 1978 are "grandfathered" from the width limit. However, at the time at which the property owner proposed additional work, whether it be adding slips, increasing the size or relocating the docks, the existing

structure is no longer considered the same structure and thus is required to conform with the current Coastal Zone Management rules requirements. Further, the Department is clarifying that in situations where the oversized dock or pier is located over wetlands or intertidal flats, the dock or pier must be reduced to a maximum of six feet. The six-foot requirement is consistent with the provisions of the Wetlands Act of 1970 and existing N.J.A.C. 7:7E-4.2(e)2vi (proposed N.J.A.C. 7:7E-4.5(b)6.

The rule rationale is being recodified as N.J.A.C. 7:7E-4.5(g) (currently N.J.A.C. 7:7E-4.2(e)9).

N.J.A.C. 7:7E-4.6 Maintenance dredging

Currently, the acceptability conditions for maintenance dredging are codified as N.J.A.C. 7:7E-4.2(f). As described above, this section is being recodified as N.J.A.C. 7:7E-4.6. Maintenance dredging 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 an authorized depth and width for safe navigation.

Proposed N.J.A.C. 7:7E-4.6(a) (currently N.J.A.C. 7:7E-4.2(f)1) is being amended to further refine the definition of maintenance dredging. Maintenance dredging means the dredging of specific previously dredged areas for the purposes of maintaining previously authorized water depths and widths. Further, to be considered maintenance dredging, proposed N.J.A.C. 7:7E-4.6(a)1i requires that the area to be dredged is limited to the same water depth, length and width of the previous dredging operation. For natural waterways, proposed (a)1ii requires that either the proposed area to be dredged is currently being used for navigation or mooring of vessels requiring the proposed water depth, or the area has been dredged in the last 10 years. This allows areas that have been previously dredged and are still actively in use to be subject to the maintenance dredging rule. In addition dredging in areas that have been dredged within 10 years of the date of the application shall be considered maintenance dredging. In areas which are not currently being used and where more than 10 years has passed since it was last dredged, the bottom substrate will have been recolonized by a naturally functioning benthic community. Therefore, the impacts associated with disturbance of these areas will be similar to impacts associated with dredging in an area that has not been previously dredged, and as such, these projects will be evaluated as new dredging.

Existing N.J.A.C. 7:7E-4.2(f)2 is being recodified as N.J.A.C. 7:7E-4.6(b). Existing N.J.A.C. 7:7E-4.2(f)i (proposed N.J.A.C. 7:7E-4.6(b)1) concerning the placement of dredged material is being amended to cross-reference the rules concerning the disposal of dredged material below the spring high water line (N.J.A.C. 7:7E-4.8) and dredged material placement on land (N.J.A.C. 7:7E-7.12) and delete the reference to the New dredging rule (existing N.J.A.C. 7:7E-4.2(g)), which is inapplicable.

Existing N.J.A.C. 7:7E-4.2(f)2ii is recodified as N.J.A.C. 7:7E-4.6(b)2 and amended to provide that additional testing may be required to determine the acceptability of the proposed placement site for the dredged material.

Proposed N.J.A.C. 7:7E-4.6(b)3 (existing N.J.A.C. 7:7E-4.2(f)2iii) is being amended to correct the reference to the State Surface Water Quality Standards. Existing 7:7E-4.2(f)2iv (proposed N.J.A.C. 7:7E-4.6(b)4) is being amended to delete the provision concerning the imposition of seasonal restrictions**,** and instead, cross-reference N.J.A.C. 7:7E-4.6(b)7 which contains the seasonal restrictions for maintenance dredging.

Proposed N.J.A.C. 7:7E-4.6(b)5 and 6 (existing N.J.A.C. 7:7E-4.2(f)2v and vii) provide specific operational procedures that may be required for mechanical and hydraulic dredges respectively. The list of examples of mechanical dredges at existing N.J.A.C. 7:7E-4.2(f)2v (proposed N.J.A.C. 7:7E-4.6(b)5) is being amended to delete "orange peel" dredges since the Department has not encountered this type of dredge in its experience through the years with dredging and dredges. The standards for seasonally restricting dredging in certain waterways found at existing N.J.A.C. 7:7E-4.2(f)vi(1) through (6) and vii(1) through (3) are being combined and recodified as N.J.A.C. 7:7E-4.6(b)7. Proposed N.J.A.C. 7:7E-4.6(b)8 specifies that a slope of no steeper than three horizontal to one vertical (3:1) shall be maintained adjacent to wetlands to prevent undermining and slumping of the wetlands**,** since typically unconsolidated material will not have a stable angle of repose steeper than 3:1.

Reprofiling is a method of maintenance dredging that consists of the movement of sediments from one location to a specific adjacent and deeper location, without removing the sediments from the water, resulting in a recontouring of both the reprofiled and depositional areas. The Department considers the use of reprofiling only as an interim management technique for smaller projects, that is less than 5,000 cubic yards. The Department's main concern with reprofiling operations is to ensure that the

proposed depositional area is of sufficient size and depth to contain the relocated sediments. In addition, since reprofiling only moves sediments from one location to another, the Department is concerned that the sediments may be resuspended and redeposited in other areas, particularly adjacent berths and navigational channels. The redeposition of sediments may also adversely impact existing benthic communities in the vicinity of the project area. For these reasons, proposed N.J.A.C. 7:7E-4.6(c) discourages reprofiling. However, if the Department determines that the reprofiling is in the public interest despite its discouraged status, the Department may permit reprofiling provided that mitigating or compensating measures are taken so that there is a net gain in quality and quantity of the coastal resources of concern (See definition of discouraged at existing N.J.A.C. 7:7E-1.5(d), proposed N.J.A.C. 7:7E-1.8). Reprofiling is however, 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 when other management techniques are unavailable. Reprofiling would serve as an interim measure that will allow existing maritime uses to continue operation while a more permanent solution is sought. The acceptability conditions require that there is no feasible alternative to reprofiling, the area to be reprofiled is minimized, that the depth of the material to be removed is limited to three feet, and the “receiving” area has adequate capacity to accommodate the material. Reprofiling must be performed by dragging a steel beam or pipe across the berth and/or channel bottom, thereby leveling accumulated sediment to a uniform, specified depth. Alternative procedures will be considered only under special instances where the use of a drag bar is impractical due to limited space in the project area.

Proposed N.J.A.C. 7:7E-4.6(d) prohibits propwashing, that is, the movement of sediment by resuspending accumulated material by scouring the bottom substrate with boat propellers or specially designed equipment with propellers. Propwash dredging is prohibited because it 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 or mooring areas and channels.

Existing N.J.A.C. 7:7E-4.2(f)3 which provides that seasonal limitations on dredging may be imposed on maintenance dredging to mitigate adverse impacts on

certain special areas and impacts to the water area is proposed for deletion since proposed N.J.A.C. 7:7E-4.6(b)4 and existing N.J.A.C. 7:7E-4.2(f)3 (proposed N.J.A.C. 7:7E-4.6(b)7) set forth the circumstances in which the Department may impose seasonal restrictions.

A new section, proposed N.J.A.C. 7:7E-4.6(e) is being proposed to make the public aware of the availability of a Department dredging technical manual. The manual is titled, "The Management and Regulation of Dredging Activities and Dredged Material Disposal in New Jersey's Tidal Waters," and dated October 1997. This manual is available upon request from the Department's Office of Maps and Publications, PO Box 420, Trenton, New Jersey, 08625-0420, (609) 777-1038. This technical manual was developed by the Department pursuant to N.J.S.A. 13:1D-101 et seq. to establish clear and comprehensive policies and procedures for reviewing proposed dredging activities, and the management of the dredged material. In addition, this manual provides guidance for the sampling, testing and permitting of proposed dredging projects and various dredged material management/disposal/use alternatives. In March 1996, the dredging technical manual underwent public review and comment. Notice of public meetings and the opportunity to comment on the manual was published n the New Jersey Register (see 28 N.J.R. 1564(b)). Three public meetings were held on March 25, 1996 at the Department of Environmental Protection headquarters; April 1, 1996 at the Steven's Institute of Technology, Hoboken; and April 3 at the Cumberland County Community College, Vineland. In addition, a 75-day public comment period was held. Subsequent to this opportunity for public comment, the final dredging technical manual was revised, as appropriate, to incorporate the comments received.

The rationale at existing N.J.A.C. 7:7E-4.2(f)4 is being recodified as N.J.A.C. 7:7E-4.6(f) and is being supplemented with information concerning reprofiling and propwash dredging.

N.J.A.C. 7:7E-4.7 New Dredging

The acceptability conditions for new dredging are being recodified from N.J.A.C. 7:7E-4.2(g) to N.J.A.C. 7:7E-4.7. New dredging is the removal of sediment from the bottom of a water body that has not been previously dredged.

The definition of new dredging at N.J.A.C. 7:7E-4.7 (existing N.J.A.C. 7:7E-4.2(g)1) is being simplified by inserting a cross-reference to the definition of maintenance dredging instead of repeating the definition.

The acceptability conditions at existing N.J.A.C. 7:7E-4.2(g)2 are being recodified as N.J.A.C. 7:7E-4.7(b)1 though 9. Existing N.J.A.C. 7:7E-4.2(g)2i is being recodified as N.J.A.C. 7:7E-4.7(b) with minor wording changes. Existing N.J.A.C. 7:7E-4.2(g)2i(6) is being deleted because the standards for new dredging are being amended to incorporate the currently referenced maintenance standards at N.J.A.C. 7:7E-4.7(b)11i through vii. Existing N.J.A.C. 7:7E-4.2(g)2i(1) through (5) and (8) through (10) are being recodified as N.J.A.C. 7:7E-4.7(b)1 through 8 with minor changes in wording to facilitate the recodification. Proposed N.J.A.C. 7:7E-4.7(b)9 sets forth a minimum buffer for the dredging activities from wetlands in order to prevent slumping of this special area. As discussed at N.J.A.C. 7:7E-4.6(b)8, the slope of three vertical to one horizontal must be maintained since typically unconsolidated material will not have a stable angle of repose steeper than three vertical to one horizontal. Proposed N.J.A.C. 7:7E-4.7(b)10 requires that dredging be consistent with the specific standards appropriate to the dredging method. The standards of proposed N.J.A.C. 7:7E-4.7(b)10 are the same as the maintenance dredging standards at proposed N.J.A.C. 7:7E-4.6(b)1 through 8. Lastly, the provision for seasonal limitations on dredging to protect marine species (existing N.J.A.C. 7:7E-4.2(g)2ii) is being incorporated into proposed N.J.A.C. 7:7E-4.7(b)10vii. The provision of that subsection for reducing dimensions of the dredging project is being deleted since the applicable special area rules and proposed N.J.A.C. 7:7E-4.7(b)2, 4, 5 and 6 provide sufficient protection.

Similar to proposed N.J.A.C. 7:7E-4.6(d), proposed N.J.A.C. 7:7E-4.7(c) prohibits propwash dredging since it is indiscriminate, releasing sediment into the water column with no controls to minimize impacts on water quality or control the fate of the resuspended solid.

Existing N.J.A.C. 7:7E-4.2(g)2iii and iv are being recodified as N.J.A.C. 7:7E-4.7(d) and (e) with only minor change wording changes proposed to facilitate the recodification of N.J.A.C. 7:7E-4.2.

A reference to the Department's dredging technical manual is being proposed at N.J.A.C. 7:7E-4.7(f).

The rule rationale at proposed N.J.A.C. 7:7E-4.7(g) (existing 4.2(g)v) is being amended to reflect the updating of this rule.

N.J.A.C. 7:7E-4.8 Dredged material disposal

The standards relevant to dredged material disposal are proposed at N.J.A.C. 7:7E-4.8 (currently codified as N.J.A.C. 7:7E-4.2(h)). Dredged material disposal is the discharge of sediments removed during dredging operations.

The acceptability conditions for dredged material disposal are proposed at N.J.A.C. 7:7E-4.8(b)1 through 6 (currently codified as N.J.A.C. 7:7E-4.2(h)2i through viii).

Existing N.J.A.C. 7:7E-4.2(h)2ii and viii are being combined with existing N.J.A.C. 7:7E-4.2(h)2i as proposed N.J.A.C. 7:7E-4.8(b)1 to list the general water areas in which dredged material disposal is discouraged or prohibited. Proposed N.J.A.C. 7:7E-4.8(b)2 (existing N.J.A.C. 7:7E-4.2(h)2iii) is being amended to include reference to the beneficial use of the dredged material, thus reflecting the Department's commitment of encouraging beneficial use of dredged material wherever feasible. In addition, the references to the United States Environmental Protection Agency (USEPA) and United States Army Corps of Engineers (USACOE) Guidelines have been corrected to reference the appropriate sections. The list of USEPA guidelines is being amended to include the Evaluation of Dredged Material Proposed for Ocean Disposal Testing Manual, EPA-503/8-91/001, February 1991, and the evaluation of Dredged Material Proposed for Discharge in Inland and Near Coastal Waters Testing Manual, EPA-000/0-93/000, May 1993. Existing N.J.A.C. 7:7E-4.2(h)2iv which explains the EPA Guidelines cited at existing N.J.A.C. 7:7E-4.2(h)2iii (proposed N.J.A.C. 7:7E-4.8(b)2) is proposed for deletion because the narrative explaining the content of the EPA Guidelines is not a standard but rather an explanation of that standard and is therefor unnecessary.

Proposed N.J.A.C. 7:7E-4.8(b)3 requires that the dredged material disposal conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B. This standard is proposed to ensure that if any dredged material is placed in the water, it will be protective of human health and the environment.

Existing N.J.A.C. 7:7E-4.2(h)2v and vi are being recodified as N.J.A.C. 7:7E-4.8(b)4 and (b)5 and further divided for clarity. Minor changes in wording are proposed to facilitate the recodification. Furthermore, the rule is being amended to provide that

subaqueous dredged material disposal may be limited to a particular tidal cycle to further minimize impacts. For example, disposal may only be permitted within 2 hours of slack tide in an area of high tidal exchange to reduce the drift of dredged material away from the disposal site. The provision at existing N.J.A.C. 7:7E-4.2(h)2vii permitting unconfined aquatic disposal which does not meet the conditions listed is being proposed for deletion because such disposal could cause unacceptable damage to the waterway and its resources. Existing N.J.A.C. 7:7E-4.2(h)2vi is being recodified as N.J.A.C. 7:7E-4.8(b)6 with no changes in text.

A reference to the Department's dredging technical manual is being proposed at N.J.A.C. 7:7E-4.8(d).

The cross-reference to the Dredged material placement on land rule, N.J.A.C. 7:7E-7.12 at existing N.J.A.C. 7:7E-4.2(h)2ix is being recodified as N.J.A.C. 7:7E-4.8(c). The rule rationale is being amended to reflect the proposed amendments discussed above and recodified as N.J.A.C. 7:7E-4.8(e) (existing N.J.A.C. 7:7E-4.2(h)3).

N.J.A.C. 7:7E-4.9 Solid waste or sludge dumping

As part of the restructuring of N.J.A.C. 7:7E-4.2, the prohibition of solid waste or sludge dumping at N.J.A.C. 7:7E-4.2(i) is being recodified as N.J.A.C. 7:7E-4.9. The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area**.** No substantive changes in the existing text are proposed. However, minor wording changes in language are proposed to implement the restructuring of this section.

N.J.A.C. 7:7E-4.10 Filling

The rule concerning filling in general water areas at existing N.J.A.C. 7:7E-4.2(j) is being recodified as N.J.A.C. 7:7E-4.10. Filling is the deposition of material (sand, soil, earth, dredged material, etc.) into water areas for the purpose of raising water bottom elevations to create land areas. With the exception of the changes described below, only minor changes in wording are proposed for clarity and to facilitate the restructuring of this section.

Proposed N.J.A.C. 7:7E-4.10(e) sets forth the mitigation requirements for the filling of tidal water areas. Mitigation for filling is required at a creation to lost ratio of 1:1 in the same estuary. The standards for filling intertidal and subtidal shallows are set

forth at proposed N.J.A.C. 7:7E-3.15(g) and (h). Proposed N.J.A.C. 7:7E-4.10(e)1 through 3 set forth the filling activities that do not require mitigation. These activities are filling in a man-made lagoon associated with infill bulkhead construction of no more than 75 feet in length, beach nourishment and construction of a replacement bulkhead. These exceptions to the mitigation requirement are the same as those proposed at N.J.A.C. 7:7E-3.15(g)1, 3 and 5.

N.J.A.C. 7:7E-4.11 Mooring

Existing N.J.A.C. 7:7E-4.2(k) sets forth the standards for moorings within general water areas. A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat. As part of the structuring of N.J.A.C. 7:7E-4.2, this section will be recodified as N.J.A.C. 7:7E-4.11, with no substantive change proposed.

N.J.A.C. 7:7E-4.12 Sand and gravel mining

Existing N.J.A.C. 7:7E-4.2(l) contains the acceptability conditions for sand and gravel extraction. Sand and gravel extraction is the removal of sand or gravel from the water bottom substrate for the purpose of using the sand or gravel at another location. Under this proposal, this section will be renamed “Sand and gravel mining” to more appropriately reflect the activities for which this rule applies and be recodified as N.J.A.C. 7:7E-4.12. Existing N.J.A.C. 7:7E-4.2(l)1 is being recodified as N.J.A.C. 7:7E-4.12(a) with minor wording changes.

Existing N.J.A.C. 7:7E-4.2(l)2 is being recodified as N.J.A.C. 7:7E-4.12(b) and amended to discourage sand and gravel mining in all water body types and prohibits sand and gravel mining in lakes, ponds and reservoirs, man-made harbors and tidal guts unless the water body was created by the mining process, in which case the use is conditionally acceptable. Proposed N.J.A.C. 7:7E-4.12(b)1i through vi (existing N.J.A.C. 7:7E-4.2(l)2i through vi) set forth the acceptability conditions.

Proposed N.J.A.C. 7:7E-4.12(c) sets forth the acceptability conditions for sand and gravel mining for the purposes of beach nourishment. Proposed N.J.A.C. 7:7E-4.12(c)1 through 5 set forth the acceptability conditions. These include: the minimization of direct and indirect impacts to special areas; the water depth at the mining site is at least six feet below mean low water in rivers, creeks and streams; there will be no

increase in shoreline erosion or creation of anoxic water conditions; and, the beach nourishment projects complies with the Coastal engineering use rule. Reference to the coastal engineering rule is being added to ensure that the beach nourishment project is constructed in a manner which minimizes impacts to coastal resources.

The rule rationale at existing N.J.A.C. 7:7E-4.2(l)3 is being recodified as N.J.A.C. 7:7E-4.12(d) with minor wording changes.

N.J.A.C. 7:7E-4.13 Bridges

Existing N.J.A.C. 7:7E-4.2(m) contains the acceptability conditions for bridges. Under the Coastal Zone Management rules, a bridge is any continuous structure spanning a water body and does not include overhead transmission lines. As part of the restructuring of N.J.A.C. 7:7E-4.2, the section is being recodified as N.J.A.C. 7:7E-4.13. The requirement at existing N.J.A.C. 7:7E-4.2(m)2ii that the applicable Location and Resource rules be met is being deleted since any regulated development must comply with all applicable sections of the Coastal Zone Management rules.

N.J.A.C. 7:7E-4.14 Submerged pipelines

Existing N.J.A.C. 7:7E-4.2(n)1 defines submerged infrastructure as cables and pipelines. The definition of N.J.A.C. 7:7E-4.2(n)1i is being deleted since a separate submerged cable rule is proposed. N.J.A.C. 7:7E-4.2(n)1ii, which defines pipelines, is being recodified as N.J.A.C. 7:7E-4.14(a) and revised to simplify the definition by deleting the description of how submerged pipelines are installed.

The acceptability conditions for submerged pipelines are proposed as N.J.A.C. 7:7E-4.14(b) (currently codified as N.J.A.C. 7:7E-4.2(n)2i). Under this proposal, the construction of submerged pipelines at N.J.A.C. 7:7E-4.14(b)1 and 2 is conditionally acceptable provided the pipeline is not sited in special areas unless there is no prudent or feasible alternate route and the pipeline is installed via directional drilling unless it is determined that directional drilling is not feasible. Since the installation of submerged pipelines has the potential to disrupt the ecosystem in which it is placed, it is discouraged in environmentally sensitive areas. Due to this potential for disruption of the ecosystem, directional drilling is the preferred method for installing submerged pipelines. Proposed N.J.A.C. 7:7E-4.14(b)3, 4 and 5 contain standards for minimizing the impact to the water body and bottom. The existing acceptability conditions at N.J.A.C. 7:7E-

4.2(n)2i (1) and (2) are being combined as N.J.A.C. 7:7E-4.14(b)3 for clarity. Existing N.J.A.C. 7:7E-4.2(n)2i(3) requiring that the pipeline comply with the Energy Use rule is being deleted because the pipeline would have to comply with all applicable sections of the rules. Existing N.J.A.C. 7:7E-4.2(n)2iii which sets forth the standards for the installation of submerged cables is being deleted since the Department is proposing a new submerged cable rule at N.J.A.C. 7:7E-4.20. Proposed N.J.A.C. 7:7E-4.14(b)5 requires the route be designed to minimize impacts to the water area.

The rule rationale at existing N.J.A.C. 7:7E-4.2(n)3 is being recodified as N.J.A.C. 7:7E-4.14(c) and expanded to discuss the importance of directional drilling.

N.J.A.C. 7:7E-4.15 Overhead transmission lines

Proposed N.J.A.C. 7:7E-4.15 (existing N.J.A.C. 7:7E-4.2(o)) contains the standards for overhead transmission lines in general water areas. Overhead transmission lines are electronically conducting wires hung between supporting pylons for the transmission of electrical power from the generating plant to the site of consumption. The description of overhead transmission lines at proposed at N.J.A.C. 7:7E-4.15(a) (existing N.J.A.C. 7:7E-4.2(o)1) is being amended to clarify that this rule applies to not only electrical lines but also to telecommunication lines and cable television lines. Thus, reference to electrical power is being deleted because overhead transmission lines are not restricted to only electrical lines.

Proposed N.J.A.C. 7:7E-4.15(b) lists the types of general water areas where overhead transmission lines are discouraged or prohibited.

Proposed N.J.A.C. 7:7E-4.15(c) (existing N.J.A.C. 7:7E-4.2(o)2) sets forth the standards for acceptability. Existing N.J.A.C. 7:7E-4.2(o)2iii is being deleted because the secondary impact rule at N.J.A.C. 7:7E-6.3 deals with the potential impacts resulting from the proposed development.

N.J.A.C. 7:7E-4.16 Dams and impoundments

Existing N.J.A.C. 7:7E-4.2(p) contains the standards for dams and impoundments. Dams and impoundments are structures that obstruct natural water flow patterns for the purposes forming a contained volume of water. Under this proposal, this section will be recodified as N.J.A.C. 7:7E-4.16, with minor changes in wording to facilitate the recodification.

N.J.A.C. 7:7E-4.17 Outfalls and intakes

Existing N.J.A.C. 7:7E-4.2(q), the standards for outfalls and intakes, is being recodified as N.J.A.C. 7:7E-4.17. Outfalls and intakes are pipe openings that are located in water areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents. Existing N.J.A.C. 7:7E-4.2(q)2 (proposed N.J.A.C. 7:7E-4.17(b)) is being amended to delete the provision that stormwater discharge pipes comply with the Stormwater Management rule and that they provide appropriate filtration measures. This provision is being deleted because the stormwater management rule, N.J.A.C. 7:7E-8.7 and Water Quality rule, N.J.A.C. 7:7E-8.4 address this issue and all coastal permit applications are required to comply with all Coastal Zone Management rules.

N.J.A.C. 7:7E-4.18 Realignment of water areas

The acceptability conditions for the realignment of water areas is being recodified from N.J.A.C. 7:7E-4.2(r) to N.J.A.C. 7:7E-4.18. Under the Coastal Zone Management rules, realignment of water areas is the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading of an area above the mean high water line. The reference to the proposed development complying with the resource rules at existing N.J.A.C. 7:7E-4.2(r)3 is being deleted since a proposed development must comply with all sections of the Coastal Zone Management rules Except as noted above, no substantive changes in existing text are proposed. However, minor changes in language are proposed to implement the restructuring of this subchapter.

N.J.A.C. 7:7E-4.19 Breakwaters

Existing N.J.A.C. 7:7E-4.2(t) contains the rules for the construction of breakwaters. Under this proposal, this rule would be recodified as N.J.A.C. 7:7E-4.19. Breakwaters (including those constructed of concrete, rubble mound and timber) are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas.

The description of breakwaters found at existing N.J.A.C. 7:7E-4.2(t) is being recodified as N.J.A.C. 7:7E-4.19(a) with only minor changes in text.

The acceptability standards for the construction of breakwaters in general water areas are being recodified as N.J.A.C. 7:7E-4.19(b)1 through 3 (existing N.J.A.C. 7:7E-4.2(t)1 through3). Existing N.J.A.C. 7:7E-4.19(t)1 is being recodified as N.J.A.C. 7:7E-4.19(b)1 and amended to apply to timber, vinyl or plastic breakwaters. Breakwaters constructed of other materials must comply with the standards found at proposed N.J.A.C. 7:7E-4.19(b)3 (existing N.J.A.C. 7:7E-4.2(t)3). Existing N.J.A.C. 7:7E-4.2(t)2 is being recodified as N.J.A.C. 7:7E-4.19(b)2 with no changes in text.

Proposed N.J.A.C. 7:7E-4.19(b)3 (existing N.J.A.C. 7:7E-4.2(t)3) is being amended to apply to all breakwaters other than those constructed of timber, vinyl or plastic. These types of breakwaters must comply with the Filling and Structural shore protection rules.

The rule rationale at existing N.J.A.C. 7:7E-4.2(t)4 is being recodified as N.J.A.C. 7:7E-4.19(c) with no changes in text.

N.J.A.C. 7:7E-4.20 Submerged cables

Existing N.J.A.C. 7:7E-4.2(n) contains the acceptability conditions for submerged infrastructure. This rule currently contains the standards for both submerged pipelines and submerged cables. As noted above in the summary for proposed N.J.A.C. 7:7E-4.14, the standards for pipelines are being proposed as a separate section, both for clarity and to reflect the new and more detailed standards for installation of submerged cables in the Atlantic Ocean which are proposed at N.J.A.C. 7:7E-4.20.

Over the past several years, the Department has received an increasing number of applications and preapplication requests for the installation of submerged cables in the Atlantic Ocean. In the course of evaluating these applications, the Department received information from the fishing industry objecting to the cable installations because they can result in loss of fishing area. The areas of the ocean off of New Jersey are fished for surf clams, ocean quahogs, sea scallops and finfish, using a variety of fishing gear from surf clam dredges to otter trawls. Surf clams are generally found offshore in waters up to 60 meters deep. Ocean quahogs and sea scallops are harvested in waters up to 110 meters deep. Finfish are harvested in waters ranging from the nearshore out to 120 meters deep. New Jersey's surf clam, ocean quahog and sea scallop fisheries

are an important contributor in terms of landings to the State's commercial fishing industry. In 1999, these commercially sought molluscan species had a dockside value of approximately $50.5 million and using an economic multiplier of six which is applied to seafood products (New Jersey Department of Agriculture), are worth approximately $303.0 million to the State's economy. Of these species, surf clams are the most valuable, accounting for 67% of the State's total molluscan landings in 1999. 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 and federally controlled waters. In 1999, New Jersey vessels landed more than 84% of the total Mid-Atlantic and New England regions' surf clams harvest with an dockside value of over $29 million and worth approximately $174 million to the State's economy.

Commercial landings for all finfish and shellfish in New Jersey combined were 182,859,637 pounds in 1996, valued at $94.8 million dockside. Bottom tending mobile gear represent about 60% of the State's finfish landings, computed by weight. A similar percentage would result for value. That figure includes menhaden, which is used industrially for oil and poultry feed. The figure would be nearer to 80% if only food species were counted. The total ripple effect on the State economy for commercial fishing is estimated to be in excess of $590 million. These fish are landed primarily at ports in Belford, Point Pleasant, Barnegat Light and Cape May. Given the above statistics, landing of a cable in the New Jersey territorial sea or in coastal waters beyond the New Jersey territorial sea (3 geographical miles offshore) may have an affect on New Jersey's coastal zone. Therefore, New Jersey would apply the standards of this rule to applications for a State permit as well as to federal consistency reviews.

Traditionally, submarine cables have been surface laid. The potential exists for fishing gear using mobile bottom-tending gear to hit a surface laid cable, possibly damaging the cable or causing the fishing boat to become hung up and perhaps having to cut its gear loose. More recently, cables have been buried in the nearshore area. Certain fishing gear, particularly clam dredges, cut into the bottom of the ocean floor and could continue to present potential interactions if the cable is not buried deeply enough.

In 1999 representatives of the fishing industry contested the issuance of a permit for installation of a submerged cable in the ocean. As a result, on May 1, 2000, the Commissioner issued Administrative Order #2000-07 establishing a Submarine Cable

Task Force. The Task Force includes representatives of the fishing industry, notably the clamming industry, representatives of the cable industry, representatives of the US Army Corps of Engineers and the National Marine Fisheries Service and members of the Department. The Task Force was charged with recommending guidelines for the installation of submarine cables to minimize conflicts with coastal fisheries. In addition, the Task Force was to recommend guidelines for maintenance of submarine cables and removal of unused cables. This proposal sets forth new standards for installation and maintenance of submarine cables and is the result of discussions at Submarine Cable Task Force meetings beginning in March 2000. The standards include a cable burial depth, procedures for crossing cables, monitoring of installed cables, maintenance of cables at the prescribed depth and removal of cables once they have been taken out of service. Measures to compensate for loss of areas of the ocean to fishing are also included. The rule intends to reduce conflict between two important economic activities over use of the ocean, without favoring one industry over another. While the rule focuses on ensuring that submerged cables do not interfere with fishing boats, other federal regulations, such as United States Coast Guard regulations, already prohibit fishing boats from operating in a manner which would damage submerged cables.

Proposed N.J.A.C. 7:7E-4.20(a) defines submerged cables (cables). The definition in existing N.J.A.C. 7:7E-4.2(n)1i has been amended to include those structures placed in the water in association with cables, such as repeaters. This amendment will ensure that the standards apply to all in-water structures associated with the cable installation since any such structure may have an impact on the resource or the fisheries.

The remainder of the rule has been broken into three subsections. Proposed N.J.A.C. 7:7E-4.20(b) contains the standards for submerged cables located in waterways other than the Atlantic Ocean, proposed N.J.A.C. 7:7E-4.20(c) contains the standards for submerged cables located in the Atlantic Ocean, and proposed N.J.A.C. 7:7E-4.20(d) contains the rule rationale.

No substantive changes are proposed to the standards for cables not located in the Atlantic Ocean, except to remove the requirement that cables alignments be marked by buoys at the surface. Such a requirement would result in buoys being located across many waterways and the cable industry has indicated that such buoys are not necessary to protect the cables. Rather, marking at the cable landfall will suffice.

Proposed N.J.A.C. 7:7E-4.20(c) contains the standards for submerged cables located in the Atlantic Ocean. Proposed N.J.A.C. 7:7E-4.20(c)1, 5 and 6 are standards which are in the current rules at existing N.J.A.C. 7:7E-4.2(n)2 and N.J.A.C. 7:7E-4.2(n)2iii(1). Proposed N.J.A.C. 7:7E-4.20(c)1 requires an alternatives analysis for certain cables (this standard has been modified from the current rule, as discussed below) and 4.20(c)5 encourages directional drilling at the cable landing. Proposed N.J.A.C. 7:7E-4.20(c)6 requires that the route minimize areas where anchors are likely to foul the submerged cable. The remaining subsections of the rule propose new standards.

There are a number of different designs for submarine cables. A single cable may extend from the shoreline directly across the ocean to Europe. Single cables have also been installed from the New Jersey shoreline to Bermuda. More recently the Department approved a loop system, with a single cable extending from the Monmouth County shoreline to Europe, a second single cable extending from southern Ocean County to Europe, and a third cable in the ocean as a loop from Monmouth County to Ocean County. Cable systems looping north-south along the East Coast have also been proposed. The Department recognizes that cables going to Europe or Bermuda have no alternative location than the Atlantic Ocean. However, cables looping from one point in the United States to another may have a land based alternative. Many cables have been laid on land in the past. Installation of cables in the ocean has the potential to remove certain areas from availability for fish and shellfish harvest. The Coastal Zone Management rules have long identified surf clam areas as a Special Area (N.J.A.C. 7:7E-3.3). As noted above, New Jersey is home to both fishing fleets and processing plants for clams, and the vast majority of surf clams landed are landed in New Jersey. Marine fisheries for ocean quahogs, sea scallops, summer flounder and scup, are also important. In recognition of the importance of the fishing industry and the need to prevent development from restricting access to harvesting grounds, proposed N.J.A.C. 7:7E-4.20(c)1 retains the alternatives analysis found in the existing rule, but limits it to Surf clam areas and to areas where marine fish are commercially harvested using mobile bottom-tending gear. If there is no alternative land-based route, the cable must follow the shortest route to waters beyond these fishing areas to minimize the impact on commercial harvest. The other Special Areas likely to be found along a cable route are Prime fishing areas (N.J.A.C. 7:7E-3.4), Shipwreck and artificial reef habitats (N.J.A.C.

7:7E-3.13) and Historic and archaeological resources (N.J.A.C. 7:7E-3.36). These three special areas are typically in discrete locations, rather than running along much of the coast as do surf clam areas and fishing grounds. Therefore, the alternatives analysis for these special areas requires an exploration of alternate routes outside of the special areas, whether land-based or in the ocean, and the cable must follow the route with the least disturbance to these special areas.

Proposed N.J.A.C. 7:7E-4.20(c)2 establishes a burial depth of at least 1.2 meters for cables in the ocean both in Surf clam areas and in waters where Marine fish are commercially harvested using mobile bottom-tending gear in order to minimize the potential that fishing gear can harm the cables and minimize the loss of areas to fishing. Such burial is sometimes not feasible due to geologic or topographic features, such as hard clays, and existing cables. The rule recognizes these geologic and topographic features, and provides that burial depth may be less where it is demonstrated that burial to 1.2 meters is not practicable. Proposed N.J.A.C. 7:7E-4.20(c)3 and 4 establish standards for exceptions to the burial depth due to the crossing of other cables.

The standards for crossing existing in-service cables and crossing existing out-of-service cables are found at proposed N.J.A.C. 7:7E-4.20(c)3 and 4, respectively. The standards differ because out-of-service cables can be cut while in-service cables cannot. In each case the standards apply in Surf clam areas and in waters where Marine fish are commercially harvested using mobile bottom-tending gear. The steps are required to minimize risk to the cable and impact on commercial fishing. Proposed N.J.A.C. 7:7E-4.20(c)3i requires that the new cable be buried as close as possible to the depth of the cable it is crossing. Proposed N.J.A.C. 7:7E-4.20(c)3ii requires that the number of crossings be minimized, thus minimizing the length of cable not buried the full 1.2 meters. Cable routes can often be adjusted in the planning and design phase, thus in some cases can be designed to avoid traversing the most productive fishing areas. At a minimum, complete burial (to 1.2 meters) should be achieved in those areas. Thus, proposed N.J.A.C. 7:7E-4.20(c)iii requires that the cable company consult with the fishing interest groups identified at N.J.A.C. 7:7-4.2(a)3 and adjust the cable to the maximum extent practicable to reduce the impact on commercial fishing. Once a cable is installed in the ocean, future cable installations may need to cross that cable. Accordingly, proposed N.J.A.C. 7:7E-4.20(c)3iv requires a permittee to share information and cooperate as future cable installations seek to cross the permitted cable in order to

reduce the impacts of future crossing on fisheries. Such cooperation would most likely take the form of allowing the new cable to lie very near the existing cable with an insulating material between the two cables. This rule would not in any way relinquish the rights of a cable owner to protect a cable from badly engineered crossings that might harm the cable.

In contrast to an in-service cable, an out-of-service cable can often be retrieved and a portion cut and removed, thus not posing an impediment to burial of a new cable. The cable industry has indicated that when a cable is buried at a depth of less than 0.6 meters, retrieval is possible. Therefore, proposed N.J.A.C. 7:7E-4.20(c)4i requires that such a cable be cut and removed for a distance of 500 meters on each side of the proposed new cable route. This would permit the new cable to be buried to the specified depth of 1.2 meters. The remaining old cable would then be returned to its previous location and depth in the sea floor.

When a cable is buried at a depth of 0.6 meters or greater, retrieval of the cable may or may not be practicable. Proposed N.J.A.C. 7:7E-4.20(c)4ii requires cutting and removal where practicable, in accordance with the standards discussed above for cables less than 0.6 meters deep. Re-burial as close as practicable to the original depth, and in no case to a depth of less that 0.6 meters, is required. Where cutting and removal is not possible, the cable crossing shall be handled in the same manner as described above for crossing of an in-service cable (proposed N.J.A.C. 7:7E-4.20(c)3) since the potential effects on the commercial fishing industry are comparable. If the existing out-of-service cable to be crossed is buried more than 1.2 meters deep, the new cable can be buried to the same 1.2 meters depth as if no crossing were contemplated, in accordance with proposed N.J.A.C. 7:7E-4.20(c)4iii.

The above sections of the rule contain standards for the installation of a new cable. The primary means of reducing the conflict between the cable and the commercial fishing industries is adequate burial of a cable so that fishing can occur over the cable. Therefore standards are being proposed to ensure that the cable has been properly installed and that the cable is maintained at the prescribed depth while in service. These standards are proposed at N.J.A.C. 7:7E-4.20(c) 8, 9, and 10. Furthermore, standards governing the handling of the cable once it is removed from service are being proposed at N.J.A.C. 7:7E-4.20(c)11.

In order to ensure that sufficient financial resources remain for cable removal, proposed N.J.A.C. 7:7E-4.20(c)7 requires each permittee to obtain a financial assurance from a lender or insurer regulated and authorized by the New Jersey Department of Banking and Insurance to transact business in New Jersey. The financial assurance would be in an amount sufficient for the Department to hire an independent contractor to remove the inactive cable if the permittee did not do so. Letters of credit, bonds and insurance are all examples of financial assurance. The financial assurance would be released upon removal of the cable or upon the Department determining that the cable need not be removed.

Proposed N.J.A.C. 7:7E-4.20(c)8 contains inspection and maintenance requirements for the permitted cables. An inspection and maintenance plan, approved by the Department, must be implemented after the cable has been installed. The inspection provision is necessary to determine if the cable is at the authorized depth and location. The plan would provide for inspection immediately following cable installation, two years thereafter, and every five years after the two year inspection. Furthermore, if the Department reports to the permittee that it has received information suggesting that the cable has been covered, the permittee shall conduct an investigation, in accordance with proposed N.J.A.C. 7:7E-7.4.20(c)8iv. The cable company would also conduct an inspection, if it deemed it appropriate. If no inspection were conducted as part of the investigation, the Department could require an inspection after reviewing the report of the investigation. If any inspection reveals that the cable is not buried to the authorized depth, proposed N.J.A.C. 7:7E-4.20(c)8v requires reburial to the authorized depth within 90 days if practicable, and in any case within 6 months.

Proposed N.J.A.C. 7:7E-4.20(c)9 and 10 require submission of reports to the Department after the initial inspection and after subsequent inspections, respectively. The initial report requires identification of all areas where the cable is not buried to a depth of 1.2 meters, as well as the route of the installed cable and areas where inactive cables have been cut. 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). This is an accurate, widely utilized navigational system. This report must also be submitted to fishing interest groups. This is required in order to minimize the risk to the cable by notifying the commercial fishing industry of the locations of areas where the cable is buried less than 1.2 meters deep. A

list of these groups is found at proposed N.J.A.C. 7:7-4.2(a)3. Subsequent reports shall also include reporting on storms that may have affected the cable and any cable hits. These reports are due in January of each year. It must also be reported when the cable is taken out of service.

The rule requires, at N.J.A.C. 7:7E-4.20(c)11, that within two years after a cable has been taken out of service in accordance with Federal Communications Commission regulations, the cable shall be removed from the ocean both in Surf clam areas and in waters where Marine fish are commercially harvested using mobile bottom-tending gear. The intent of this provision is to ensure that unused cables are not abandoned on the sea floor where they may interfere with other uses of the sea floor in the future. The rule provides that the Department may allow all or part of the cable to remain in place under certain conditions. First, the Department must find that leaving the cable in place would not result in long term adverse impact to the ocean and/or ocean resources and secondly, it must find that the cable would not unreasonably interfere with fishing or other uses of the seabed. A permittee must request such a finding from the Department, and justify leaving the cable in place. Ultimately, the Department's decision shall consider public input, including input from fishing interest groups, from whom input will be solicited via a notification of the request to leave the cable in place.

As noted above, some portions of a cable may not be able to be buried to a depth of 0.6 meters due to geologic or topographic features of the sea floor identified in the cable routing process, and due to cable crossings. In addition, other portions of the cable may not achieve the 0.6 meters burial depth during installation. Where these portions of the cable are less than 0.6 meter deep, current technology can rebury the cable, potentially to 1.2 meters. Where these portions of the cable are deeper than 0.6 meter, it is unlikely that they can be reburied to 1.2 meters. While there are no recorded hits of cables buried deeper than 0.6 meter, fishing may be deterred over a cable in those areas where the cable is buried less than 0.6 meters. Therefore, proposed N.J.A.C. 7:7E-4.20(c)12 requires mitigation for these areas in the form of a monetary contribution provided to the Department's dedicated account for shellfish habitat mitigation. The monetary contribution is not a penalty, rather, it goes toward establishment of a fund to enhance fisheries. The monetary contribution shall be calculated at the rate of $100 per meter of cable buried to less than 0.6 meters. Money in the dedicated Shellfish Habitat Mitigation account is to be administered by the

Department's Bureau of Shellfisheries. The fund would be used for shellfish and marine fish habitat restoration, enhancement and related research projects. Among these is the expansion of the existing surf clam stock assessment program. This would enable the program to examine age-growth relationships in nearshore areas and to examine the impact of various ocean harvest gear types on surf clam survivorship and recruitment into the fishery. Expansion of the assessment program would provide for more timely and precise opening and closing of surf clam conservation zones to protect sub-market size classes and maximize harvest potential. Enhancement of other fisheries through habitat enhancement, such as traditional artificial reef development in the ocean would be other available options. The type of mitigation actually employed would depend on the amount of revenue collected via the proposed mitigation program.

Lastly, proposed N.J.A.C. 7:7E-4.20(d) contains the rationale for the section.

N.J.A.C. 7:7E-4.21 Artificial reefs

N.J.A.C. 7:7E-4.21 is being proposed as a new rule, for the purpose of providing standards for the construction of artificial reefs in waters of the State of New Jersey. The Department is proposing that N.J.A.C. 7:7E-4.21 be included in Subchapter 4, General Water Areas, which contains the standards for proposed uses of water areas. N.J.A.C. 7:7E-4.21 is being separated from N.J.A.C. 7:7E-3.13 in order to distinguish between standards for the construction of artificial reefs, and standards to manage artificial reefs as a special area once reefs have been established.

Proposed N.J.A.C. 7:7E-4.21(a) provides a definition of artificial reefs. The purpose for the creation of artificial reefs is for the enhancement of fish habitat and/or fisheries, in accordance with the policies of Title Two of the National Fishing Enhancement Act of 1984 (33 U.S.C.A. 2103, et seq.).

Proposed N.J.A.C. 7:7E-4.21(b) sets forth the Department's standards for the siting of artificial reefs. N.J.A.C. 7:7E–4.21 (b)1 and 2 provide that artificial reefs will be allowed in the Atlantic Ocean only, and shall be sited outside of Surf clam areas, Prime fishing areas, Navigation channels, Inlets, and Submerged infrastructure routes, and Historic and archaeological resources. In addition, artificial reefs shall be sited to minimize impacts on commercial fishing operations, in accordance with proposed N.J.A.C. 7:7E-4.21 (b)3. The purpose of this requirement is to reduce conflicts among ocean users and to protect significant marine resources. In order to minimize

navigational hazards, N.J.A.C. 7:7E–4.21 (b)1 and 4 prohibit the construction of reefs in navigation channels, shipping lanes, and anchorages. The physical characteristics of reef placement are important for reef stability and human health concerns. These are set forth in N.J.A.C. 7-7E-4.21(b)5, 6 and 7.

Proposed N.J.A.C. 7:7E 4.21(c) outlines standards for the construction of artificial reefs. N.J.A.C. 7:7E-4.21(c)1 and 2 ensures that material is of sufficient density and will not move outside of designated reef boundary, either by the force of currents or floatation. N.J.A.C. 7:7E-4.21(c)3 ensures that the reef will not pose a threat to navigation. N.J.A.C. 7:7E-4.21(c)4 through 8 provides that the reef material will not threaten the marine environment, nor be toxic, hazardous, explosive or radioactive. Proposed N.J.A.C. 7:7E-4.21(c)9, sets forth specific categories of materials allowed for use as artificial reefs in New Jersey, provided the proposed materials meet the conditions at N.J.A.C. 7:7E-4.21(c)1 through 8. Proposed N.J.A.C. 7:7E-4.21(c)10 describes the specific procedures for the deployment of artificial reefs in New Jersey waters, including notification, inspection, observation of deployment, and the recording of reef locations utilizing a Global Positioning Satellite (GPS) system.

It is important to make the distinction between the deployment of artificial reefs and the dumping of solid waste N.J.A.C. 7:7E-8.22, or the placement of shoreline protection structures N.J.A.C. 7:7E-7.11(e) in the Atlantic Ocean. Artificial Reefs must be placed with the intent of enhancing fish habitat and/or fisheries in accordance with the National Fishing Enhancement Act of 1984 (33 U.S.C.A. 2103, et seq.).

Proposed N.J.A.C. 7:7E-4.21(d) requires the preparation of an Artificial Reef Management Plan and outlines its required elements, including a monitoring schedule. The Reef management plan allows for uniform evaluation of reef structures during the permitting process and to ensure the reef performs as designed.

Proposed N.J.A.C. 7:7E-4.21(e) requires the reef builder to provide the location of the artificial reef to the US Department of Commerce National Ocean Survey for inclusion on nautical charts. This will make the location of the reef public information available for recreational fishing and other reef users. Furthermore, public knowledge of the reef location can serve to minimize user conflicts.

Proposed N.J.A.C. 7:7E-4.21(f) contains the rule rationale, which describes the importance of artificial reefs, their siting and management.

N.J.A.C. 7:7E-4.22 Miscellaneous

Proposed N.J.A.C. 7:7E-4.22 (existing N.J.A.C. 7:7E-4.2(s)) sets forth the standards for uses of general water areas that are not specified at proposed N.J.A.C. 7:7E-4.2 through 4.21 (existing N.J.A.C. 7:7E-4.2(b) through (r)and (t)) or addressed in the Use rules, N.J.A.C. 7:7E-7. No substantive changes are proposed to this section.

SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

This subchapter sets forth the requirements for impervious cover and vegetative cover on sites in the upland waterfront development area and in the CAFRA area.

N.J.A.C. 7:7E-5.1 sets forth the areas which the impervious cover and vegetative cover requirements apply, that is General Land Areas, Special Land Areas and seven Special Water's Edge Areas. N.J.A.C. 7:7E-5.1 also lists the developments to which subchapters 5, 5A and 5B do not apply.

N.J.A.C. 7:7E-5.2 contains the definitions specific to Subchapters 5, 5A and 5B.

N.J.A.C. 7:7E-5.3 sets forth the basic requirements relating to the impervious cover that apply to both the upland waterfront development area and the CAFRA area. Specifically, this section addresses where on a site the allowable impervious coverage can be placed and how this area is determined.

N.J.A.C. 7:7E-5.4 contains the vegetative cover requirements that apply in both the upland waterfront development area and CAFRA area. The vegetative cover requirement has two components--a tree preservation and/or planting requirement and an herb/shrub component. This section describes how the vegetative cover requirement is determined and how it shall be applied to a given site.

N.J.A.C. 7:7E-5.5 sets forth the standards for determining if a site is forested or unforested.

Under this proposal, amendments are not proposed to N.J.A.C. 7:7E-5.3, through N.J.A.C. 7:7E-5.5. A summary of the amendments proposed to N.J.A.C. 7:7E-5.1, Purpose and scope and N.J.A.C. 7:7E-5.2, Definitions are found below.

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

N.J.A.C. 7:7E-5.1(d) contains a list of developments to which Subchapter 5A and 5B do not apply. Two new developments (proposed N.J.A.C. 7:7E-5.1(d)7 and 8) are

being proposed for addition to the list of developments for which Subchapters 5A and 5B do not apply, specifically wastewater treatment plants and water treatment plants. Since there is a public need for these types of developments, and these developments are typically compact and upgraded frequently to meet current demands and review of these types of development are conducted by other Department programs including the Division of Watershed Management, the Department believes that is it not appropriate to apply the impervious cover percentages and vegetative cover requirements of the Coastal Zone Management rules to these developments.

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

N.J.A.C. 7:7E-5.2 contains definitions that are specific to subchapters 5, 5A and 5B. To facilitate changes proposed to the Energy use rule at N.J.A.C. 7:7E-7.4, the definition of "CAFRA area" is being recodified at N.J.A.C. 7:7E-1.8, Definitions, since it will no longer apply to only Subchapter 5, 5A and 5B.

SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER REQUIREMENTS IN THE UPLAND WATERFRONT DEVELOPMENT AREA

Subchapter 5A sets forth the impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area. For a site in the upland waterfront development area, impervious cover limits and vegetative cover percentages are based on the growth rating, environmental sensitivity, development potential and on whether the site is forested or unforested.

The growth rating for a site located in the upland waterfront development area is determined in accordance with N.J.A.C. 7:7E-5A.2, and is based on the region in which the site is located and the growth rating assigned to that region.

A site's environmental sensitivity is based on the soil type, and depth to seasonal high water table or presence of paving or structures. N.J.A.C. 7:7E-5A.3 sets forth the environmental sensitivity ratings for a site.

N.J.A.C. 7:7E-5A.4 addresses the development potential of a site. Development potential is a rating that reflects where there is the infrastructure necessary to support a development and whether there is other development nearby. There are three levels of development potential; high, medium and low. N.J.A.C. 7:7E-5A.5 through N.J.A.C. 7:7E-5A.7 set forth the specific standards for determining development potential for

residential or minor commercial development; major commercial or industrial development; and campground development.

The development intensity set forth at N.J.A.C. 7:7E-5A.8, is based on the growth rating, environmental sensitivity, and development potential. The site's development intensity in turn determines what impervious cover limits and vegetative cover percentages apply pursuant to N.J.A.C. 7:7E-5A.9.

N.J.A.C. 7:7E-5A.10 describes how to calculate the area on a site in the upland waterfront development area that must contain vegetative cover, that is trees and herb/shrub vegetation.

Under this proposal, amendments are not proposed to N.J.A.C. 7:7E-5A.1, Purpose and scope; N.J.A.C. 7:7E-5A.2, Upland waterfront development area regions and growth ratings; N.J.A.C. 7:7E-5A.3, Environmental sensitivity; N.J.A.C. 7:7E-5A.4, Developmental potential; N.J.A.C. 7:7E-5A.5, Development potential for a residential or minor commercial development site; N.J.A.C. 7:7E-5A.6, Development potential for a major commercial or industrial development site; N.J.A.C. 7:7E-5A.7, Development potential for a campground development site; and N.J.A.C. 7:7E-5A.8, Development intensity rules. A summary of the amendments to the remaining rules is found below.

N.J.A.C. 7:7E-5A.5 Development potential for a residential or minor commercial development site

The development potential for a residential or minor commercial development site is based on a number of factors. One of these factors is that a majority of the site, excluding wetlands or surface water areas or land areas abutting limited access transportation corridors, is adjacent to or across a public road or railroad from land that is developed. The Department has found in its review of coastal permit applications that the term "land" is subject to various interpretations. Therefore, for the purposes of clarity, this provision at 7:7E-5A.5(b)3 is being amended to make it clear that a majority of the area, excluding wetlands or surface water areas**,** within 1,000 feet of the site must be developed.

N.J.A.C. 7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area

N.J.A.C. 7:7E-5A.9 sets forth the impervious cover limits for s site or portion of a site that is unforested. N.J.A.C. 7:7E-5A.9(b)2 sets forth the impervious cover limit for unforested sites or portion thereof, located in the northern waterfront region or urban area region. This paragraph incorrectly cross-references N.J.A.C. 7:7E-5A.1(d) as the section which describes how to determine the upland waterfront development region in which a site is located. Under this proposal, the incorrect cross-reference is proposed to be replaced with the correct cross-reference to N.J.A.C. 7:7E-5A.2(d), Upland waterfront development regions and growth ratings.

N.J.A.C. 7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area

This subsection describes the process for determining vegetative cover percentages that is, the tree preservation or planting and herb/shrub vegetation planting or preservation requirements for a site in the upland waterfront development area. Currently, the rule requires a specific amount of tree planting or preservation and a specific amount of herb/shrub vegetation planting or preservation, based on whether the site is forested or unforested. Under this proposal, N.J.A.C. 7:7E-5A.10(c) would be amended to allow the tree planting requirement at N.J.A.C. 7:7E-5A.10(a)1 to be satisfied by preserving equivalent forested areas on the site in addition to those required at N.J.A.C. 7:7E-5A.10(a)1. Moreover, N.J.A.C. 7:7E-5A.10(c) would be amended to allow the herb/shrub vegetation requirement at N.J.A.C. 7:7E-5A.10(a)2 to be satisfied by preserving equivalent wooded areas on the site or planting an equivalent area of trees in addition to those required at N.J.A.C. 7:7E-5A.10(a)1.

SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA

This subchapter sets forth the impervious cover requirements and vegetative cover percentages for sites in the CAFRA area. For a site in the CAFRA area, impervious cover requirements 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 in a military installation.

N.J.A.C. 7:7E-5B.1 contains the purpose and scope of this subchapter.

The description and policy objectives of the coastal planning areas are found at N.J.A.C. 7:7E-5B.2. N.J.A.C. 7:7E-5B.3 describes the CAFRA planning map, coastal planning areas, CAFRA cores, CAFRA nodes, CAFRA centers and coastal centers. This section also describes the Department's ability to amend the CAFRA planning map.

N.J.A.C. 7:7E-5B.4 describes the method of determining the impervious cover limit for a site in the CAFRA area. The impervious cover limit is based on the site's location in a CAFRA center, CAFRA core or CAFRA node, coastal center coastal planning area or military installation. N.J.A.C. 7:7E-5B.5 describes how to calculate the area of a site in the CAFRA area that must contain the vegetative cover, that is trees and herb/shrub.

N.J.A.C. 7:7E-5B.5, describes the vegetative cover requirements for a site located in the CAFRA Area, including how to calculate the area on a site that must contain vegetative cover, that is trees and herb/shrub vegetation through preservation and/or planting.

Under this proposal, amendments are not being proposed to N.J.A.C. 7:7E-5B.1 through N.J.A.C. 7:7E-5B.3. The amendments proposed to the impervious cover limits (N.J.A.C. 7:7E-5B.4) and vegetative cover requirements (N.J.A.C. 7:7E-5B.5) rules for sites located in the CAFRA area are summarized below.

N.J.A.C. 7:7E-5B.4 Impervious cover limits for a site in the CAFRA area

N.J.A.C. 7:7E-5B.4 sets forth the impervious cover limits for sites located in the CAFRA area. At N.J.A.C. 7:7E-5B.4(a)3 the Department proposes to delete the phrase "based on the Coastal Planning Area in which the site is located" in recognition of the fact that the impervious cover limit is not based only on the Coastal Planning Area but also on existing site conditions and the proposed use. This revised language is consistent with the wording of N.J.A.C. 7:7E-5B.4(a)1 and(a)2.

N.J.A.C. 7:7E-5B.4(c) describes the method for determining the impervious cover limit for a site located in a CAFRA center, CAFRA core, or CAFRA node. Currently, the impervious cover limit is the acreage of the total land area on the site multiplied by the impervious cover percentage in Table H for the type of CAFRA center, CAFRA core or CAFRA node in which the site is located or, the amount of legal, existing impervious cover located on the site, as determined at 7:7E-5B.4(g), whichever is higher. Hence the impervious cover limit for a CAFRA center could range from 50 percent to over 90

percent depending upon the type of CAFRA center or the amount of existing legal impervious cover on site. The impervious cover limit for the Coastal Metropolitan Planning Area is 80 percent. Thus, the impervious cover limit for a CAFRA center located within the Coastal Metropolitan Planning Area could be less than the impervious cover limit of the Coastal Metropolitan Planning Area.

The Department is proposing to amend the impervious cover requirement for CAFRA centers, CAFRA cores or CAFRA nodes located in the Coastal Metropolitan Planning Area, to provide that the impervious cover limit is any one of the following: the acreage of the total land area on site multiplied by the impervious cover percentage in Table H for the type of CAFRA center, CAFRA core or CAFRA node in which the site is located, or the amount of legal, existing impervious cover located on the site, or the acreage of the net land area on the site multiplied by the impervious cover percentage in Table H for the Coastal Metropolitan Planning Area (80 percent), whichever is higher. Thus, under this proposal, the impervious cover limit for a CAFRA village located outside of the Coastal Metropolitan Planning Area would be 60 percent of the total land area or the amount of legal, existing impervious cover located on the site, while the impervious cover limit for a CAFRA village located in a Coastal Metropolitan Planning Area would be 60 percent of the total land area, or the amount of legal, existing impervious cover located on the site, or 80 percent of the net land area, if that were higher. This proposed rule amendment would not preempt the application of any municipal ordinance that would result in more restrictive impervious cover requirements as provided at N.J.A.C. 7:7E-5.1(g).

Existing N.J.A.C. 7:7E-5B.4(c) through (g) explain the procedures for determining the impervious cover limit for a site based on its location in a CAFRA center, CAFRA core, CAFRA node, coastal center, Coastal Planning Area, or military installation. On March 7, 2001, the Department received a petition for rulemaking on behalf of the Marine Trade Association requesting an amendment to the impervious cover limits for marinas (see 33 N.J.R. 843(a)). The petition requested that the impervious cover limit for a new, redeveloped or expanded marina be the acreage covered by gravel and/or compacted earthen surfaces, buildings and/or concrete or asphalt pavement. The Department's response to the petition was published on May 7, 2001 (see 33 N.J.R. 1476(a)). In response to this petition, the Department is proposing to amend the sections for determining the impervious cover limit within the Suburban, Rural, Fringe

and Environmentally Sensitive Coastal Planning Areas for marina support facilities at existing marinas including marinas operated by public agencies, commissions or authorities. The proposed amendment would apply when the existing marina is not located in a CAFRA center, CAFRA core, CAFRA node, or coastal center. Many marinas are located outside of centers in the Coastal Suburban, Coastal Fringe, Coastal Rural, and Coastal Environmentally Sensitive Planning Areas, where their expansion may be constrained by the impervious cover limits for these Coastal Planning Areas. In keeping in the objectives of the Coastal Rural and Environmentally Sensitive Planning Areas as stated at N.J.A.C. 7:7E-5B.2(e) and (f), this proposed amendment would not apply to the construction of new marinas. By encouraging development of new marinas in these Coastal Planning Areas as suggested by the petitioner, the Department would be contradicting the stated objective of protecting the environmentally sensitive features of these Coastal Planning Areas by not guiding development into centers. The Department is proposing a different method for determining the impervious cover limit for the construction of support facilities at existing marinas, in order to maintain and enhance these existing water dependent uses which provide public access to the water.

More specifically, N.J.A.C. 7:7E-5B.4(e) describes the method for determining the impervious cover limit for a site located in either the Coastal Suburban, Coastal Fringe, Coastal Rural, or Coastal Environmentally Sensitive Planning Area. Proposed N.J.A.C. 7:7E-5B.4(e)3 would provide an additional means of determining the impervious cover limit in these Coastal Planning Areas for construction of marina support facilities at legally existing and operating commercial marinas including marinas operated by public agencies, commissions or authorities. 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.

Proposed N.J.A.C. 7:7E-5B.4(e)3 provides that the impervious cover limit may be based upon the amount of legal existing impervious cover (as defined at N.J.A.C. 7:7E-1.8) located on the site, as determined at N.J.A.C. 7:7E-5B.4(g). (Note that N.J.A.C. 7:7E-5B.4(g) and 5B.5(b) are being amended to reflect this change.) The higher of either this proposed impervious cover limit or the impervious cover limit currently allowed

under the rules would apply. The current coverage limits are found at existing N.J.A.C. 7:7E-5B.4(e)1 and 2. The former is the acreage of the net land area of the site multiplied by the impervious cover percentage in Table H as determined under N.J.A.C. 7:7E-5B.4(g). The latter is the acreage covered by buildings, asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department. In keeping with the need to balance protection of environmental resources and provision of access to the water, the rule requires that any structure developed in accordance with proposed N.J.A.C. 7:7E-5B.4(e)3 be placed on existing impervious cover. This proposal differs from that suggested in the petition since "compacted earthen areas" would not be included in calculating the amount of existing impervious cover. However, this is consistent with all of N.J.A.C. 7:7E-5B.4, in that "compacted earthen areas" are not included in the calculations of impervious cover for CAFRA centers, CAFRA cores, CAFRA nodes, coastal centers, Coastal Planning Areas or military installations.

Further, as part of the proposed amendment described above, existing N.J.A.C. 7:7E-5B.4(e)2 is being amended to provide that when determining the acreage of existing buildings, asphalt or concrete pavement, any buildings, asphalt or concrete pavement placed on the site under proposed (e)3 are excluded from the calculation. This amendment will ensure that the expanded marina will serve as a marina and not a means to increase the impervious cover of a site for future redevelopment of that site with another use.

N.J.A.C. 7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area

N.J.A.C. 7:7E-5B.5 describes the process for determining vegetative cover percentages that is, the tree preservation or planting and herb/shrub vegetation preservation or planting requirements for a site in the CAFRA area. The requirements contained in N.J.A.C. 7:7E-5B.5 are similar to the requirements at N.J.A.C. 7:7E-5A.10 for sites in the upland waterfront development area. The rule requires a specific amount of tree preservation or planting and a specific amount of herb/shrub vegetation preservation or planting based on whether the site is forested or unforested. Under this proposal, N.J.A.C. 7:7E-5B.5(c) would be amended to allow the tree planting requirement at N.J.A.C. 7:7E-5B.5(a)1 to be satisfied by preserving equivalent forested areas on the site in addition to those required at N.J.A.C. 7:7E-5B.5(a)1. Further,

N.J.A.C. 7:7E-5B.5(c) would be amended to allow the herb/shrub vegetation requirement at N.J.A.C. 7:7E-5B.5(a)2 to be satisfied by preserving equivalent wooded areas on the site or planting an equivalent area of trees in addition to those required at N.J.A.C. 7:7E-5B.5(a)1. The alternatives described above would accomplish the requirements of N.J.A.C. 7:7E-5B.5(c) and (a)1 and may result in less disturbance to the vegetation existing on site.

SUBCHAPTER 6. GENERAL LOCATION RULES

This subchapter outlines the process of determining the most acceptable route for linear development (roads and utility lines) and discusses secondary impacts and the requirements for a secondary impact analysis.

N.J.A.C. 7:7E-6.1 Rule on location of linear development

N.J.A.C. 7:7E-6.1 provides that linear developments must comply with the specific location rules to determine the most acceptable route. If part of the linear development does not comply with the specific location rules, the linear development may be acceptable provided: there is no feasible alternative alignment that would have less impacts to special areas; there will be no loss of unique or irreplaceable areas; mitigation for adverse impacts is provided; and the alignment is located on or in existing transportation corridors and alignments to the maximum extent practicable. Under this proposal, the Department is amending N.J.A.C. 7:7E-6.1(a)1 to provide that for the linear development to be acceptable, there must be no prudent or feasible alignment which would have less impact on sensitive areas, marine fish or fisheries as defined at N.J.A.C. 7:7E-8.2. This amendment will ensure that the impacts on marine fish and fisheries associated with the installation of submerged infrastructure such as cables and pipelines, will be addressed.

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

This rule provides that even if a proposed development is found acceptable in accordance with N.J.A.C. 7:7E-6.1, the Department can reject or conditionally approve the proposed development location as reasonably necessary to: promote public health, safety and welfare; protect public and private property, wildlife and fisheries; and preserve, protect and enhance the natural environment.

Under existing N.J.A.C. 7:7E-6.2(a), the scope of development projects to which this rule applies is limited to those developments subject to N.J.A.C. 7:7E-6.1. This proposal would expand application of the rule to developments subject to subchapter 3, 4, 5, 5A, 5B and 6. The Department is proposing to amend this subsection to allow the Department to reject or conditionally approve a development as reasonably necessary to promote the public health, safety and welfare; protect public and private property, wildlife and marine fisheries; preserve, protect and to enhance the natural environment. This is in keeping with the CAFRA Statute N.J.S.A. 13:19-2 and 10 which set forth the purpose of CAFRA and the findings necessary to issue a permit under CAFRA.

N.J.A.C. 7:7E-6.3 Secondary impacts

N.J.A.C. 7:7E-6.3 contains the Department's rule on secondary impacts. Secondary impacts are the effects of additional development likely to be constructed as a result of the approval of a particular proposal. Secondary impacts may include traffic increases, increased recreational demand and other offsite impacts generated by onsite activities which affect the site and surrounding region.

Under existing N.J.A.C. 7:7E-6.3(b), coastal development that induces further development shall demonstrate to the maximum extent practicable that the secondary impacts of the development comply with the Coastal Zone Management rules. This rule is being amended to clarify that the Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas and to protect and preserve coastal resources. In addition, for the purposes of easier reading, N.J.A.C. 7:7E-6.3(b) is being further codified.

SUBCHAPTER 7. USE RULES

Subchapter 7 lists sets of rules for particular uses of coastal resources (including housing, resorts, marinas, energy, transportation, mining, ports, commercial facilities and dredging) and contains rules and conditions addressed to particular developments. In general, this subchapter specifies conditions which must be satisfied in addition to the Location rules (Subchapters 2 through 6) and the resource rules (Subchapter 8). The Use rules consist of: N.J.A.C. 7:7E-7.1, Purpose and scope; N.J.A.C. 7:7-7.2 Housing use; N.J.A.C. 7:7E-7.3 Resort/recreational use; N.J.A.C. 7:7E-7.3A, Marina Development; N.J.A.C. 7:7E-7.4, Energy Use; N.J.A.C. 7:7E-7.5 Transportation use;

N.J.A.C. 7:7E-7.6 Public Facility use; N.J.A.C. 7:7E-7.7, Industry use; N.J.A.C. 7:7E-7.8, Mining use; N.J.A.C. 7:7E-7.9 Port use; N.J.A.C. 7:7E-7.10, Commercial facility use; N.J.A.C. 7:7E-7.11, Coastal engineering; N.J.A.C. 7:7E-7.12, Dredged Material Disposal on Land; N.J.A.C. 7:7E-7.13, National Defense Facilities use; and, N.J.A.C. 7:7E-7.14, High-rise structures. Under this proposal, the Department is not proposing to amend the Mining use and Commercial facility use rules. A summary of the Use rules which are being amended as part of the readoption are summarized below.

N.J.A.C. 7:7E-7.2 Housing use rules

The Department's housing use rules are found at N.J.A.C. 7:7E-7.2. "Housing" as defined in this rule includes single family detached houses, multi-family units with apartments or town houses, high-rise buildings and mixed use developments. This rule contains the Department's standards for water area and waters edge housing; floating homes, cluster developments; construction, reconstruction or expansion (with or without expansion) of single family homes; and housing and transportation.

N.J.A.C. 7:7E-7.2(e)2 and (f)2 set forth the standards for the construction or reconstruction (with or without expansion) of a single family home or duplex on a dune. N.J.A.C. 7:7E-7.2(e)2i and (f)2i allow development on the landward slope of a secondary or tertiary dune provided specific conditions are met. Under this proposal, N.J.A.C. 7:7E-7.2(e)2i and (f)2i are being amended to require that development proposed on the landward slope of a secondary or tertiary dune be located on the "most landward" slope of the dune. This will ensure that any new development in these areas will be located in the area of the site most protected from coastal storms and help preserve the more vulnerable areas of the dune system. The Department is also proposing the same amendments to the coastal general permits for the construction or reconstruction (with or without expansion) of single family homes or duplexes at N.J.A.C. 7:7-7.8(d)1 and 7.9(d)1

N.J.A.C. 7:7E-7.2(e)3 and (f)3, the standards for the development, expansion, or reconstruction (with or without expansion) of a single family home or duplex and/or accessory development, are being amended under this proposal with regards to development on dunes and coastal bluffs.

Currently N.J.A.C. 7:7E-7.2(e)3 and (f)3 provide that development shall comply with the Coastal bluffs rule at N.J.A.C. 7:7E-3.31 if the site is located on the Atlantic

Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. If the site is not located on one of these water bodies, the development must meet a setback requirement. Under this proposal, provided the proposed development meets one of two criteria, and is not located on the Atlantic Ocean, Delaware Bay, Raritan Bay or Sandy Hook Bay, the proposed development would not be required to meet the setback requirement for coastal bluffs at N.J.A.C. 7:7E-7.2(e)10i or (f)10i. Proposed N.J.A.C. 7:7E-7.2(e)3i and ii and (f)3i and ii set forth the criteria under which the proposed development would not have to meet the setback requirements for a coastal bluff. Proposed N.J.A.C. 7:7E-7.2(e)i and (f)i provide that when the development is located in the "developed bluff area" the development would not have to meet the setback requirements at N.J.A.C. 7:7E-7.2(e)10i and (f)10i. For the purposes of N.J.A.C. 7:7E-7.2(e)3 and (f)3, the "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pools, or tennis courts that existed on July 19, 1993. Proposed N.J.A.C. 7:7E-7.2(e)3ii and (f)3ii provide that the proposed development may be located landward of the existing developed bluff area provided the development on the coastal bluff does not exceed the cumulative surface area of the developed bluff area and the developed bluff area is restored with native woody vegetation species. The amendments described above, are being proposed in recognition that until July 19, 1993, the Department did not regulate development of individual single family homes or duplexes in the CAFRA area., and as a result, development occurred on coastal bluffs. The proposed amendments are an attempt to balance the homeowner's ability to modify existing development on a bluff while protecting undeveloped bluff areas.

In addition, the cross reference to the setback requirements for the expansion or reconstruction (with or without expansion) at existing N.J.A.C. 7:7E-7.2(f)3 is being amended to correct an error.

Further, as mentioned previously, the coastal general permits for the development, expansion, reconstruction (with or without expansion) of a single family home or duplex and/or accessory development at N.J.A.C. 7:7-7.8 and 7.9 are being proposed for amendment to reflect these proposed changes.

N.J.A.C. 7:7E-7.3A Marina Development

N.J.A.C. 7:7E-7.3A(a)6 is being amended to replace the term "dredge spoil" with "dredged material".

N.J.A.C. 7:7E-7.4 Energy Use rule

The Energy use rule contains the acceptability standards for the wide variety of energy facilities that may be proposed in the coastal area. The majority of changes proposed in this subsection are being made to update the rule to reflect current terminology and delete references to outdated plans and organizations.

N.J.A.C. 7:7E-7.4(a) contains the definition of energy facilities. The Department proposes to amend the definition to specify that energy facilities include facilities, plants or operations for exploration, development, extraction and processing of energy or fossil fuel. This would make the definition inclusive of all of the energy facilities that are identified in the remainder of N.J.A.C. 7:7E-7.4. The Department is proposing to delete the reference to the Department of Energy Act since this is the only provision of the act which is used in this rule. However, the intent of this portion of the definition, not to include retail dealers as energy facilities, remains. An example of a retail dealer, gas stations, and a description of those facilities as commercial, has been added for clarity.

N.J.A.C. 7:7E-7.4(b) contains the standard for siting an energy facility. The current standards provide for determinations to be made by the Department's Office of Energy, and refer to the State Energy Master Plan. The rule requires a consideration of the need for the energy facility. In 1999, the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49 to N.J.S.A. 48:3-98, significantly modified the regulation of the energy industry in New Jersey. The Act indicated the intent to lower the high cost of energy and improve the quality of services, thereby improving the quality of life and placing the State in an improved competitive position in regional, national and international markets. The Act placed greater reliance on competitive markets. The Act reduced the role of the Board of Public Utilities, which had replaced the Office of Energy, and moved the State away from consideration of need for energy facilities. Therefore, the Department proposes to delete this subsection and replace it with new standards. The proposed standards reflect the legislative mandate of CAFRA to work within the framework of a comprehensive environmental design strategy which preserves the most ecologically sensitive and fragile area from inappropriate development and provides adequate environmental safeguards for the construction of any developments in the coastal area. These standards are to be considered in selecting a site for an energy facility. Whereas the previous siting standards referred to the State Energy Master Plan,

the new standards are explicit in terms of what resources to consider in selecting a site for a facility. They take into account the potential effects of the facility on coastal resources, including scenic resources, and public use of the resources.

Specifically, N.J.A.C. 7:7E-7.4(b)1 requires that energy facilities not be sited in certain Special Areas or marine fish and fisheries areas, unless site-specific information demonstrates that the facilities will not result in adverse impacts to these areas. These Special Areas are the Special Water Areas (N.J.A.C. 7:7E-3.2 through 3.15), the Special Water's Edge Areas (N.J.A.C. 7:7E-3.16 through 3.32), and most Special Land Areas (N.J.A.C. 7:7E-3.33 through 3.42, 3.44 and 3.46). This list includes the Special Areas that are environmentally sensitive resource areas, which may be adversely, affected by energy development, and not those where development is specifically encouraged, such as the Special Urban Area, N.J.A.C. 7:7E-3.43. Additionally, N.J.A.C. 7:7E-7.4(b)2 requires that facilities that are not water dependent be at least 500 feet inland of the mean high water line in the CAFRA area and in the limited growth and extension regions in the upland waterfront development area. These are the Western Ocean, Southern, Mullica-Southern Ocean, Great Egg Harbor River and Delaware Estuary regions. Such restrictions have not been placed on development regions, where the general policy is to promote growth through infill and limited extension. Limited growth regions are those regions that contain large environmentally sensitive areas. Extension regions are regions where development should be channeled only after full development of the development regions, and where environmental sensitivity is weighed more heavily than in development regions. Water dependent facilities are exempted from this restriction since they require access to the water. N.J.A.C. 7:7E-7.4(b)3 requires that public access to and use of the waterfront and tidal waters be maintained, and enhanced where feasible, and N.J.A.C. 7:7E-7.4(b)4 requires that the scenic and visual qualities of coastal areas be maintained as well.

Throughout N.J.A.C. 7:7E-7.4, the Department proposes to replace all references to the "Coastal Resource and Development Policies" with "Coastal Zone Management rules" to reflect the current name of these rules.

It is proposed that the reference to the Coastal Tourism Response Model in the rationale of the rule regarding employment at coastal energy facilities, at N.J.A.C. 7:7E-7.4(c)2, be deleted because it is no longer maintained by the Land Use Regulation Program.

Changes are also proposed throughout this subsection to update references to particular coastal areas of the State. The phrase "Bay and Ocean Shore" segment, region, and area were previously used to refer to the area regulated under CAFRA. They are proposed to be replaced throughout this subsection with the phrase "CAFRA area" where they apply only to areas above the mean high water line and "CAFRA area and its coastal waters" where they apply to areas both above and below the mean high water line. Similarly, the term "less developed areas of the coastal zone" at N.J.A.C. 7:7E-7.4(e)1 would be replaced with the current terminology "the CAFRA area", as would references to areas in or along "the Atlantic Ocean and Delaware Bay". The term "territorial sea" is being replaced by "coastal waters" since it does not only refer to the Atlantic Ocean as the term "territorial sea" implies.

The references to the "built-up urban coastal area" at N.J.A.C. 7:7E-7.4(e)1 and "the built-up area of the coastal zone along the Hudson, Raritan and Delaware Rivers at N.J.A.C. 7:7E-7.4(f)1 are proposed to be amended to use the current region names, the Urban Area, Delaware and Northern Waterfront regions. For consistency, the Urban Area region would be added to the list of developed areas where repair and maintenance facilities are conditionally acceptable at N.J.A.C. 7:7E-7.4(g)1 and where storage of crude oil, gases and other potentially hazardous liquid substances is acceptable at N.J.A.C. 7:7E-7.4(p)2.

References to ports at N.J.A.C. 7:7E-7.4((h)1 and (q)1i, are proposed to be revised to be consistent and use the current port names, the "Port of New York and New Jersey" and the "Port of Camden and Philadelphia".

The rationale for the standards for onshore support bases at N.J.A.C. 7:7E-7.4(e)2 is proposed to be updated to reflect the fact that offshore exploration is not ongoing but may occur in the future.

N.J.A.C. 7:7E-7.4(i) contains the standards for pipelines and associated facilities. The standards at existing (i)1iii(1) prohibit pipeline corridors for landing oil in the Central Pine Barrens area of the Mullica River, and Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as a "critical area" for sewerage purposes and in non-degradation surface and groundwater quality standards at N.J.A.C. 7:9. Such landings are discouraged in other undeveloped parts of the Pine Barrens. Similarly, existing N.J.A.C. 7:7E-7.4(i)1iii(2) discourages pipeline corridors for natural gas in the same Central Pine Barrens region, unless the developer can demonstrate that

the construction and operation of the proposed pipeline will meet the adopted non-degradation standards for water quality and cause no long-term adverse environmental impacts. The term "Central Pine Barrens area" is no longer used in describing Pinelands regions, nor do the rules cited still refer to this critical area. Moreover, since this rule was first adopted in 1978, the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., was enacted in 1979 and the Pinelands Comprehensive Management Plan was adopted in November 1980. The Comprehensive Management Plan sets forth specific standards for development of such facilities in the various regions of the Pinelands. The Pinelands National Reserve and Pinelands Protection Area rule, N.J.A.C. 7:7E-3.44, sets forth the standard for coastal development in the Pinelands which is subject to the Coastal Zone Management rules. It requires that coastal development be consistent with the intent, policies and objectives of the National Parks and Recreation Act of 1978, P.L. 95-625, Section 502 and the State Pinelands Protection Act, N.J.S.A. 13:18A-1. Furthermore, the Water quality rule, N.J.A.C. 7:7E-8.4, and the Rule on location of linear development, N.J.A.C. 7:7E-6.1, protect surface water, groundwater, and other sensitive resources from potential adverse impacts of pipeline corridor development. If the proposed development is also located within the Pinelands Protection Area or the Pinelands Preservation Area, it must also receive approval of the Pinelands Commission. Accordingly, these outdated standards referring to the Pine Barrens are being deleted.

It should be noted that the Coastal Permit Program rules, N.J.A.C. 7:7-4.2(a)3, require that any application for a CAFRA permit within the State Pinelands Preservation Area or State Pinelands Protection Area must submit a copy of the application package to the Pinelands Commission. Furthermore, N.J.A.C. 7:7-4.2(a)8 requires that applications for development in an area under the jurisdiction of the Pinelands Commission must submit either a Certificate of Filing, Notice of Filing, or a Certificate of Compliance from the Pinelands Commission. These provisions are intended to ensure a coordinated review by the Department and the Pinelands Commission. This rule proposal also proposes to amend N.J.A.C. 7:7-4.2(a)8 to replace the term "Certificate of Compliance" with the correct term "Certificate of Completeness" and to add the submission of a resolution of the Pinelands Commission approving an application for public development.

Existing N.J.A.C. 7:7E-7.4(i)1vi and vii are proposed to be recodified as N.J.A.C. 7:7E-7.4(i)1iv and v, respectively, with no change in substance. Existing N.J.A.C. 7:7E-7.4(i)1v(2) is proposed to be recodified as N.J.A.C. 7:7E-7.4(i)3, with minor rewording for clarity.

Lastly, the rationale of this subsection at N.J.A.C. 7:7E-7.4i(ii)5 is proposed to be amended for grammatical sense and to delete the outdated reference to an intergovernmental offshore oil and gas transportation planning process and to recent Minerals Management Service lease sales. The reference to the Pine Barrens is also proposed for deletion, consistent with the above-described deletion of existing N.J.A.C. 7:7E-7.4(i)1iii.

No changes in substance are proposed at N.J.A.C. 7:7E-7.4(j), standards relevant to gas separation and dehydration facilities, which includes minor changes for clarity.

At N.J.A.C. 7:7E-7.4(l)1 the Department proposes to replace the word "offshore" with the word "onshore" to describe the location at which a pig or scraping tool would be removed from a pigging facility

The reference to the Department's Office of Energy at N.J.A.C. 7:7E-7.4(m)2 is proposed to be deleted as that office no longer exists. This change is also proposed at N.J.A.C. 7:7E-7.4(n)1 and N.J.A.C. 7:7E-7.4(o)1.

Furthermore, changes are proposed to N.J.A.C. 7:7E-7.4(n)1 to delete the unnecessary standard for compliance with United States Department of Transportation regulation for other gas-related facilities, as compliance with these and any other applicable regulations is required regardless of any standards in these rules.

At N.J.A.C. 7:7E-7.4(o)1, the requirement that there be a need for an oil refinery or petrochemical facility is proposed to be deleted due to deregulation of the industry by the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-49. In this same subsection, the requirement for an environmental impact statement is proposed for deletion, since all application requirements and procedures are set forth in the Coastal Permit Program rules, N.J.A.C. 7:7, including the requirements for an environmental impact statement and the contents of an environmental impact statement. Furthermore, existing N.J.A.C. 7:7E-7.4(o)1i (proposed N.J.A.C. 7:7E-7.4(o)2) is proposed to be amended so that new oil refineries and petrochemical facilities outside the CAFRA area are encouraged to locate in industrial areas accessible to both their potential labor force

and existing infrastructure. This is intended to enable a facility to avail itself of existing distribution systems and waste treatment systems.

Existing N.J.A.C. 7:7E-7.4(p)1i, ii and iii are being reworded for clarity, with no change in substance, and recodified as N.J.A.C. 7:7E-7.4(p)2, 3 and 4. Similarly, N.J.A.C. 7:7E-7.4(q) is being reworded for clarity only.

N.J.A.C. 7:7E-7.4(r) contains the standards relevant to electric generating stations. The standard for conversion or modification of existing generating facilities at existing N.J.A.C. 7:7E-7.4(r)1 is being recodified as N.J.A.C. 7:7E-7.4(r)2 for clarity. At N.J.A.C. 7:7E-7.4(r)1i, the standard related to compliance with the Coastal Zone Management rules is being proposed to be deleted as compliance with these and any other applicable regulations is required regardless of any standards in this subsection. This deletion results in recodification of the remainder of the rule. At existing N.J.A.C. 7:7E-7.4(r)1ii, (proposed N.J.A.C. 7:7E-7.4(r)1i), the reference to the Office of Energy is being deleted since it no longer exists. The requirement to establish a need for an electric generating station and that there are no better alternative technologies is also being deleted due to the deregulation of the industry in 1999.

N.J.A.C. 7:7E-7.4(s)1 is being modified to delete the reference that liquefied natural gas is transmitted by pipeline to a base-load electric generating station, since the transmission may also be to an inter or intrastate system. This change is required to ensure that there are standards applicable to all liquefied natural gas facilities. Moreover, changes are being proposed to N.J.A.C. 7:7E-7.4(s)1i to update the Federal regulations that apply to liquefied natural gas facilities. All other changes are minor rewording for clarity, with no change in substance.

N.J.A.C. 7:7E-7.5 Transportation Use rule

N.J.A.C. 7:7E-7.5(a) is being amended to add the citation for the Rule on Location of Linear Development.

N.J.A.C. 7:7E-7.6 Public Facility Use rule

For the purposes of clarity, the standards for general public facilities at 7:7E-7.6(b) are being recodified as 7:7E-7.6(d) and amended to contain the standards for new or expanded public facilities other than solid waste and waste water treatment facilities. Existing N.J.A.C. 7:7E-7.6(b)1i through (b)1iii are being recodified as N.J.A.C. 7:7E-

7.6(d)1 through 3. Codification of this provision immediately after N.J.A.C. 7:7E-7.6(b) and (c), which provide standards for specific types of public facilities, will make it clearer that the standards previously codified at N.J.A.C. 7:7.6(b) apply to all other public facilities.

Existing N.J.A.C. 7:7E-7.6(c) contains the standards for solid waste facilities and is being recodified as N.J.A.C. 7:7E-7.6(b). A definition of solid waste facility is proposed at N.J.A.C. 7:7E-7.6(b). This definition is the same as the definition of this term contained in the Department's Solid Waste rules at N.J.A.C. 7:26-1.4. Existing 7:7E-7.6(c)3, which provides that sanitary landfills are prohibited in a wetland, is being recodified as 7:7E-7.6(c)2 and amended to provide that solid waste facilities shall not be located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b), the list of activities prohibited in coastal wetlands. This provision is being amended to use “solid waste facilities” instead of “sanitary landfills” for consistency with proposed N.J.A.C. 7:7E-7.6(b) and because this term is more comprehensive and includes a variety of solid waste facilities including sanitary landfills, recycling centers, and composting facilities which were previously not addressed. This amendment does not preclude the placement or expansion of solid waste facilities in freshwater wetlands or transition areas. The placement or expansion of a solid waste facility in a freshwater wetland or transition area must comply with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A. Proposed N.J.A.C. 7:7E-7.6(b)1iii requires that the solid waste facility be consistent with the proposed solid and hazardous waste rule at N.J.A.C. 7:7E-8.22. In an effort to make this rule more concise, the portion of the rule rationale at existing N.J.A.C. 7:7E-7.6(e) that applies to solid waste facilities is being recodified as N.J.A.C. 7:7E-7.6(c)2.

Currently, the standards for wastewater treatment plants are found at N.J.A.C. 7:7E-7.6(d). Under this proposal it is proposed to be recodified as N.J.A.C. 7:7E-7.6(c). Existing N.J.A.C. 7:7E-7.6(d)1 (proposed N.J.A.C. 7:7E-7.6(c)1) is being amended to use current terminology. Existing N.J.A.C. 7:7E-7.6(d)1i is being recodified as N.J.A.C. 7:7E-7.6(c)2 and being rephrased in the affirmative. Existing N.J.A.C. 7:7E-7.6(d)1ii is being recodified as N.J.A.C. 7:7E-7.6(c)3 with minor changes in wording. To make the rule more concise, the rule rationale for wastewater treatment facilities is being recodified as N.J.A.C. 7:7E-7.6(c)4.

N.J.A.C. 7:7E-7.7 Industry Use

The Department's rule for industry uses is found at N.J.A.C. 7:7E-7.7. Industry uses include a wide variety of industrial processing, manufacturing, storage and distribution activities.

Industry uses at existing N.J.A.C. 7:7E are defined by the Standard Industrial Classification (SIC) categories 2011 to 3999, excluding 2991 (petroleum refining) since that industry is addressed by the Energy use rule. The Standard Industrial Classification (SIC) codes were a national business coding system that was in effect from the 1930's until April 1997. The SIC codes were last revised by the federal Office of Management and Budget in 1987 and published in an SIC manual.

In 1992, the Office of Management and Budget formed the US Economic Classification Policy Committee, which consisted of representatives of the US, Canada and Mexico, developed a new coding system to replace SICs. The goal of this committee was to develop a classification system that identifies additional types of industries, is organized according to a consistent economic principle, and is uniform for Canada, Mexico and the United States. As a result of this committee, a new coding system known as the North American Industrial Classification System (NAICS) was adopted in April 1997. The new NAIC codes are based on a production-oriented framework which groups industry according to similar processes used to produce goods or services. The NAICS changes the manner in which industry is classified from being classified using business activity to using a production/process classification, and thus conversion from the SIC to NAIC system is not always one to one.

The United States began implementing NAICS in 1997. The various United States statistical agencies will be phasing in the publication of NAICS-based data between 1999 and 2004.

N.J.A.C. 7:7E-7.7(a) defines "industry" based on these coding systems. Upon review of this rule, the Department has determined that SIC codes were used since they were a well-known method of classification. However, since the new coding system does not always correlate with the old SIC system, the references to the SIC codes are being deleted. Instead, the existing definition of "industry" at N.J.A.C. 7:7E-7.7(a) will be amended to incorporate the language of the existing definition of "industrial development" as defined in the Coastal Permit Program rules at N.J.A.C. 7:7-1.3, thus

ensuring that the scope of the uses considered "industry" under this rule is not changed. Examples of industry uses are also being included at N.J.A.C. 7:7E-7.7(a).

Only minor wording changes are proposed at N.J.A.C. 7:7E-7.7(b) for the purpose of clarity.

N.J.A.C. 7:7E-7.11 Coastal Engineering

The rules concerning coastal engineering are found at N.J.A.C. 7:7E-7.11. Coastal engineering includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, revetments and seawalls are all examples of coastal engineering.

The Coastal Zone Management rules attempt to balance the economic interest in development with resource protection. Maintenance and expansion of existing ports is one of the basic goals of the coastal management program, as is protection and enhancement of the coastal ecosystem. Both the Port special area rule, N.J.A.C. 7:7E-3.11 and the Port use rule, N.J.A.C. 7:7E-7.9, further the goal of port maintenance and expansion. The Coastal engineering rule, at N.J.A.C. 7:7E-7.11(a)1 states that coastal engineering use rules do not apply to water dependent uses in existing ports. This language proposed to be revised to clarify that this exemption applies only to shore protection priority standards found at N.J.A.C. 7:7E-7.11(b). The standards for structural shore protection are already designed to balance need to provide shore protection with minimization of impacts to natural coastal resources and therefore would provide for essential shore protection within ports. The beach and dune management standards do not typically apply within these areas.

N.J.A.C. 7:7E-7.11 (a) and (e)1 and 3 are being amended to include "gabions" in the lists of shore protection structures because gabions are being used more frequently and there is currently a coastal general permit for these types of structures. N.J.A.C. 7:7E-7.11(e)1vi is also being amended to update the cross-reference to the filling rule at N.J.A.C. 7:7E-4.10.

N.J.A.C. 7:7E-7.11(e)2 sets forth the acceptability standards for the maintenance or reconstruction of an existing bulkhead. This paragraph is being amended and further

codified for the purposes of clarity. Under this proposal, N.J.A.C. 7:7E-7.11(e)2 provides that the maintenance or reconstruction of an existing bulkhead is conditionally acceptable provided it meets the standards proposed at N.J.A.C. 7:7E-7.11(e)2i, ii or iii. All measurements are made form the waterward face of the existing bulkhead to the waterward face of the proposed bulkhead. Proposed N.J.A.C. 7:7E-7.11(e)2i requires that a replacement bulkhead must be located within 18 inches outshore of the existing bulkhead unless it meets proposed N.J.A.C. 7:7E-7.11(e)2ii or iii. Proposed N.J.A.C. 7:7E-7.11(e)2ii sets forth the standards for replacement bulkheads constructed of a corrugated material. For bulkhead replacements with a corrugated material, the replacement bulkhead shall be located no more than 24 inches outshore of the existing bulkhead as measured from the waterward face of the existing bulkhead to the waterward face of the corrugated bulkhead. This provision recognizes that an additional area (beyond the 18 inches for other bulkhead replacement) is necessary to accommodate the corrugation. Proposed N.J.A.C. 7:11(e)2iii addresses situations in which the existing bulkhead can not physically accommodate a replacement as provided at N.J.A.C. 7:7E-7.11(e)2i or ii. In such as case, the replacement bulkhead must be placed as close as physically possible to the original bulkhead alignment.

N.J.A.C. 7:7E-7.12 Dredged material placement on land

N.J.A.C. 7:7E-7.12 contains the Department's rules for dredge material placement on land. Dredged material placement on land is the discharge of sediments removed during dredging operations.

The title of this rule is being amended to reflect the Department's commitment to encouraging beneficial uses of dredged material wherever possible, as opposed to exclusive reliance on disposal activities. Similarly, subsection (a) is being amended to reflect the beneficial use of dredged material as an acceptable use alternative. Examples of beneficial uses have been added for clarity. In addition, the area to which this rule applies has been redefined as the area landward of the spring high water line, consistent with the definition of General Water Area. The cross-reference to the standards for dredged material disposal below the spring high water line has been amended to reflect the proposed reorganization of Subchapter 4.

N.J.A.C. 7:7E-7.12(b) has been amended to replace the reference to polluting groundwater and degrading surface water quality with a requirement for protection of

surface and groundwater quality. The current rule references the potential need to cover sediments, and the need to avoid objectionable odors and degrading the landscape. These are only three of the various specific means to protect human health and manage ecological risks. Therefore, they are proposed to be replaced with a requirement that the use be protective of human health and manage ecological risks. In addition, the amended rule provides that testing of the dredged material may be required as needed to determine the acceptability of the placement of the material on a particular site

N.J.A.C. 7:7E-7.12(b)1 is being recodified as N.J.A.C. 7:7E-7.12(c) with no changes in text. The provision concerning the use of uncontaminated dredged material as beach fill at N.J.A.C. 7:7E-7.12(b)2 is being combined with existing N.J.A.C. 7:7E-7.12(b)3 and recodified as N.J.A.C. 7:7E-7.12(d) since this paragraph contains the uses of dredged material that are encouraged. Amendments are also proposed to clarify that all dredged material can potentially be used beneficially in a setting appropriate to the quality and particle size of the material. For example, even though contaminated dredged material could not be used for beach fill, it could potentially be used as landfill cover. Existing N.J.A.C. 7:7E-7.12(b)4 through 6 are being recodified as N.J.A.C. 7:7E-7.12(e) through (g) with no changes in text. Existing N.J.A.C. 7:7E-7.12(b)7 is proposed to be recodified as N.J.A.C. 7:7E-7.12(h) and is being amended to reference both the State Surface Water Quality Standards and the State Groundwater Quality Standards.

A reference to the Department's dredging technical manual is being proposed at N.J.A.C. 7:7E-7.12(i). This technical manual provides guidance and criteria for the required sampling, testing and permitting of proposed dredging projects and various dredged material management/disposal/use alternatives.

The rationale for this rule is proposed to be recodified as N.J.A.C. 7:7E-7.12(j) and is being amended to address the potential impacts of dredging and dredged material placement on land. In addition, minor changes in terminology are being proposed for consistency throughout this rule.

N.J.A.C. 7:7E-7.13 National defense facilities rule

The Department’s standards for national defense facilities are found at N.J.A.C. 7:7E-7.13. A national defense facility is any building, group of buildings, marine terminal, or land area owned or operated by a defense agency (Army, Navy, Air Force,

Marines, Coast Guard) and used for training, research, material support or any other defense-related use.

The language at existing N.J.A.C. 7:7E-7.13(b) is being amended for clarity, with no changes in substance. In addition, references to the title of Chapter 7E at N.J.A.C. 7:7E-7.13(b)1 and 2 are being updated.

N.J.A.C. 7:7E-7.14 High-rise structures

The standards for the development of high-rise structures are found at N.J.A.C. 7:7E-7.14. Currently, the term high-rise structure is undefined. Under this proposal, N.J.A.C. 7:7E-7.14(a) is being amended to include a definition of "high-rise structure." "High-rise structures" would be defined as structures which are more than sixty feet in height or are more than sixty feet in height as measured from pre-construction ground level.

Proposed N.J.A.C. 7:7E-7.14(b) sets forth the standards for high-rise structures. These standards are currently codified as N.J.A.C. 7:7E-7.14(a)1 though 6, and under this proposal, would be recodified as N.J.A.C. 7:7E-7.14 (b) 2 through 7. Cross-references to other sections of this Chapter and the Coastal Permit Program rules, N.J.A.C. 7:7, are being updated. Proposed N.J.A.C. 7:7E-7.14(b)1 is a standard which encourages high-rise structures to be located in urban areas of existing high-rise or high-density development. This standard is currently contained in the language at N.J.A.C. 7:7E-7.14(a) and is being recodified as (b)1 for clarity.

The rule rationale is being recodified from N.J.A.C. 7:7E-7.14(b) to (c) with no changes in text.

SUBCHAPTER 8. RESOURCE RULES

Subchapter 8 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 and contains standards to which proposed developments must adhere. The Resource rules consist of: N.J.A.C. 7:7E-8.1, Purpose and scope; N.J.A.C. 7:7E-8.2, Marine Fish and Fisheries; N.J.A.C. 7:7E-8.4 Water Quality; N.J.A.C. 7:7E-8.5, Surface water use; N.J.A.C. 7:7E-8.6, Groundwater use; N.J.A.C. 7:7E-8.7, Stormwater management; N.J.A.C. 7:7E-8.8, Vegetation; N.J.A.C. 7:7E-8.10, Air Quality; N.J.A.C.

7:7E-8.11, Public access to the waterfront; N.J.A.C. 7:7E-8.12, Scenic resources and design; N.J.A.C. 7:7E-8.13, Buffers and compatibility of uses; N.J.A.C. 7:7E-8.14, Traffic; N.J.A.C. 7:7E-8.21, Subsurface sewage disposal systems. Under this proposal, amendments are not proposed to the Water quality, Groundwater use, Stormwater management, Scenic Resources and design, and traffic rules. A new resource rule, Solid Waste, is being proposed as part of this readoption at N.J.A.C. 7:7E-8.22. A summary of this new rule and of the changes to the remaining sections is found below.

N.J.A.C. 7:7E-8.1 Purpose and scope

N.J.A.C. 7:7E-8.1, Purpose, is being amended to further refine the purpose of Subchapter 8, Resource rules. The resource rules evaluate the development in terms of its effects on various resources of the built environment and natural environment of the coastal zone, both at the proposed site and its surrounding region.

Existing N.J.A.C. 7:7E-8.1(b) specifies various statutes that a development must comply with in addition to this Chapter. Under this proposal, N.J.A.C. 7:7E-8.1(b) is being deleted because a proposed development must comply with all applicable local, State and Federal requirements.

N.J.A.C. 7:7E-8.2 Marine fish and fisheries

The acceptability standards for activities that impact the marine fish and fisheries resource are currently codified as N.J.A.C. 7:7E-8.2(a). Under this proposal, existing N.J.A.C. 7:7E-8.2(a) is being deleted in its entirety.

Proposed N.J.A.C. 7:7E-8.2(a) defines “marine fish” and “marine fishery” since these terms are currently undefined. Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics. The catching, taking or harvesting of marine fish is also a marine fishery.

Proposed N.J.A.C. 7:7E-8.2(b) provides that any activity that would adversely impact the natural functioning of marine fish and fisheries is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries is also discouraged unless it meets the acceptability criteria proposed at N.J.A.C. 7:7E-8.2(c).

Proposed N.J.A.C. 7:7E-8.2(c) sets forth activities that are conditionally acceptable provided the activity complies with the appropriate general water area rule (N.J.A.C. 7:7E-4). Conditionally acceptable activities include: the construction of submerged cables and pipelines; sand and gravel mining for the purposes of beach nourishment; and the establishment of Aquaculture Development Zones.

The rule rationale, currently codified as N.J.A.C. 7:7E-8.2(b) is being recodified as N.J.A.C. 7:7E-8.2(d) and amended to provide additional information regarding the importance of marine habitat in sustaining marine fish and fisheries; update the economic importance of the marine fish and fisheries resources; highlight the significance of sand mining to support the State's beach nourishment program; and describe the importance of Fishery Management Plans. Fishery Management Plans provide for the management of marine fish throughout their range. Fishery Management Plans are developed to prevent overfishing of marine fish and achieve optimal yield from each fishery on a continuing basis.

N.J.A.C. 7:7E-8.8 Vegetation

N.J.A.C. 7:7E-8.8 contains the Department's rule for vegetation. Under this rule, vegetation is defined as the plant life or total plant cover that is found on a specific area whether indigenous or introduced by humans.

N.J.A.C. 7:7E-8.8(b) is being amended to clarify that the vegetation planted at a coastal development be a coastal species native to New Jersey thus promoting diversity of vegetation throughout the coastal zone.

N.J.A.C. 7:7E-8.10 Air quality

The Department's rule for the protection of air resources under this chapter is codified at N.J.A.C. 7:7E-8.10. The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and the attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

The description of air quality protection at N.J.A.C. 7:7E-8.10(a) is proposed for amendment for grammatical sense.

The existing cross-reference to the Traffic rule is being updated at existing N.J.A.C. 7:7E-8.10(c).

N.J.A.C. 7:7E-8.11 Public access to the waterfront

The Department's rules for public access to the waterfront are codified at N.J.A.C. 7:7E-8.11. Public access to the waterfront is the ability of all members of the community at large to pass physically and visually to, from and along the ocean shore and other waterfronts.

The existing list of public projects where public access, including parking, is required at N.J.A.C. 7:7E-8.11(b)6 is being amended to include beach nourishment projects, thus ensuring that the newly created beach will be accessible to the public.

The cross-references to the Hudson River Waterfront Development rule and Atlantic City rule are being updated to include both the title of the rule and the New Jersey Administrative Code section number.

N.J.A.C. 7:7E-8.13 Buffers and compatibility of uses

The standards for buffers and compatibility of uses are found at N.J.A.C. 7:7E-8.13. Buffers are natural or man-made areas, structures or objects that serve to separate distinct uses or areas. Compatibility of uses is the ability for uses to exist together without aesthetic or functional conflicts.

N.J.A.C. 7:7E-8.13(b)1 is being amended to replace the reference to N.J.A.C. 7:7E-3.1 through 3.48 with reference to all of Subchapter 3 for clarity.

N.J.A.C. 7:7E-8.13(b)2 is being amended to clarify that the standards for wetland buffers are found at N.J.A.C. 7:7E-3.28.

N.J.A.C. 7:7E-8.22 Solid and Hazardous Waste

As discussed in the summary of Subchapter 8, the Resource rules are used to review a proposed development in terms of its effects on various resources of the built and natural environment of the coastal zone. As such, there are specific Resource rules that address the protection of air and water. There is no comparable rule that addresses the effects of development on land. To address this situation, the Department is proposing a Solid and Hazardous Waste rule.

Proposed N.J.A.C. 7:7E-8.22(a) defines solid and hazardous waste. The definitions in the Solid and Hazardous Management rules, N.J.A.C. 7:26, and the Hazardous Waste rules at N.J.A.C. 7:26G are rather lengthy in order to provide sufficient

detail for the solid and hazardous waste programs. This level of detail is not necessary for the purposes of coastal zone management. Therefore, these definitions have been combined and condensed for this proposed rule.

The standards for coastal development concerning solid and hazardous waste are proposed at N.J.A.C. 7:7E-8.22(b). Coastal development must comply with the applicable State and Federal regulations, standards and guidelines for handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid and Hazardous Management rules, N.J.A.C. 7:26, the Recycling rules at N.J.A.C. 7:26A and the Hazardous Waste rules at N.J.A.C. 7:26G.

The rule rationale, which describes the importance of the management and disposal of solid and hazardous wastes, is proposed at N.J.A.C. 7:7E-8.22(c).

Social Impact

The existing Coastal Zone Management rules have had a positive social impact by providing a comprehensive, efficient, and integrated framework for managing coastal development and protecting coastal resources. The proposed re-adoption with amendments of the Coastal Zone Management rules, N.J.A.C. 7:7E will have a positive social impact on the coast by continuing to protect and enhance coastal resources and guiding coastal development into appropriate locations. These rules provide the substantive standards for decisions on permit applications pursuant to the Waterfront Development Law, the Wetlands Act of 1970, and the Coastal Area Facility Review Act (CAFRA). Therefore, these rules are necessary to continue implementation of these statutes and to facilitate the coastal permit application process for new development and redevelopment subject to coastal permit jurisdiction.

The proposed re-adoption with amendments includes the re-codification of existing text to consolidate terms, to clarify specific compliance requirements, and to reflect current organizational structure within the Department. These amendments will benefit permit applicants by increasing their understanding of the rules, thereby simplifying the permit application process.

The proposed re-adoption with amendments contains several changes to Special Area rules at Subchapter 3 to assist permit applicants and better protect and enhance coastal resources. For example, the proposed standards for tidal wetland mitigation

projects at N.J.A.C. 7:7E-3B.2 will allow applicants to design a tidal wetland mitigation plan in conformance with clear guidelines from the Department. In addition to assisting permit applicants by providing clear guidelines for wetland mitigation proposals, this requirement will ensure that wetland mitigation plans are appropriately prepared, and that the impact of development on tidal wetlands is adequately mitigated.

These rules will also have a positive social impact on the coastal zone by maintaining the quality of land and water resources within the area. Continued preservation of rural and forest areas, concentration of development into centers, and improvements in water quality will enhance the enjoyment of the coastal experience and the quality of life for coastal residents and tourists alike.

Economic Impact

The Coastal Zone Management rules represent the State's substantive standards for the use and development of resources in New Jersey's coastal zone. These rules are used to review permit applications under the Coastal Permit Program rules at N.J.A.C. 7:7, which implement the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19; the Wetlands Act of 1970, N.J.S.A. 13:9A; and the Waterfront Development Law, N.J.S.A. 12:5-3. The coastal permitting program is supported by two main revenue sources: Federal grant and State appropriations. The Department's permit application fees are generally based on the actual cost of application review. Although the Department is proposing amendments to the Ninety-Day Construction Permits rules to move the coastal permitting fees to the Coastal Permit Program rules, no amendments are proposed to the permit application fees.

The proposed readoption of the Coastal Zone Management rules will have a positive economic benefit through the protection and enhancement of coastal resources, and the tourism industry that is dependent on these resources. Although there are costs associated with demonstrating compliance with this chapter as discussed below, these costs will not expand beyond those previously incurred. Further, the proposed readoption will provide an economic benefit in that permit applicants will continue to rely on the guidance provided in the rules in preparation of permit applications under the guise of the Coastal Permit Program rules. These rules provide specific standards and conditions which apply to development requiring a coastal permit, and are used by

permit applicants in the design of projects and in the preparation of permit applications and environmental impact statements.

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

The Department believes that the proposed re-adoption with amendments of the Coastal Zone Management rules will have a positive effect on development in the coastal zone. These rules have been in place since 1978 and are necessary for the Department to continue implementing the Waterfront Development Law, the Wetlands Act of 1970 and CAFRA. During this time period, the rules have served to protect coastal resources while guiding development toward less environmentally sensitive locations, thereby providing the necessary balance to sustain appropriate growth in the coastal zone. While these rules require property owners to obtain permits for certain types of development in the coastal area, the implementation of these rules will also allow for growth in the coastal zone to support residential housing and commercial development needs, which are critical components of the State's tourism industry. Enhancement of the tourism industry resulting from the continued implementation of these rules will have a positive economic impact within the coastal zone.

The proposed rule amendments will also have a positive economic impact since they include new standards for permit application requirements, including standards for tidal wetland mitigation proposals and maintenance dredging. These standards will simplify the preparation of permit applications and supporting information, resulting in an associated streamlining and reduction in consulting effort on the part of permit applicants. These standards will also facilitate the review of permit applications by the Department, and potentially reduce the overall time required to review the permit application.

Other sections of the proposed re-adoption with amendments will result in economic benefit as well. For example, the Department proposes a new provision at N.J.A.C. 7:7E-3.23(c)1ii to allow the construction of at-grade decks within the waterfront

portion of filled water's edge sites, provided that the use of the decks is water oriented. These structures will accommodate expansions of certain commercial developments important to the coastal tourism industry, particularly waterfront restaurants, and promote public access to the waterfront at these sites, thereby providing economic benefit to the local economy.

The proposed amendments at N.J.A.C.7:7E, Subchapter 10, will not have an economic impact as these permit fees are those existing at N.J.A.C. 7:1C and are simply proposed for recodification. The actual fee amounts are not proposed for amendment.

If the Department fails to re-adopt these rules, the economic impact to New Jersey residents and visitors would be negative, since these rules provide the standards for new development and redevelopment, and associated environmental protection. The proposed readoption with amendments will enable the Department to continue protecting environmental resources and to guide development to appropriate locations. In particular, the coastal tourism economy would be directly impacted if these rules were not re-adopted.

Environmental Impact

The Department believes that the proposed re-adoption of the Coastal Zone Management rules, with amendments, will continue to have a positive environmental impact on the coastal zone. The Coastal Zone Management rules represent the most comprehensive set of development standards in place throughout the coastal zone. These rules address the potential impacts of development on numerous land and water resources, shoreline erosion and stabilization, coastal hazard mitigation and public access to the waterfront. The continued implementation of these rules, as amended, will maintain the protection of coastal resources including wetlands, beaches, dunes, surface waters, and endangered and threatened wildlife and vegetation species habitats. In addition, continued implementation of these rules will discourage development sprawl into rural areas and concentrate development and redevelopment in centers, where existing infrastructure is available to support new growth.

Other sections included in this proposal will have positive environmental impacts as well. The proposed adoption of new standards for tidal wetland mitigation proposals at N.J.A.C. 7:7E-3B.2 will facilitate the creation and enhancement of tidal wetlands

required as a condition of permit approval. Currently, these wetland mitigation standards are determined on a case-by-case basis. The proposed amendments will allow prospective permit applicants to better plan the required mitigation proposals and avoid unnecessary consulting services.

The proposed amendments to the rules on surf clams at N.J.A.C. 7:7E-3.3, and marine fish and fisheries at N.J.A.C. 7:7E-8.2 will better protect the fisheries and biological communities dependent on nearshore sand resources from impacts associated with large-scale sand borrowing for beach nourishment along the coast. The proposed standards require that regulated activities mitigate adverse impacts to these fisheries through a variety of techniques, including alteration of sand borrow areas, and modifications of borrow area depths and dimensions. In many past coastal permit decisions, these standards were required as a condition of approval, therefore the Department is proposing to codify requirements based on its experience in reviewing such applications. The proposed amendments to the intertidal and subtidal shallows rule at N.J.A.C. 7:7E-3.15 include clear standards for mitigation of development impacts to these areas, where no prior standards existed. These standards will ensure that mitigation is carried out in a comprehensive, technically sound manner and that the mitigation will adequately ameliorate any adverse impacts on intertidal and subtidal shallows. The proposed standards at N.J.A.C. 7:7E-4.14 would encourage the use of directional drilling rather than trenching to install submerged infrastructure, which will reduce the impact of submerged infrastructure installation activities on water areas and benthic resources.

Federal Standards Statement

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

The Federal Coastal Zone Management Act (16 U.S.C. 1450 et seq) was signed into law on October 27, 1972. The Act does not set specific regulatory standards for development in the coastal zone; rather, it provides broad guidelines for states developing coastal management programs. These guidelines are found at 15 C.F.R.

Part 923. The guidelines do not specifically address the review standards that should be applied to new coastal development in order to preserve and protect coastal resources and to concentrate the pattern of coastal development. They simply provide a planning and management process, without establishing development standards for development in the coastal area. Therefore, the Department has concluded that the proposed re-adopted rules, with amendments, do not exceed any Federal standards or requirements.

Jobs Impact

The Department anticipates that the proposed re-adoption of the Coastal Zone Management rules, with amendments, will not have an adverse impact on the number of jobs in the State. The proposed readoption of this chapter will have a positive impact on engineering, consulting and legal services since the rules will continue to apply to regulated developments with no change in jurisdiction or scope of development subject to coastal permit application review. Therefore, the need for environmental consultants and other professionals in the land use field will continue, as will the amount of development-related employment. These rules, and the associated permit requirements, will continue to support this employment sector in the coastal area. The proposed amendments are not expected to have any significant impact on jobs, since the amendments accompanying this readoption do not change the types of development regulated under the coastal permitting program.

Agriculture Industry Impact

The proposed re-adoption of the Coastal Zone Management rules, with amendments, is expected to continue to benefit the agriculture industry by reducing development sprawl into rural agricultural lands and concentrating development in more densely developed areas and centers. This will conserve more farmland in the coastal area for ongoing and future agricultural uses.

The rules also maintain the impervious cover exemption for agriculture uses, including aquaculture, thereby facilitating the development and redevelopment of agricultural uses in the coastal zone.

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

Regulatory Flexibility Statement

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 re-adoption of the Coastal Zone Management rules, with amendments, will continue to affect a significant number of builders and property owners defined as "small businesses" in the Act. However, the proposed re-adoption of the Coastal Zone Management rules, with amendments, will not alter or expand the Department's current jurisdiction over development in the coastal area. In addition, the Department has determined that the proposed rules and amendments will not impose additional reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Act.

The small businesses subject to coastal permit regulation may benefit from the reorganization, clarification and streamlining provisions of the proposed re-adoption with amendments. These changes should simplify the permit application procedure for small businesses that require coastal permit approval to develop or redevelop, by consolidating standards and by providing more detailed guidance regarding permit application submission requirements.

Readoption of these rules will continue to result in costs to those proposing to construct development subject to the jurisdiction of the Wetlands Act of 1970, the Waterfront Development Law and CAFRA. These potential costs include consulting fees and permit application fees. However, failure to readopt these rules and continue implementing these statutes would result in significant degradation of coastal resources and would eliminate further implementation of the Department's smart growth initiatives throughout the coastal zone. This would have a direct adverse impact on the quality of life of people residing in or visiting the coastal zone, as well as adverse secondary impacts to the State's coastal tourism economy.

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

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

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

Chapter 1C

Ninety-Day Construction Permits rules

N.J.A.C. 7:1C

7:1C-1.2 Definitions

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

…

"Appropriate agency" *means:*

1. The Land Use Regulation Program, CN 401, Trenton, NJ 08625 for:

[i. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3 (Waterfront Development Permit);

ii. Permits for a regulated activity under the Wetlands Act of 1970, P.L. 1970, c.272 (N.J.S.A. 13:9A-1 et seq.);

iii. Permits issued pursuant to the Coastal Area Facility Review Act, P.L. 1993, c.190 (N.J.S.A. 13:19-1 et seq.); and**]** i.- iii. **Reserved.**

iv. (No change.)

2. (No change.)

"Construction permit" means:

[1. Approval of plans for the development of any waterfront upon any tidal or navigable waterway pursuant to N.J.S.A. 12:5-3;

2. A permit for a regulated activity pursuant to "The Wetlands Act of 1970," P.L. 1970, c.272 (N.J.S.A. 13:9A-1 et seq.);

3. A permit issued pursuant to the Coastal Area Facility Review Act, P.L. 1993, c.190 (N.J.S.A. 13:19-1 et seq.); **]** 1. – 3. **Reserved.**

4. - 5. (No change.)

…

7:1C-1.3 Pre-application procedure and requirements

(a) A pre-application review is an optional service especially recommended for major development. During this review the Department will discuss the apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The conference is intended to provide guidance and does not constitute a commitment of approval or denial of a permit for the proposed development. However, if the appropriate agency determines that the proposed project is exempt from the permit requirement, the agency shall issue a written statement of such finding which shall bind the agency. The written statement issued as a result of a pre-application review shall be based solely on the information submitted by the applicant pursuant to (a)1 below. **[**Therefore, this written statement will not constitute an exemption letter, issued pursuant to N.J.A.C. 7:7-2.1(e), certifying that a development is exempt from the requirements of CAFRA.**]**

1. (No change.)

(b) – (d) (No change.)

[(e) Applicants for CAFRA, Waterfront Development and coastal wetland permits shall follow the procedures set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.**]**

7:1C-1.5 Fees

(a) Fees shall be charged for the review of any application for a construction permit in accordance with the following schedule:

[1. Waterfront development permits:

i. The fee for any work requiring a General Permit or consisting solely of capital repairs or reconstruction with all work taking place above 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 shall be $250.00. Regulated activities eligible for a General Permit include, but are not limited to, the following: minor reconstruction or maintenance of currently serviceable legal existing structures in all navigable waters, minor construction of new bulkheads in man-made tidal lagoons and minor maintenance dredging in man-made tidal lagoons.

ii. The permit 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 $500.00 per unit. The fee for a residential development consisting of a single duplex shall be $500.00.

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(3) The fee for non-residential developments shall be calculated based on the following schedule:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1 ¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1 ½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(4) The fee for mixed Residential and Non-Residential Facilities shall be the sum of the Residential and Non-Residential Facilities fee as calculated under (a)1ii(1) or (2) and (3) above.

iii. The permit fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

(1) The permit fee for residential site improvements for a single private residential unit or duplex, including without limitation: shore structures (bulkheads, riprap) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be $250.00 plus one half of one percent of the construction cost above $10,000.

(2) The permit fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1 ¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1 ½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall

provide the applicant with documentation of such costs when a supplemental fee is charged.

2. Wetland permits: The fee for a Wetlands Act of 1970 permit (N.J.A.C. 7:7-2.2) shall be one percent of the construction costs, or a minimum of $250.00 for residential dock construction associated with a single family or duplex dwelling unit, and $500.00 for all other regulated activities.

3. CAFRA permits:

i. The fee for residential developments 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 $500.00 per unit. The fee for a residential development consisting of a single duplex shall be $500.00.

(2) The fee for all other residential developments shall be $3,000 plus:

(i) $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

(ii) $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

(iii) $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

ii. The fee for non-residential developments 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:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1 ¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1 ½ percent of construction costs above $200,000
greater than $350,000	$5,700 + one percent of construction costs above $350,000

The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its

actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

(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 $3,500 plus $500.00 per acre included in the site plan.

(A) For a proposed linear development, the fee shall be $3,500 plus $500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

(3) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet 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, the fee shall be calculated considering the entire development using the formula found at (a)3ii(1) above.

(4) For a non-residential commercial development that straddles the regulatory zone between the first 150 feet 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, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

(5) For a public or industrial development that straddles the regulatory zone between the first 150 feet review zone and the remainder of the CAFRA area, the fee shall be calculated considering the entire development using the formula found at (a)3ii(2) above.

iii. The fee for mixed residential and non-residential facilities shall be the sum of the residential and non-residential facilities fee as calculated under (a)3i and (a)3ii above.

iv. The fee for the review of a General Permit authorization application pursuant to N.J.A.C. 7:7-07.2 shall be $250.00.

v. The fee for the review and processing of a request for an exemption letter certifying

that a development is exempt from the requirements of CAFRA shall be $125.00.**]** 1. – 3. **Reserved.**

4. – 5. (No change.)

(b) **[**Authorization to continue construction for one year beyond the expiration date of an issued CAFRA, Waterfront Development or Coastal Wetlands permit will be granted in accordance with N.J.A.C. 7:7-1.5(c), (d) and (e).**]** **Extensions of time for issued treatment works approvals will be granted in accordance with N.J.A.C. 7:14A-22.12.**

1. (No change.)

(c) (No change.)

(d) For the purposes of this section, a modification to an issued permit, **[**excluding Waterfront Development and Coastal Wetlands permits**]** will be processed for modified projects which will not result in a significant change in the scale, use, or impact of the project as approved. The determination as to what constitutes a significant change is within the sole discretion of the Department and will be based on a review of the original application file and the new information submitted by the applicant. A change that will cause less environmental impact than the original project will not constitute a "significant change." Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious coverage, reduction in buffers, change in foot print location, and a change in the hydraulics of a stream. **[**The fees for modifications to CAFRA, Waterfront Development and Coastal Wetlands permits are found at (d)2 and 3 below. In addition, the description of permit activities which are subject to major and minor modifications is found at N.J.A.C. 4.10.**]**

1. The fee for a request for an approval of a modification of the approved project shall be one-quarter of the total original permit fee or a minimum of $100.00.

[2. The application fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is $100.00; and

3. The application fee for a major modification to an Upland Waterfront Development, Coastal Wetlands, or CAFRA permit is 20 percent of the total original permit fee , with a minimum fee of $250.00 and a maximum fee of $5,000.**]**

(e) - (g) (No change.)

(h) The Department shall annually adjust the fees for each activity provided in this section for **[**waterfront development permits, coastal wetlands permits, CAFRA permits and**]** stream encroachment permits. **[**For each such permit program, the**]**__**The**__ Department shall calculate a fee adjustment factor annually, and multiply each fee **[**within that program**]** by that fee adjustment factor. The Department shall calculate the fee adjustment factor by taking the following steps:

1. – 6. (No change.)

(i) (No change.)

(j) The Department will not make the adjustment of fees provided in (h) above or prepare the report described in (i) above for any one-year period ending June 30, if in that period the Department proposes or promulgates amendments to any fees for **[**waterfront development permits, wetlands permits, CAFRA permits or**]** stream encroachment permits.

(k) (No change.)

7:1C-1.7 Review of application

(a) – (b) (No change.)

(c) **[**Notwithstanding the requirements of (a) above, applications for CAFRA, waterfront development, and coastal wetlands permits shall be reviewed in accordance with the procedure set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.**]** __**Reserved.**__

(d) – (e) (No change.)

7:1C-1.8 Decision on permit application

(a) The Department shall approve, condition, or disapprove an application for a construction permit, **[**other than CAFRA permit,**]** within 90 days following the date of receipt of an application that has been accepted for filing, except when additional information has been requested pursuant to N.J.A.C. 7:1C-1.7(a)2. In the latter case, the Department shall make a decision on the permit application within 90 days following the date of receipt of the information requested. The date of receipt of the application or of the additional information requested is the date that an application or additional information is received by the appropriate agency.

(b) **[**Applications for CAFRA permits shall be reviewed in accordance with the procedures set forth in the Coastal Permit Program Rules at N.J.A.C. 7:7.**]** **Reserved.**

(c) – (f) (No change.)

7:1C-1.9 Appeals

(a) **[**An appeal from an action of the Land Use Regulation Program on a coastal permit pursuant to N.J.S.A. 12:5-3, N.J.S.A. 13:19-1 et seq. or N.J.S.A. 13:9A-1 et seq. shall be to the Commissioner in accordance with the procedures of N.J.A.C. 7:7-5.**]** **Reserved.**

(b) (No change.)

(c)-(g) (No change.)

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

SUBCHAPTER 1. GENERAL PROVISIONS

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

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

…

"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.

…

7:7-1.8 Procedure where more than one permit is required

(a) (No change.)

(b) The Department shall assess a single permit fee for a project 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 permits; or freshwater wetlands permits (including individuals permits, general permits, and transition area waivers) issued under N.J.A.C. 7:7A. The permit fee for the project shall be calculated in accordance with N.J.A.C. **[**7:1C-1.5(c)**]** **7:7-10.5(a)**.

7:7-1.9 Permit fees

Permit fees are established by the Department pursuant to the 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) and are published at N.J.A.C. **[**7:1C-1.5**]** **7:7-10**. The Department will maintain a printed fee schedule for public use.

7:7-1.10 Construction and relaxation procedures or standards

(a) - (d) (No change.)

(e) A request for the relaxation of N.J.A.C. 7:7E standards under (c) above shall include the following:

1. – 3. (No change.)

4. Documentation that the property has been offered for sale, in a letter provided by the Department, via certified mail, at a fair market value, to all owners of real property within 200 feet of the property, **along with a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate, within 200 feet,** and to the land conservancies, environmental organizations, and governmental agencies on a list supplied by the Department. The applicant shall submit any response it receives to the offer for sale to the Department within 15 days of receipt by the applicant. The written offer of sale shall:

i. – iv. (No change.)

5. (No change.)

SUBCHAPTER 2. ACTIVITIES FOR WHICH A PERMIT IS REQUIRED

7:7-2.1 CAFRA

(a)-(e) (No change.)

(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.

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. **[**7:1C-1.5(a)3v**]** **7:7-10.4(e)**; and

iv. – (No change.)

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 **[**7:1C-1.5(a)3v**]** **7:7-10.4(e)**; and

iv. – (No change.)

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. **[**7:1C-1.5(a)3v**]** **7:7-10.4(e)**; and

vi. (No change.)

SUBCHAPTER 3. PRE-APPLICATION REVIEW

7:7-3.1 Purpose

(a) A pre-application review is an optional service especially recommended for major development. **Pre-application meetings are however, mandatory for coastal permit applications involving the installation of submarine cables in the Atlantic Ocean.** At this review the Department will discuss apparent strengths and weaknesses of the proposed development, as well as the procedures and policies that would apply to the particular development. The review is intended to provide guidance and does not constitute a commitment to approve or deny a permit application for the development.

7:7-3.2 Request for a pre-application review

(a) Potential applicants for major projects**, other than the installation of submarine cables in the Atlantic Ocean,** are encouraged to request a pre-application review with the Department at the earliest opportunity. A request for a pre-application review shall be made in writing and shall include a conceptual proposal for the proposed development.

1. (No change.)

(b) Potential applicants for the installation of submarine cables in the Atlantic Ocean shall schedule the pre-application review early in the design process. A request for a pre-application review shall be made in writing and include a written description of the proposed project along with a National Oceanic and Atmospheric Administration (NOAA) nautical chart depicting potential cable routes in relationship to existing cable routes. All pre-application review requests for the installation of submarine cables shall be submitted to the Manager of the Department's Bureau of Coastal Regulation, P.O. Box 439, Trenton, New Jersey, 08625-0439.

[(b)**]****(c)** The Department shall, within 10 days of receipt of such request, schedule a

pre-application conference. Alternatively, the Department may suggest a telephone conversation if only a small number of relatively straightforward issues need discussion. A pre-application review will not be considered a declaration of intent to submit an application to the Department **[**as defined in N.J.A.C. 7:1C-1.3 of the 90-Day Construction Permit rules.**]**

(d) For pre-application conferences involving the installation of submarine cables in the Atlantic Ocean, written notice of the pre-application meeting shall be provided by the potential applicant to the organizations listed at (d)1 through 7 below, a minimum of 15 days prior to the date of the scheduled meeting. The written notice shall include the date, time and location of the pre-application meeting and a copy of the applicable NOAA nautical chart depicting the proposed cable route.

1. Garden State Seafood Association;

2. National Fisheries Institute;

3. North Atlantic Clam Association,

4. Rutgers Cooperative Extension;

5.New Jersey Shellfisheries Council;

6. New Jersey Marine Fisheries Council; and

7. Commercial Fishing Communications Association.

SUBCHAPTER 4. PERMIT REVIEW PROCEDURE

7:7-4.1 General

(a) – (b) (No change.)

(c) The 90 Day Construction Permit Law (N.J.S.A. 13:1D-29 et seq.) **[**and its implementing regulations (N.J.A.C. 7:1C)**]** establish**es** certain uniform permit review requirements for five types of construction permits issued by the Department, including CAFRA, Wetlands Act of 1970 and Waterfront Development permits. This chapter incorporates and is consistent with those requirements.

7:7-4.2 Application contents

(a) Individual waterfront development, wetland and CAFRA permit application submissions shall comply with (a) through (f) below. Individual CAFRA permit applicants must also provide public notice in the newspaper of an application submission to the Department in accordance with N.J.A.C. 7:7-4.3, Newspaper notice of application submission and availability of application for examination by the public. The submission requirements for the coastal general permits are found at N.J.A.C. 7:7-7.3, Application procedure for a coastal general permit authorization.

1. (No change.)

2. A check, money order, or government voucher **made payable to the "Treasurer, State of New Jersey—Environmental Services Fund"** in the amount of the appropriate fee **[**(see N.J.A.C. 7:1C-1.5)**]** **as set forth at N.J.A.C. 7:7-10**;

3. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package 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. The third copy shall be maintained in the clerk's office.

i. Applications for CAFRA permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission.

ii. Applications for a waterfront development permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (a)3ii(1) through (7) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (a)4 below and a copy of the public notice shall be included in the application to the Department.

(1)Garden State Seafood Association;

(2) National Fisheries Institute;

(3) North Atlantic Clam Association,

(4) Rutgers Cooperative Extension;

(5)New Jersey Shellfisheries Council;

(6) New Jersey Marine Fisheries Council; and

(7) Commercial Fishing Communications Association.

4. Verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a 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 would occur, to the planning board and environmental commission 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 **list** certified **by the municipality, [**list**]** of all owners of real property, including easements as shown on the tax duplicate, within 200 feet**.[**, except as described**]** **Exceptions to the required notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found** at (a)4i through iv below. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 81/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for a permit for the development shown on the enclosed plan.

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
PO Box 439

501 East State Street

Trenton, New Jersey 08625-0439

attn: (Municipality in which property is located) Section Chief";

i. – ii. (No change.)

iii. A waterfront development or wetlands permit application for a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance, or dune creation of one-half mile or more in length shall be subject to public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper(s). This newspaper notice shall be published as a display advertisement of at least 4 inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed above ground structure related to the linear development or shore protection development such as a pump station or treatment plant, groin, bulkhead, revetment or gabion, rather than 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. **Such an application shall also contain a list, certified by the municipality, of all owners of real property, including easements as shown on the tax duplicate, within 200 feet of an above ground structure.** The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 81/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location**. The language of the public notice shall read as found at (a)4 above and a copy shall be included in the application to the Department**;

iv. (No change.)

5. (No change.)

6. All coastal permit applications shall include the state plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the state plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the state plane

coordinates for a site contact the Department's Geographic Information (GIS) Office at (609)777-0672.

i. 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.

ii. For a linear development or shore protection development including beach nourishment, beach and dune maintenance or dune creation, the state plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below.

(1) For a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation 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; or

(2) For a linear development of less than one-half mile in length, or shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the state plane coordinates shall include the coordinates for the end points of the development.

Recodify 6. and 7. as 7. and 8. (No change in text.)

[8.**]9.** Applications for development in an area under the jurisdiction of **the** Pinelands Commission must also submit either a Certificate of Filing, **a** Notice of Filing, **[**or**]** a Certificate of **[**Compliance**] Completeness, or a resolution approving an application for public development** from the Pinelands Commission along with the other required application materials; and

Recodify 9. as 10. (No change in text.)

(b) – (d) (No change.)

(e) If the regulated activity would occur **[** on**]in** wetlands as defined by N.J.A.C. 7:7E-3.27(a) **or intertidal and subtidal shallows as defined by N.J.A.C. 7:7E-3.15(a),** then the applicant may submit a mitigation plan as part of the application.

1. The Department requires an approved mitigation proposal as a condition **[**precedent**]** **prior** to engaging in a regulated activity in a wetland **or intertidal and subtidal shallow, except as provided at (e)2 or 3 below.**

2. The Department may, upon request of the applicant, determine that a mitigation plan will not be required as part of a permit application 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 and that the structure will comply with the acceptability conditions provided by N.J.A.C. 7:7E-**[**4.2(e)**]** **4.5**. The Department may however, require mitigation notwithstanding the applicant's compliance with the terms of this paragraph, if it has determined , on an individual case basis, that mitigation is necessary.

3. Mitigation is not required for certain types of development in intertidal and subtidal shallows as specified at 7:7E-3.15(g).

[3.**]****4.** **[**Any**]** **All** mitigation proposal**s** submitted pursuant to this section shall **[**include, but not be limited to the following:**] comply with N.J.A.C. 7:7E-3B.2, Tidal Wetland and Intertidal and Subtidal Shallows Mitigation Proposals.**

[i. A description of the wetland mitigation proposal, which shall include the specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals;

ii. A description (for example, size, type, vegetation, hydrology, etc.) of the wetlands to be destroyed or disturbed;

iii. Photographs of the proposed mitigation site;

iv. The names and addresses of current and proposed owner(s) of the mitigation project site;

v. A description of the existing ecosystem of the mitigation site, including a discussion of the vegetation, soils, hydrology, wildlife and adjacent land use;

vi. A discussion of the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, and should provide seasonal high water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

vii. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;

viii. Existing soil types with soil borings to document seasonal high water tables, and a discussion of the created substrate of the proposed mitigation site describing how the substrate of the site will be prepared, whether the pH is appropriate, and any other pertinent factors;

ix. A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;

x. A copy of a proposed conservation restriction as defined at N.J.A.C. 7:7-1.3, providing that no regulated activities will occur in the wetland mitigation area or its associated transition area and that it will remain as a natural area in perpetuity. Prior to site preparation, proof that the conservation restriction has been recorded in the office of the clerk of the county or the Registrar of Deeds and Mortgages, if applicable, is required.

xi. A metes and bounds description of the proposed mitigation site which forms the basis for the conservation restriction. The metes and bounds description shall include the transition area;

xii. New Jersey Wetlands Map/Tidelands Map number(s) for the development site (and mitigation site if at a different location) as well as block and lot numbers and ownership of the mitigation site;

xiii. An actual cost estimate of the mitigation proposal. The cost estimate should include the cost of land, site preparation, engineering costs, plantings and any other items incidental to the mitigation proposal;

xiv. Five folded copies of a site plan for the mitigation project which includes:

(1) Project location within the region;

(2) The lot and block number of the mitigation project location;

(3) Existing and proposed elevations and grades of the mitigation site in on foot intervals; and

(4) Plan views and cross sectional views;

xv. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and property boundaries, and a determination of the State Plane Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the end points of those projects which are 1,999 feet or-less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and

xvi. A mitigation plan must include a secured bond, or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, financial surety to assure the success of the mitigation project shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. For a mitigation plan submitted by a public agency, the

Department will not require a secured bond provided that the construction of the development and mitigation are provided for in a single bid and contract.**]**

(f) (No change.)

7:7-4.3 Newspaper notice of application submission and availability of application for examination by the public

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

(d) **[**The status of all permit applications shall be published in the DEP Bulletin pursuant to N.J.A.C. 7:1C-1.6, and this publication shall constitute notice to all interested persons except as provided in N.J.A.C. 7:7-4.8.**]** **The Department shall publish in the "DEP Bulletin", a report of the receipt of each new application and each agency action on applications currently before it. In conjunction with notice provided under N.J.A.C. 7:7-4.8, publication in the "DEP Bulletin", constitutes constructive notice to all interested persons of Department actions on coastal permits, except as provided in N.J.A.C. 7:7-4.8.**

7:7-4.4 Initial review of application

(a) For all CAFRA applications:

1. – 2. (No change.)

3. If an application is not complete for public comment or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. (No change.)

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. **[**7:1C-1.5**]** **7:7-10**.

iii. (No change.)

4. – 5. (No change.)

(b) For all Waterfront Development and Coastal Wetland applications:

1. – 3. (No change.)

4. If an application is not complete for final review or for the public hearing within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

i. (No change.)

ii. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. **[**7:1C-1.5**]** **<u>7:7-10</u>**.

iii. (No change.)

5. – 6. (No change.)

7:7-4.5 Public hearings and public comment periods

(a) - (e) (No change.)

(f) The applicant shall give public notice of the public hearings, pursuant to section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12), with the exception of (f)2 and 3 below. Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. – 4. (No change.)

5. Proof of notice shall be submitted to the Department at least three days prior to the public hearing. Proof of notice to property owners of real property, including easements as shown on the tax duplicate, and public agencies shall consist of the white mail certified receipts or other written receipts. **<u>Proof shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate.</u>** Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper

notice. In cases where proof of publication is unavailable three days prior to the hearing, the applicant may submit a notarized affidavit stating that notice of the hearing has been published, and specifying the date and newspaper in which the notice was published.

(g) The applicant shall give public notice of the public comment period pursuant to Section 7.1 of the Municipal Land Use Law (N.J.S.A. 40:55D-12 with the exception of (g)**[**2,**]** 3 and 4 below). Any newspaper notice shall be a display advertisement a minimum of four inches in width.

1. – 4. (No change.)

5. Notice **containing the information** **[**as**]** described **[**at**]** **in** (g)2 above, of the public comment period shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

6. Proof of notice shall be submitted to the Department at least 10 days prior to the commencement of the public comment period. Proof of notice to owners of real property, including easements as shown on the tax duplicate, and public agencies shall consist of white certified mail receipts or other written receipts. Proof of publication in the newspaper shall specify the date and newspaper in which notice was published, and shall include a copy of the newspaper advertisement. **Proof shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate.**

(h) (No change.)

(i) The applicant shall provide a court reporter, bear the cost of the hearing**,** **including but not limited to court reporter attendance fees, transcript costs, hearing officer fees and hearing room rental** and provide the Department with the original transcript**[**, as required by N.J.A.C. 7:1C-1.5(e)**]**.

(j) – (k) (No change.)

7:7-4.6 Final review of the application

(a) – (c) (No change.)

(d) If an application for which a public hearing or public comment period has been held is not complete for review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, further extensions in which to submit the information will be granted. Failure to submit the information by the mutually agreed date of extension will be cause for the Department to cancel the application without further notice.

1. (No change.)

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. **[**7:1C-1.5**]** **7:7-10**.

7:7-4.7 Timetable for permit decisions

(a) – (b) (No change.)

(c) The timeframes for a decision prescribed under this section may be extended for a 30-day period by the mutual consent of the applicant and the Department provided that the Department or the applicant request from the other such an extension prior to the expiration date for the approval, conditioning or disapproval of such an application.

Recodify existing (c) as (d) with no change in text.

7:7-4.8 Publication of the permit decision

(a) (No change.)

[(b) The permittee may, if it chooses not to wait for the permit decision to be published in the DEP Bulletin, publish notice of the permit decision in a newspaper of regional circulation which includes the municipality in which the project site is located, and by

certified mail to any person who commented on the application during the review process or requested such notice, in writing, during the application review period. The Department shall maintain a list of such newspapers. Such notice shall also be given to the clerk of the municipality in which the proposed development will occur, the environmental commission and planning board of the municipality in which the proposed development will occur, and the environmental commission and planning board of the county in which the proposed development will occur.

1. Publication of notice by the permittee by publication of a display advertisement of at least four inches in width in a newspaper of general circulation in the municipality shall begin the 10 day appeal period (see N.J.A.C. 7:7-5) if publication takes place prior to publication of notice of the permit decision in the DEP Bulletin.

2. Proof of such publication and of mailing shall be submitted the Department.**]**

[(c) The permit application review process may be extended pursuant to the provisions of N.J.A.C. 7:1C-1.8(e) or by mutual agreement. **]**

7:7-4.10 Modification Requests

(a) If a permittee proposed a change in the development authorized under a coastal permit during the term of validity of the permit pursuant to N.J.A.C. 7:7-1.5, the permittee shall submit, in accordance with this section, a request for a modification of the permit. In addition, to address a construction related problem, a permittee who has completed construction shall submit a request for a modification of a permit within one year of completion of construction. The criteria for modification of a waterfront development permit are found at (a) through (e) below; for modification of a coastal wetlands permit, at (f) below; and for modification of a CAFRA permit at (g) and (h) below. **The criteria for modification of a coastal general permit are found at N.J.A.C. 7:7-7.3A, Requests for modifications of coastal general permits.**

(b) – (h) (No change.)

(i) A permittee requesting a modification to a coastal permit shall submit to the Department the following:

1. – 5. (No change.)

6. The applicable fee under **[**N.J.A.C. 7:7-1.5(d)**]** **N.J.A.C. 7:7-10**.

7. Verification (white mailing receipt or other written receipt is acceptable and a copy of the public notice) that public notice has been provided in accordance with (j) below. **Verification shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with N.J.A.C. 7:7-4.10(j) below** ; and

8. (No change.

(j) The permittee shall provide public notice as follows:

1. For a major modification of a CAFRA permit or a waterfront development permit for development located landward of the mean high water line:

i. Submission of three complete copies of the request for a modification required under (i) above 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. The third copy shall be maintained in the clerk's office.

(1) Requests for a modification of a permit for development within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission.

(2) Requests for a modification of a permit for installing a submarine cable or sand mining in the ocean must also contain verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP application form have been forwarded to the organizations listed at (j)1i(2)(A) through (G) below. The site plan referred to in this subsection shall be a NOAA nautical chart depicting the proposed cable route or limits of the proposed sand mining area. The language of the public notice shall read as found at (j)1ii below and a copy shall be included in the application to the Department.

(A) Garden State Seafood Association;

(B) National Fisheries Institute;

(C) North Atlantic Clam Association,

(D) Rutgers Cooperative Extension;

(E) New Jersey Shellfisheries Council;

(F) New Jersey Marine Fisheries Council; and

(G) Commercial Fishing Communications Association.

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, to the planning board and environmental commission 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, with the exception of**]** **Exceptions to required notice to all owners of real property within 200 feet of the property or properties on which the proposed development would occur are found at** (j)1iii **and (j)4 below**. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the application to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal permit will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal permit in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal permit can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
attn: (Municipality in which property is located) Section Chief";

iii. (No change.)

2. (No change.)

3. For a modification of a coastal wetlands permit or waterfront development permit for a development located below (outshore of) the mean high water line, **public notice shall consist of the following:**

i. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i;

ii. Notice including a copy of the amended site plan and completed LURP application form **[**submission of a copy of the site plan, the public notice required at (j)1ii above, and completed LURP application form**]** to all owners of real property including easements, sharing a common property boundary with the property on which the proposed development would occur**. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 8½ inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as described at (j)1ii and a copy shall be included in the application to the Department;**

4. Rather than public notice as required under (j)1 through 3 above, for a modification of any coastal permit, if the change is to a linear development of one-half mile or more in length, or a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one half-mile or more in length, public notice **shall consist of the following:**

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width**;**

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (j)1i;

iii. Notice including a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (j)3ii above.

iv. Notice **[**containing the information described in (j)3 above**]** **including a copy of the amended site plan and completed LURP application form** **[**shall also be provided**]** to all owners of real property, including easements as shown on the tax duplicate, **within 200 feet** of a proposed above ground structure related to the proposed linear development or shore protection structure, such as a treatment plant, groin, revetment, gabion or bulkhead rather than 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**. The amended site plan requirements and notice language are found at (j)3ii above.**

SUBCHAPTER 5. PROCEDURES TO REQUEST AN ADJUDICATORY HEARING TO CONTEST A PERMIT DECISION

7:7-5.1 Hearing request

(a) Subject to the limitation on third-party hearing rights specified in (d) below**,** any interested persons who consider themselves aggrieved by a permit decision of the Land Use Regulation Program may, within **[**10**]** **30** days of publication of notice of the permit decision in the DEP Bulletin **[**or within 10 days of publication of notice by the permittee pursuant to N.J.A.C. 7:7-4.8(b), whichever occurs first, **]**submit a written request for an adjudicatory hearing to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, P.O. 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 Appendix D.**]** **The DEP Bulletin is available through the Department's website at** www.state.nj.us/dep. **The written request shall include:**

1. All information required by the "Adjudicatory Hearing Request Checklist and Tracking Form" available from the Department's Land Use Regulation Program, PO Box 439, Trenton, NJ 08625-0439 and on the Land Use Regulation Program's website at www.state.nj.us/dep/landuse**, including the following:**

i. Information on the person requesting the hearing;

ii. Information on the decision being appealed;

iii. A copy of the decision document;

iv. The legal and factual basis for the appeal;

v. Information on the issues being appealed, whether they were discussed during the review process and suggestions to settle these isssues; and

vi. Any special hearing requirements.

[1. The notice of a hearing request shall include the appropriate agency project number and, where**]** **2. If** the hearing request is submitted by someone other than the applicant, **[**evidence that a copy of the request has been mailed to the applicant.**]** **in addition to submitting the information requested above, the person requesting the hearing shall submit additonal information including the following:**

i. Evidence of notice to the permit applicant;

ii. Information regarding the participation of the person requesting the hearing in the application review process; and

iii. Information necessary for the Department to determine whether the appellant has a legal right to a hearing.

[2. The appellant shall, within 14 days of the date on which the hearing request was postmarked, submit an additional statement describing, in detail, how that person is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.**]**

[(b) Copies of a request for a hearing from a decision on a CAFRA permit application shall also be mailed to the clerk of the county of the municipality in which the project site is located, and evidence of such mailing shall be included with the hearing request.**]**

Recodify (c) – (e) as (b) through (d) (No change in text.)

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

SUBCHAPTER 7. GENERAL PERMITS AND PERMITS-BY-RULE

7:7-7.2 Permits-by-rule

(a) This section details the activities authorized by a Permit-By-Rule.

1. – 4. (No change.)

5. The construction of non-residential docks, piers and boat ramps located landward of the mean high water line, provided that the construction waterward of the mean high water line has received a Waterfront Development permit. 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. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. This permit-by-rule also includes the construction of non-residential decks provided they are not located on a beach, dune or wetland, provided the construction does not require clearing of forest vegetation and provided the size does not exceed a footprint area of 400 square feet. The Waterfront Development permit may include additional conditions (including but not limited to public access to the waterfront) on the upland construction to insure compliance with the **[**Rules on**]** Coastal Zone Management **rules**, N.J.A.C. 7:7E.

6. The construction of the portion of a recreational dock or pier landward of the mean high water line at a residential development, provided that construction waterward of the mean high water line is authorized through the issuance of a Waterfront Development permit. 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. The width of the structure over wetlands shall not exceed six feet and the height shall be a minimum of four feet over the wetlands. The Waterfront Development permit may include additional conditions on the upland construction to insure compliance with the **[**Rules on **]**Coastal Zone Management **rules** (N.J.A.C. 7:7E). For example, the Waterfront Development permit may be conditioned to require the dock to cross the wetlands at the narrowest point on the property or to allow continued access along the shoreline.

7. – 10. (No change.)

(b) – (c) (No change.)

7:7-7.3 Application procedure for a coastal general permit authorization

(a) A person proposing to engage in an activity covered by a coastal general permit shall submit the following to the Department:

1. (No change.)

2. Photographs **[**of the site for which authorization is being requested**]** **showing the specific location of the proposed development taken from a minimum of four different locations and labeled as to orientation;**

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

4. Verification (white certified mailing receipt or other written receipt is required) that three complete copies of the application package 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, or any public body with similar responsibilities. The third copy shall be maintained in the clerk's office. Applications for coastal general permits within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the application package has been submitted to the Pinelands Commission.

[3.**]****5.** Verification that **[**a complete copy of the application has been forwarded to the clerk of the municipality (white certified mail receipt or written receipt is required) and that**]** a certified mail notice **[**with return receipt requested**]**(white receipts or green cards are acceptable) **and a copy of the site plan and completed LURP application form have** **[**has**]** been forwarded to **[**the environmental commission, or any public body with similar responsibilities, as well as to municipal planning board, county planning board, municipal construction official,**] the construction code official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Verification that notice has also been provided** **[**and**]** to all owners of real property, including easements, as shown on the tax duplicate, surrounding and sharing a property boundary at any point on the perimeter of the proposed development. **Verification in the form of a list certified by the municipality of all owners of real**

property, including easements as shown on the tax duplicate, surrounding and sharing a property boundary at any point, except as provided at (a)5i and ii below shall also be provided. The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The **public** notice shall read as follows:

"This letter is to provide you with legal notification that an application will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program for authorization under a coastal general permit for (describe the proposed development).

The complete permit application package can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter. Your comments should be sent along with a copy of this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
P.O. Box 439
Trenton, New Jersey 08625-0439
attn: (Municipality in which property is located) Section Chief;"

i. For beach and dune maintenance permit applications which involve more than one single family lot, the applicant shall provide public notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper**[**,**]. This newspaper notice shall be published as a display advertisement of at least four inches in width. Such an application shall also include verification that a certified mail notice (white mailing receipt or other written receipt is acceptable) and a copy of the site plan and completed LURP**

application form have been forwarded **[**and**]** to all owners of real property, including easements, as shown on the tax duplicate within 200 feet of a proposed dune walkover structure, rather than to all owners of real property, including easements within 200 feet of the beach and dune maintenance activities. **The site plan referred to in this subsection need not include a full set of plans, but must depict the proposed development in relationship to existing site conditions. This plan may be on an 8 1/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location**;

ii. (No change.)

6. All coastal permit applications shall include the state plane coordinates for a point at the approximate center of the site, except as provided at (a)6i and ii below. The accuracy of the state plane coordinates shall be within 50 feet of the actual center point of the site. For assistance in determining the state plane coordinates for a site contact the Department's Geographic Information (GIS) Office at (609)777-0672.

i. State plane coordinates are not required for applications for the following coastal general permits: N.J.A.C. 7:7-7.7 (for single family homes or duplexes that are not part of a larger development only), 7.8, 7.9, 7.9. 7.10, 7.11, 7.12, 7.14, 7.18, 7.19,and 7.20.

ii. For shore protection development including beach nourishment, beach and dune maintenance or dune creation, the state plane coordinates shall be provided in accordance with (a)6ii(1) or (2) below.

(1) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation 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; or

(2) For a shore protection development including beach nourishment, beach and dune maintenance or dune creation of one-half mile or less, the state plane coordinates shall include the coordinates for the end points of the development.

[4.**]** **7.** A fee pursuant to N.J.A.C. **[**7:1C-1.5(a)3iii**]** **7:7-10[**; and**].**

[5.**]** **8.** The additional information for the specific coastal general permit for which the authorization is sought, as required under N.J.A.C. 7:7-7.5 through **[**7.25**]** **7.26**.

(b) – (d) (No change.)

(e) If an application is not complete for final review within 90 days of a request for additional information, the Department may, 30 days after providing written notice by certified mail to the applicant, cancel and return the application, unless the applicant can demonstrate good cause for the delay in completing the application. In such cases, a 90 day extension in which to submit the information will be granted.

1. (No change.)

2. A re-submission of a previously cancelled application more than one year after the date of cancellation shall be accompanied by the appropriate fee pursuant to N.J.A.C. **[**7:1C-1.5**]** **7:7-10**.

3. (No change.)

(f) - (k) (No change.)

7:7-7.3A Requests for modifications of coastal general permit authorizations

(a) If a permittee proposes a change in the development authorized under a coastal general permit during the term of validity of the permit authorization pursuant to N.J.A.C. 7:7-7.3(k), the permittee shall submit a request for a modification of the coastal general permit authorization in accordance with this section.

(b) A permittee may request a modification to a coastal general permit authorization provided:

1. The changed project would continue to be authorized under the same coastal general permit; and

2. The proposed change does not result in a significant change in the scale, use or impact to special areas as defined at N.J.A.C. 7:7E-3. The determination as to

what constitutes a significant change will be based on a review of the original application file and new information submitted by the permittee which describes all proposed changes. A change that will result in less impact to special areas than the original approved development will not constitute a significant change. Significant changes generally include, but are not limited to, increased clearing, grading, filling or impervious cover, and reduction in buffers.

(c) For changes to coastal general permit authorizations that do not meet the standards of (b) above, a new coastal general permit authorization or individual coastal permit will be required.

(d) A permittee requesting a modification to a coastal general permit authorization shall submit to the Department the following:

1. A completed LURP application form;

2. Three copies of an amended site plan(s), showing:

i. All site plan information required under the specific coastal general permit;

ii. The originally approved development; and

iii. All proposed changes to the existing development.

3. A copy of the permit authorization to be modified and site plan(s) approved by that authorization;

4. The applicable fee under N.J.A.C. 7:7-10;

5. Verification (white certified mailing receipt or other written receipt is acceptable) that public notice has been provided in accordance with (e) below. Verification shall also include a list certified by the municipality of all owners of real property, including easements as shown on the tax duplicate to which individual notice is required in accordance with N.J.A.C. 7:7-7.3A(e) below; and

6. Any additional information the applicant believes will assist the Department in reviewing the proposed modification.

(e) The permittee shall provide public notice as follows:

1. For requests for a modification of a coastal general permit authorization other than those listed at 2 below:

i. Submission of three complete copies of the request for a modification under (d) above 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, or any public agency with similar responsibilities. The third copy shall be maintained in the clerk's office. Requests for modification of a coastal general permit within the Pinelands Preservation Area or Protection Area must also contain verification that a complete copy of the request for a modification has been submitted to the Pinelands Commission.

ii. Submission of a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. Notice shall also be provided to all owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point on the perimeter of the development to be modified. Such an application shall also contain a list, certified by the municipality, of owners or real property including easements, as shown on the tax duplicate, surrounding and sharing a common property boundary at any point, except as provided at (e)2 below. The amended site plan referred to in this paragraph need not include a full set of plans, but shall depict the proposed development in relationship to existing site conditions. This plan may be on an 81/2 inch by 11 inch sheet of paper provided it generally depicts the proposed development and the general and site specific location. The public notice shall read as follows and a copy shall be included in the submission to the Department:

"This letter is to provide you with legal notification that a request for modification of a coastal general permit authorization will be submitted to the New Jersey Department of Environmental Protection, Land Use Regulation Program to modify an existing coastal general permit authorization in order to construct the development shown on the enclosed plan.

The complete request for modification of the coastal general permit authorization can be reviewed at either the municipal clerk's office or by appointment at the Department's Trenton office. The Department of Environmental Protection welcomes comments and any information that you may provide concerning the proposed development and site. Please submit your written comments within 15 days of receiving this letter to:

New Jersey Department of Environmental Protection
Land Use Regulation Program
PO Box 439
501 East State Street
Trenton, New Jersey 08625-0439
attn: (Municipality in which property is located) Section Chief";

iii. For modified developments proposed on the site of an existing park facility of at least 50 acres in size, the Department may, at its discretion, limit the requirement for public notice to property owners at (e)1ii above to only those property owners the Department has determined are likely to be affected by the modifications to the previously approved development. The determination shall be based on the size of the proposed modification and its proximity to properties sharing a common boundary.

2. Rather than public notice as required under (e)1 above, for a modification of a coastal general permit authorization for beach and dune maintenance activities which involve more than one single family lot, public notice shall consist of the following:

i. Notice in the official newspaper of the municipality or in a newspaper of general circulation in the municipality if there is no official newspaper. This newspaper notice shall be published as a display advertisement of at least four inches in width;

ii. Notice to the municipal clerk, planning board and environmental commission in accordance with (e)1i;

iii. Notice including a copy of the amended site plan and completed LURP application form to the construction official of the municipality in which the

proposed development would occur, and to the planning board and environmental commission of the county in which the proposed development would occur. The amended site plan requirements and notice language are found at (e)1ii above.

iv. Notice including a copy of the amended site plan and completed LURP application form to all owners of real property, including easements as shown on the tax duplicate, within 200 feet of a proposed dune walkover structure. The amended site plan requirements and notice language are found at (e)1ii above.

(f) The Department shall publish in the DEP Bulletin notice of receipt of each request for modification of a coastal general permit authorization and notice of the approval or disapproval of each request.

7:7-7.4 Long Branch Redevelopment Zone Permit

(a)-(d) (No change.)

(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. The Department shall concur if the waiver or variance complies with the **[**Rules on**]** Coastal Zone Management **rules**, N.J.A.C. 7:7E, and if, notwithstanding the waiver or variance, the developments within the Redevelopment Zone continue to comply individually and collectively with the **[**Rules on **]**Coastal Zone Management **rules**.

(f) – (k) (No change.)

7:7-7.5 Coastal general permit 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. – 6. (No change.)

7. The expansion shall not result in excavation or grading of a dune; [and]

8. The expanded amusement pier shall continue to be used only for amusements[.] **;**

and

9. The expansion is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(b) (No change.)

7:7-7.6 Coastal general permit 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.1,**]** 3A.2 **[**and**],** 3A.3 **and 3A.4** (routine beach maintenance , emergency post-storm beach restoration, and dune creation and maintenance, respectively); and

2. (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. **[**A**]Three copies of a site** plan**(s)** showing the specific location of all proposed beach and dune maintenance activities;

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.1,**]** 3A.2**,[**and**]** 3A.3 **and 3A.4**; and

3. (No change.)

7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial developments

(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. – 3. (No change.)

4. In the case of commercial reconstruction**;**

i. The [the] reconstruction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development**; and**

ii. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15;

5. – 6. (No change.)

(b) – (c) (No change.)

7:7-7.8 Coastal general permit for the development of a single family home or duplex

(a) – (c) (No change.)

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (d)1 or 2 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, if the site and the development meet all of the following conditions

i. – iv. (No change.)

2. (No change.)

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, 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).** If the site is not located on one of the**[**se**]** four water bodies **listed above**, the development shall comply with the setback requirements at (l)1 below, **unless the development meets either (e)1 or 2 below:**

1. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)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 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) – (n) (No change.)

7:7-7.9 Coastal general permit for the expansion, or reconstruction (with or without expansion) of a single family home or duplex

(a)- (c) (No change)

(d) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.16, 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, if the site and the development meet all of the following conditions

i. – iv. (No change.)

2. – 4. (No change.)

(e) Development under this coastal general permit shall comply with N.J.A.C. 7:7E-3.31, 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).** If the site is not located on one of the**[**se**]** four water bodies **listed above**, the development shall comply with the setback requirements at (l)1 below, **unless the development meets either (e)1 or 2 below:**

1. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

2. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)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 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) – (n) (No change.)

7:7-7.13 Coastal general permit for the construction of support facilities at legally existing and operating marinas

(a) (No change.)

(b) The construction of the following support facilities listed at (b)1 through 7 below is acceptable provided they comply with the specific conditions for each facility and also with (c) below:

1. – 3. (No change.)

4. Construction of fences, water lines and new sewer lines to connect restrooms and pumpouts to existing sewer lines provided:

i. – iii. (No change.)

iv. For sewer lines only:

(1) (No change.)

[(2) The sewer line is consistent with the 208 Water Quality Management Plan;]

Recodify 3. and 4. as 2. and 3. (No change in text.)

5. – 7. (No change.)

(c) The construction of support facilities listed at (b)1 through 7 above shall also comply with the following:

1. (No change.)

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

3. Trash receptacles along with adequate fish cleaning areas, including separately marked dispensers for organic refuse, shall be provided[.] **; and**

4. The development is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(d) (No change.)

7:7-7.14 **[**Reconstruction**]** **Coastal general permit for reconstruction** of a legally existing functioning bulkhead

(a) – (c) (No change.)

7:7-7.15 Coastal general permit for **[**hazardous waste cleanup**]** **investigation, cleanup, removal or remediation of hazardous substances.**

(a) – (b) (No change.)

7:7-7.16 Coastal general permit for the landfall of utilities

(a) (No change.)

(b) Construction authorized under this coastal general permit is acceptable provided:

1. – 6. (No change.)

7. All underground cutting agents/lubricants shall be contained and properly disposed. Use of a vacuum truck may be required for large drilling operations; [and]

8. The location of existing facilities prior to excavation shall be performed pursuant to the Underground Facility Protection Act, P.L. 1994, c.118 (N.J.S.A. 48:2-73 et seq.) [.] **; and**

9. The sanitary sewer line is consistent with the Water Quality Management Plan adopted pursuant to N.J.A.C. 7:15.

(c) (No change.)

SUBCHAPTER 10. COASTAL PERMIT APPLICATION FEES

7:7-10.1 Purpose and scope

(a) This subchapter sets forth the fees for all coastal permit applications.

1. The application fee for Waterfront Development permits is found at N.J.A.C. 7:7-10.2;

2. The application fee for Coastal Wetland permits is found at N.J.A.C. 7:7-10.3;

3. The application fee for CAFRA permits is found at N.J.A.C. 7:7-10.4;

4. The standards for assessing a single permit fee for a single project requiring multiple permits including Waterfront Development, Coastal Wetlands, CAFRA, Freshwater Wetlands or Stream Encroachment permits are found at N.J.A.C. 7:7-10.5; and

5. The fees for requesting a modification of a coastal permit are found at N.J.A.C. 7:7-10.6.

(b) For the purposes of this subchapter, the term "construction cost" means the project cost, not including financing or insurance charges, of that portion of a project which is subject to review for a permit pursuant to CAFRA, the Waterfront Development Law or Wetlands Act of 1970.

(c) Any fee required under this Chapter that is subject to N.J.A.C. 7:1L shall be payable in installments in accordance with N.J.A.C. 7:1L.

7:7-10.2 Application fees for Waterfront Development permits

(a) The application fee for each of the following each of the following developments shall be $250.00:

1. Any development requiring a coastal general permit pursuant to N.J.A.C. 7:7-7; or

2. Any development consisting solely of capital repairs or reconstruction with all work taking place above 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.

(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 $500.00 per unit. The fee for a residential development consisting of a single duplex shall be $500.00.

2. The fee for all other residential developments shall be $3,000 plus:

i. $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

ii. $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

iii. $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

3. The fee for non-residential developments shall be calculated based on the following schedule:

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

Construction Cost	**Fees**
$0 to $50,000	**$1,450 + ½ of one percent of construction costs**
$50,001 to $100,000	**$1,700 + one percent of construction costs above $50,000**
$100,001 to $200,000	**$2,200 + 1 ¼ percent of construction costs above 100,000**
$200,001 to $350,000	**$3,450 + 1 ½ percent of construction costs above $200,000**
Greater than $350,000	**$5,700 + one percent of construction costs above $350,000**

i. The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

4. The fee for mixed residential and non-residential development shall be the sum of the residential and non-residential development fee as calculated under (b)1 or 2 and 3 above.

(c) The application fee for all other waterfront developments taking place waterward of the mean high water line shall be as follows:

1. The fee for residential site improvements for a single private residential unit or duplex, including, but not limited to: shore structures (bulkheads, revetments and gabions) piers and docks, walkways and activities associated with a single private residential unit or duplex, shall be $250.00 plus one half of one percent of the construction cost above $10,000.

2. The fee for all other activities requiring a waterfront development permit shall be based on the following schedule:

Construction Cost	**Fees**

$0 to $50,000	**$1,450 + ½ of one percent of construction costs**
$50,001 to $100,000	**$1,700 + one percent of construction costs above $50,000**
$100,001 to $200,000	**$2,200 + 1 ¼ percent of construction costs above 100,000**
$200,001 to $350,000	**$3,450 + 1 ½ percent of construction costs above $200,000**
Greater than $350,000	**$5,700 + one percent of construction costs above $350,000**

i. The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

7:7-10.3 Application fees for Coastal Wetland permits

(a) The application fee for a Wetlands Act of 1970 permit ("Coastal Wetlands permit") shall be one percent of the construction costs, or a minimum of $250.00 for residential dock construction associated with a single family or duplex dwelling unit, and a minimum of $500.00 for all other regulated developments.

(b) The application fee for review of a coastal general permit application pursuant to N.J.A.C. 7:7 shall be $250.00.

7:7-10.4 Application fees for CAFRA permits

(a) The application fee for residential developments requiring a CAFRA permit 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 $500.00 per unit. The fee for a residential development consisting of a single duplex shall be $500.00.

2. The fee for all other residential developments shall be $3,000 plus:

i. $50.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for the first 300 units;

ii. $40.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for units 301 to 600; and

iii. $30.00 per dwelling unit, as defined at N.J.A.C. 7:7-1.3, for all units in excess of 600.

(b) The fee for non-residential developments requiring a CAFRA 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:

Construction Cost	Fees
$0 to $50,000	$1,450 + ½ of one percent of construction costs
$50,001 to $100,000	$1,700 + one percent of construction costs above $50,000
$100,001 to $200,000	$2,200 + 1 ¼ percent of construction costs above $100,000
$200,001 to $350,000	$3,450 + 1 ½ percent of construction costs above $200,000
Greater than $350,000	$5,700 + one percent of construction costs above $350,000

i. The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department will document its actual costs for review and processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs. The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

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 $3,500 plus $500.00 per acre included in the site plan, except as provided at (b)2i-iv below. The fee payable at the time of application shall not exceed $30,000. If the fee calculated under this formula would have exceeded $30,000, the Department shall document its actual costs for review ad processing of the application and the estimated cost of determining compliance with the conditions of the permit. If such costs exceed $30,000, the applicant shall pay a supplemental fee to cover such costs The Department shall provide the applicant with documentation of such costs when a supplemental fee is charged.

i. For a proposed linear development, the fee shall be $3,500 plus $500.00 per acre to be disturbed. For the purposes of this section, "linear development" means land uses such as roads, railroads, sewerage and stormwater management pipes, gas and water pipelines, electric, telephone and other transmission lines and the rights-of-way therefor, which have the basic function of connecting two points. Linear development shall not mean residential, commercial, office or industrial buildings, improvements within a development such as utility lines or pipes, or internal circulation roads.

ii. For a proposed mining operation, as defined at N.J.A.C. 7:7E-7.8, the fee shall be $3,500 plus $100.00 per acre disturbed.

iii. For a proposed development associated with a solid waste landfill the fee shall be $3,500.

iv. For a proposed public development to be located entirely within a publicly owned park or recreation area, the fee shall be $3,500 plus $100.00 per acre disturbed.

3. For a non-residential commercial development that straddles the regulatory zone between the first 150 feet 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, 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 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, the fee shall be calculated considering the entire development using the formula

found at (b)2 above.

5. For a public or industrial development that straddles the regulatory zone between the first 150 feet 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) The application fee for mixed residential and non-residential development requiring a CAFRA permit shall be the sum of the residential and non-residential development fees as calculated under (a) and (b) above.

(d) The application fee for the review of a coastal general permit application pursuant to N.J.A.C. 7:7-7 shall be $250.00.

(e) The application fee for the review and processing of a request for an exemption letter certifying that a development is exempt from the requirements of CAFRA shall be $125.00.

7:7-10.5 Standards for assessing a single permit application fee

(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 permits; 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. The single highest permit application fee for the above listed permits required for the project; and

2. Seventy five percent of the sum of the permit application fees for all other permits required for the project.

7:7-10.6 Application fees for requests for modifications of coastal permits

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

(a) The fees for requests to modify coastal permits in accordance with N.J.A.C. 7:7-4.10 and 7.3(a) are as follows:

1. The fee for a minor modification to a Waterfront Development, Coastal Wetlands, or CAFRA permit is $100.00;

2. The fee for a major modification to an Upland Waterfront Development or CAFRA permit is 20 percent of the total original permit application fee, with a minimum fee of $250.00 and a maximum fee of $5,000.00; and

3. The fee for a modification of a coastal general permit is $100.00.

[**APPENDIX D**

ADMINISTRATIVE HEARING REQUEST CHECKLIST AND TRACKING FORM FOR PERMITS

I. Permit Being Appealed:

_____

Title and Type of Permit

II. Person Requesting Hearing:

_____	_____
Name/Company	Name of Attorney
_____	_____
_____	_____
Address	Address of Attorney

III. Please Include the Following Information as Part of Your Request:

A. The date the permittee received the final permit;
B. A copy of the permit, list of all permit conditions, and issues contested;
C. The legal and factual questions at issue;
D. A statement as to whether or not the permittee raised each legal and factual issue{s} during the public comment period on the permit;
E. Suggested revised or alternative permit conditions;
F. An estimate of the time required for the hearing;
G. A request, if necessary, for a barrier-free hearing location for physically disabled persons;
H. A clear indication of any willingness to negotiate a settlement with the Department prior to the Department's processing of your hearing request to the Office of Administrative Law; and

I. This form, completed, signed and dated with all the information listed above, including attachments to:

1. Office of Legal Affairs
ATTENTION: Adjudicatory Hearing Requests
DEPARTMENT OF ENVIRONMENTAL PROTECTION
401 E. State Street
P. O. Box 402, Trenton, NJ 08625-0402

2. Department of Environmental Protection
Land Use Regulation Program
ATTENTION: Director
P. O. Box 439
Trenton, NJ 08625-0439

3. All co-permittees (w/attachments)

Signature_____
Date_____**]**

Chapter 7E

Coastal Zone Management rules

N.J.A.C. 7:7E

SUBCHAPTER 1. INTRODUCTION

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 for public review as the New Jersey Coastal Management Program-Bay and Ocean Shore Segment and Final Environmental Impact Statement (EIS) for Federal approval**[**, which was received in September 1978**]**. In August 1978 the Governor submitted the revised New Jersey

Coastal Management Program--Bay and Ocean Shore Segment and Final EIS for Federal approval, which 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 for Federal approval, which was received in September 1980. The **[**Rules on**]** Coastal Zone Management **rules** (Rules) constitute the substantive core of the program. **[**The Rules were amended on June 4, 1981, January 12, 1982, April 19, 1982, February 7, 1983, February 3, 1986, August 15, 1988, May 15, 1989, August 20, 1990, April 5, 1993, November 15, 1993, July 18, 1994, June 23, 1995, August 19, 1996, February 17, 1998, and February 7, 2000.**]**

(c) By revising and readopting these policies as administrative rules, according to the Administrative Procedure Act, the Department aims to increase the predictability of the Department's coastal decision-making by limiting administrative discretion, as well as to ensure the enforceability of the **[**Rules on**]** 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.

(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 (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 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.

7:7E-1.2 Jurisdiction

(a) General: This chapter shall apply to **[**five**]** **six** categories, as defined in N.J.A.C. 7:7E-**[**1.3**]**1.2(c) through (**[**g**]** **h**), of actions or decisions by the Department on uses of coastal resources within or affecting the coastal zone:

1. –4. (No change.)

5. **[**DEP**]** **Department** management actions affecting the coastal zone; and

6. **[**DEP**]** **Department** planning actions affecting the coastal zone.

(b) Geographic scope of the New Jersey **[**Coastal Zone**]** **coastal zone**: This chapter shall apply geographically to the New Jersey **[**Coastal Zone**]** **coastal zone**, which is defined as:

1. The coastal area **[**under the jurisdiction of**]** **defined in** the Coastal Area Facility Review Act (CAFRA)**, N.J.S.A. 13:19-1 et seq.**;

2. **[**Areas extending waterward to the State's seaward (Raritan Bay and Atlantic Ocean) jurisdiction on the east, the State's bayward (Delaware Bay) jurisdiction on the south and southwest, and the State's riverward (Delaware River) jurisdiction on the west**]** **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 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** ;

3. **[**The regulated area under the jurisdiction of the Waterfront Development Law pursuant to N.J.A.C. 7:7-2.3(a)**]** **All lands outside of the coastal 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. (No change.)

5. The Hackensack Meadowlands **[**Development Commission**]** District as defined by N.J.S.A. 13:17-4.

(c) Coastal Permits: This chapter shall apply to all:

1. (No change.)

2. **Tidal** **[**Wetlands**]** **wetlands** permits (N.J.S.A. 13:9A-1 et seq.); and

3. (No change.)

(d) Program management actions: This chapter shall apply to all actions of the Land Use Regulation Program within the **[**Coastal Zone**]** **coastal zone** to the extent statutorily permissible:

1. – 4. (No change.)

(e) Consistency determinations: This chapter shall apply to decisions on the consistency or compatibility of proposed actions by Federal, State, and local agencies with**in or affecting** the **[**Coastal Zone Management**]** **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., determinations of consistency or compatibility under the 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.

(f) Financial assistance decisions: This chapter shall apply to State aid financial assistance decisions by **[**DEP**]** **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) **[**DEP**]** **Department** management activities: **In addition to the management activities noted at N.J.A.C. 7:7E-1.1, this** **[**This**]** chapter shall apply, to the extent statutorily permissible, to the following **[**DEP**]** **Department** management actions **including permit decisions, approvals, certifications and conveyances,** in or affecting the coastal zone **[**in addition to those noted at N.J.A.C. 7:7E-1.1**]**:

1. Tidelands Resource Council: Conveyances of State owned tidelands (N.J.S.A. 12:3-1 et seq.)**[**.**]**;

2. Division of Water Quality:

i. **[**Permits for point**]** **Point** source discharges under the New Jersey Pollutant Discharge Elimination System (N.J.S.A. 58:10A-1 et seq.)**[**.**]**;

ii. **[**Approval of**]** **Management of** 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. **[**Permits for 50 or more Sewerage (septic) Facilities (N.J.S.A. 58:11-23).

ii. Approval for Sewerage Facilities in Critical Areas (N.J.S.A. 58:11-45).

iii. Permits to Perform Regulated**]** Activities within Freshwater Wetlands (N.J.S.A. 13:9B-1 et seq.)**[**.**]**; **and**

[iv.**]** **ii.** **[**Issuance of Permits pursuant to**]**Activities under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.)**[**.**]**;

4. Water Supply **[**Regulation**]** **Administration**:

i. **[**Permit to divert**]** **Diversion of** surface and/or subsurface or percolating waters for public and private water supply (N.J.S.A. 58:1A et seq.)**[**.**]**;

ii. **[**Approval of diversions**]** **Diversions** for water supply (N.J.S.A. 58:1A et seq.)**[**.**]**;

iii. **[**Permits to drill**]** **Drilling of** wells (N.J.S.A. 58:4A-14)**[**.**]**;

iv. **[**Certifications to construct**]** **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. **[**Permits to install**]** **Installation of** or **[**maintain**]** **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 Stormwater Permitting**]** **of Non-Point Pollution Control**: **[**Permits for the discharge**]** **Discharge** of stormwater to surface waters for industrial and other facilities (N.J.S.A. 58:10A-1 et seq.)**[.]**;

6. Air Quality Regulation **[**Program**]**:

i. **[**Permit to construct, install, or alter**]** **Construction, installation or alteration of** control apparatus or equipment (N.J.S.A. 26:2C-9.2)**[.]**;

ii. **[**Certificate to operate**]** **Operation of** control apparatus or equipment (N.J.S.A. 26:2C-9.2)**[.]**; **and**

iii. **[**Approvals of variances**]** **Variances** to exceed air quality standards (N.J.S.A. 26:2C-9.2)**[.]**;

7. Division of Solid **and Hazardous** Waste **[**Management**]**: **[**Certification**]** **Management** of Solid Waste facilities (N.J.S.A. 13:1E-1 et seq.)**[.]**;

8. Green Acres and Division of Parks and Forestry:

i. **[**Adoption of regulations**]** **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. 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 **[**and adoption of regulations concerning**]** river areas in the Wild and Scenic Rivers System (N.J.S.A. 13:8-45 et seq.).**]**

9. Division of Fish**[**, Game**]** and Wildlife: **[**Adoption of regulations**]****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 **[**Section**]**: **Management of** **[**Dam Permit**]** **dams** (N.J.S.A. 58:4-1)**[.]**; **and**

11. All Divisions: Management of State-owned lands by **[**DEP**]** **the Department**.

(h) **[**DEP**]** **Department** planning actions: This chapter shall provide the basic policy direction for the following planning actions undertaken by **[**DEP**]** **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. (No change.)

2. Natural and Historic Resources Program**s**:

i. – ii. (No change.).

3. **[**Land and Water Planning**]** **Division of Watershed Management** :

i. (No change.)

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. **[**and

iii. Allocation of Wastewater Treatment Construction Grants (N.J.S.A. 58:11B-1 et seq.).

iv. Implementation and coordination of the Federal Coastal Zone Management Program.**]**

4. (No change.)

5. Division of Solid **and Hazardous** Waste **[**Management**]**: Solid **and hazardous** waste management.

6. (No change.)

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 Coastal Planning and Program Coordination: Implementation and coordination of the Federal Coastal Zone Management Program.

7:7E-1.3 Severability

(No change.)

7:7E-1.4 Review, revision, and expiration

(No change.)

7:7E-1.5 Coastal decision-making process

[(a) General: 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 comprising the Location Rules (subchapters 2 through 6), the Use Rules (subchapter 7), and the Resource Rules (subchapter 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 Rules on Coastal Zone Management 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. DEP 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 Hackensack Meadowlands Development Commission, as lead agency, and by the Department, consistent with the Hackensack Meadowlands District Master Plan, its adopted components and management programs.**]**

[(b) Principles:**]** **(a)** The Coastal Zone Management **[**Rules**]** **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**]** **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 **[**DEP**]** **<u>the Department</u>** 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, **[**DEP**]** **<u>the Department</u>** officials will be guided by eight basic coastal policies which summarize the direction of the specific rules.

i. – viii. (No change.)

[(c) Definitions: The Rules on Coastal Zone Management 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 Rules on Coastal Zone Management and the principles defined in (b) above, the following words have the following meanings.

"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 Rules on Coastal Zone Management.

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

“Coastal permit” or “permit” means a permit 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., or the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 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 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 or Waterfront Development Permit 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 and developers should be dissuaded from proposing such uses. 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).

"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.

"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.

"Land area" means an area that is landward of the spring high water line.

"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 DEP, 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. (Note: 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 NJDEP 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 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.

"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 and falls lowest 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.**]**

7:7E-1.6 Mitigation

(a) Mitigation shall be selectively considered on a case-by-case basis as compensation for the loss or degradation of a particular natural resource. In general, mitigation should

be similar in type and location to the resource disturbed, destroyed, that is, replacement in kind within the same watershed. The **[**Program**]** **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 Location Policies (N.J.A.C. 7:7E-1.5(b)1). 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 **[**3.48**]** **3.49**).

(b) (No change.)

7:7E-1.7 Correspondence with the Department

(No change.)

7:7E-1.8 Definitions

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

"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.**

(NOTE to OAL: Underscore the internet address above in the Register version of

the proposal)

"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 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., or the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 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 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).

"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.

"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 DEP, 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.

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.

(NOTE to OAL: Underscore the internet address above in the Register version of the proposal)

SUBCHAPTER 2. **[**LOCATION, USE AND RESOURCE RULES

7:7E-2.1 Introduction

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. Different rules are therefore required for different locations. This subchapter and subsequent subchapters defines the Location, Use and Resource Rules of the Coastal Program. This presentation of the rules is lengthy and detailed because the coast is large, varied, and complex. The method of applying the rules is, however, relatively simple.

7:7E-2.2 Classification of land and water types

(a) The Location rules classify all land and water locations into General Land Areas and General Water Areas and some into one or more Special Areas.

1. Special Areas are so naturally valuable, or so important for human use, or so hazardous, or so sensitive to impact, or so particular in their planning requirements, as to merit focused attention. Special Areas are defined and given special rules in N.J.A.C. 7:7E- 3. Special Area are grouped under four broad classifications: Special Water Areas; Special Water's Edge Areas; Special Land Areas; and Special Coast Wide Areas.

2. General Areas are general types of locations which classify the whole coastal zone with the exception of certain Special Water's Edge areas, which are entirely Special Areas. Parts of General Areas may also be classified as one or more Special Areas. General Areas are defined and given general rules in N.J.A.C. 7:7E-4 and 5. General Areas are grouped under two broad classifications: General Water Areas (subchapter 4) and General Land Areas (N.J.A.C. 7:7E-5, 5A, and 5B).**] (Reserved)**

SUBCHAPTER 3. SPECIAL AREAS

7:7E-3.1 **[**Introduction**]** **Purpose and scope**

(a) Special Areas are **[**~~those 48 types of coastal areas which merit~~**]** **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 into **[**Special Water Areas (See N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (See N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (See N.J.A.C. 7:7E-3.33 through 3.35), and Coastwide Special Areas (See N.J.A.C. 7:7E-3.36 through 3.48).**]** **four categories:**

1. Special Water Areas**, N.J.A.C. 7:7E-3.2 through 3.15,** extend landward to the spring high water line or the level of normal flow in non-tidal waters**[.] ;**

2. **[**The**]** Special Water's Edge Areas**, [**can be found at**]** N.J.A.C. 7:7E-3.16 through 3.32**, [**and**]** are divided into three subcategories**[**,**]** depending on their location**[**s**]**. **Special Water's Edge Areas in (a)2i and ii below are found only next to tidal waters, while**

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**[)]**;

ii. Barrier and Bay Islands**,** **[(]**N.J.A.C. 7:7E-3.20 and 7:7E-3.21**[)]**; and

iii. Coastwide Special Water's Edge Areas**,** **[(]**N.J.A.C. 7:7E-3.22 through 3.32**[)]**.**]** **;**

[3. Special Water's Edge Areas in (a)2i and ii above are found only next to the ocean, major open bays and backbay waters, while Coastwide Special Water's Edge Areas are found adjacent to tidal as well as non-tidal waters.**]**

[4.**]** **3.** Special Land Areas**, N.J.A.C. 7:7E-3.33 through 3.35, generally** are landward of the **Special** Water's Edge **Areas[**.**]** **; and**

[5.**]** **4.** Coastwide Special Areas**, N.J.A.C. 7:7E-3.36 through 3.49,** may include **Special** Water **Areas**, **Special** Water's Edge **Areas** or **Special** Land Areas.

(b) (No change.)

7:7E-3.2 Shellfish habitat

(a) – (c) (No change.)

(d) Construction of a dock, pier or boat moorings in shellfish habitat is prohibited, except for the following:

1. – 2. (No change.)

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 **[**standards relevant to recreational docks and piers at N.J.A.C. 7:7E-4.2(e)**]** **Recreational docks and piers rule at N.J.A.C. 7:7E-4.5** or any other provisions of this chapter.

i. – v. (No change.)

(e) New dredging (defined at N.J.A.C. 7:7E-4.**[**11(g)**]** **4.7**) 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.)

(f) Maintenance dredging (defined at N.J.A.C. 7:7E-**[**4.11(f)**]** **4.6**) 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-**[**4.11(g)**]** **4.7** 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) – (k) (No change.)

7:7E-3.3 Surf clam areas

(a) **["]**Surf clam areas**["]** are **coastal** waters **[**within the territorial sea of the State of New Jersey**]** which can be demonstrated to support significant commercially harvestable quantities of surf clams (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.**

(b) **[**Policy relevant to surf clam areas is as follows:

1. **]** Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited**[.]** **except for the following:**

[2.**]** **1.** Development **[**within surf clam areas is conditionally acceptable only if the development**]** **that** is of national interest **[**and no prudent and feasible alternative sites exist.**]** **provided:**

i. There are no prudent and feasible alternative sites; and

ii. Impacts to the surf clam area are minimized.

2. Sand and gravel mining to obtain material for beach nourishment provided:

i. The beach nourishment project is in the public interest;

ii. There are no prudent and feasible alternative offshore borrow site that would result in less impact to marine fish and fisheries;

ii. The impacts to surf clam areas are minimized through the following:

(1)The beach nourishment project is designed to minimize the volume of sand borrowed from the surf clam area;

(2) The borrow cut is designed to minimize the area disturbed, for example, by designing a deeper cut;

(3) The borrow site is located to avoid those more productive surf clam areas; and

(4) When appropriate, notice shall be provided to clammers in advance of the mining operation to allow for surf clam harvest; and

iii. The sand mining is not located within a surf clam conservation area as defined at N.J.A.C. 7:25-12;

(c) Rationale: **[**The value to the commercial fisherman of their surf clam harvest was 16.6 million in 1987. The total value of this fishery to the state is a multiple of this figure as we add in the revenue generated from processing and distribution of the final product. The industry supports employment of over 300 full and part time people in fishing and 1,000 - 1,500 in canning, processing, distribution and industry services. Significant areas of productive water are presently closed due to water pollution. In addition, the massive marine fish kill during the summer of 1976 was estimated to have resulted in the loss of $65 million in sea clam stocks over a seven year period.**]** **Surf clams are the most valuable molluscan species landed in New Jersey, accounting for 67 percent of**

the State's total molluscan landings in 1999. 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 and federally controlled waters. In 1999, New Jersey vessels landed more than 84 percent of the total Mid-Atlantic Region and New England Region surf clam harvest with an ex-vessel value of over $29 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. **[**Surf clam harvesting within New Jersey's territorial sea is regulated by NJDEPE. The Mid-Atlantic Regional Fisheries Management Council regulates sea clamming within the Fishery Conservation Zone (200 mile limit). Harvesting is required to be compatible with these agencies, as appropriate. Harvest quotas and other management measures have been adopted for sea clamming (surf clams and ocean quahogs) within the Fishery Conservation Zone.**]**

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 Prime fishing areas

(a) Prime fishing areas include tidal water areas and water's edge areas which have a demonstrable history of supporting a significant local quantity of recreational or commercial fishing activity. The area includes all coastal jetties and groins **[**and**]**, public fishing piers or docks **and artificial reefs**. Prime fishing areas also include all red line delineated features within the **coastal waters** **[**State of New Jersey's three-mile territorial sea**]** 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". 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.

(b) **[**Policy**]** **Standards** relevant to prime fishing areas **[**is**]** **are** as follows:

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

2. (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 invertebrate species which are essential to marine ecosystem functioning. These areas are heavily utilized by recreational and commercial fisherman. Commercial fishing occurs primarily along the Delaware Bay and Atlantic Ocean. Over 2.7 million people annually 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 1979, $178 million was spent on recreational fishing including party boats and the value of commercial fisheries landings **[**totalled**]****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.

[Navigational channels, access channels and anchorages from a network of areas that have a depth sufficient to enable marine trade to operate at the limiting depth of the channel. If one part of the system is not maintained, the entire system might be unable to function.**]**

7:7E-3.5 Finfish migratory pathways

(a) – (c) (No change.)

(d) Water's edge development which incorporates migration access structures, such as functioning fish ladders, will be conditionally acceptable, provided that the **[**NJDEP**]** **the Department's**, Division of Fish**[**, Game**]** and Wildlife approves the design of the access structure. As of January, 1994, the **[**NJDEP**]** **Department's** Division of Fish**[**, Game**]** and Wildlife is **[**currently**]** evaluating anadromous fish spawning areas for potential enhancement work. This may include building of fish ladders, removal of obstructions, stocking, and other means. A development proposal shall be consistent with these Department efforts.

(e) (No change.)

7:7E-3.6 Submerged vegetation habitat

(a) A Submerged vegetation special area consists of water areas supporting or documented as previously supporting rooted, submerged vascular plants such as widgeon grass (Ruppia maritima), sago pondweed (Potamogeton pectinatus), horned pondweed (Zannichellia palustris) and eelgrass (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), 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 DEP 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**[**, Game**]** 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) **[**Regulated activities**]** **Development** in submerged vegetation habitat **[**are**]** **is** prohibited except for the following:

1. – 2. (No change.)
3. Maintenance dredging as defined at N.J.A.C. 7:7E-**[**4.2(f)**]** **4.6** of previously authorized, existing State and Federal navigation channels 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-**[**4.2(f)**]** **4.6 and 4.7**, 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-**[**4.2(f)**]** **4.6** 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.)

(c) **[**Regulated activities**]** **Development** in upland or water areas adjacent to submerged vegetation habitat or in submerged vegetation habitat which result**s** in erosion or turbidity increases in the waters supporting submerged vegetation **or prop or hull scour through use of the development** **[**are**]**is prohibited unless mitigating measures are

provided.

(d) – (e) (No change.)

7:7E-3.7 Navigation channels

(a) Navigation channels **[**include water areas in tidal rivers and bays**]** **<u>are tidal water areas including the Atlantic Ocean, inlets, bays, rivers and tidal guts with sufficient depth to provide</u>** **[**presently maintained by DEP or the Army Corps of Engineers**]** **<u>safe navigation. Navigation channels include all areas between the top of the channel slopes on either side. These navigation channels are often</u>** **[**and**]** marked **[**by US Coast Guard**]** with buoys or stakes**<u>.</u>**[, as**]** **<u>Major navigation channels are</u>** shown on NOAA/National Ocean **[**Survey**]**<u>**Service**</u> Charts**[**: 12214, 12304, 12311, 12312, 12313, 12314, 12316, 12317, 12318, 12323, 12324, 12326, 12327, 12328, 12330, 12331, 12332, 12333, 12334, 12335, 12337, 12341, 12343, 12345, 12346, and 12363**]**.

[1. Navigation channels also include channels marked with buoys, dolphins, and stakes, and maintained by the state of New Jersey, access channels and anchorages.

2. Navigation channels include all areas between the top of the channels slopes on either side.**]**

(b) Standards relevant to navigation channels are as follows:
[1. New or maintenance dredging of existing navigation channels is conditionally acceptable providing that the condition under the new or maintenance dredging rule is met (see N.J.A.C. 7:7E-4.2(f) and (g)).**]**
[2.**]** **<u>1.</u>** Development which would cause terrestrial soil and shoreline erosion and siltation in navigation channels shall utilize appropriate mitigation measures.
[3.**]** **<u>2.</u>** Development which would result in loss of navigability is prohibited.
[4.**]** **<u>3.</u>** Any construction which would extend into a navigation channel is prohibited.
[5.**]** **<u>4.</u>** 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.

(c) (No change.)

7:7E-3.8 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, **[**Bay Head-Manasquan**]** **Point Pleasant**, and Delaware and Raritan Canals are the principal examples in the New Jersey Coastal zone.

(b) **[**Policy: The Cape May and Bay Head-Manasquan Canals are man-made tidal guts. Development in these canals must be consistent with the General Water Area policies for Tidal Guts (N.J.A.C. 7:7E-4.7) as well as with the following policies.
1. In canals presently used for navigation, such as the Cape May and Bay Head-Manasquan canals, the following policies shall apply:
i. Aquaculture, filling, dams and impoundments, and any other use which would interfere with existing or proposed canal boat traffic is prohibited;
ii. Maintenance dredging is encouraged as needed provided that an acceptable spoil disposal site is available and turbidity is controlled.**]** **In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.**

[2.**]** **(c)** In the Delaware and Raritan Canal, and in the surrounding Review Zone established by the Delaware and Raritan Canal Commission, development must be consistent with the rules and regulations of the Review Zone of the Delaware and Raritan Canal State Park (N.J.A.C. 7:45**[**-1**]**).

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

7:7E-3.9 Inlets

(a) **[**"**]**Inlets**[**"**]** are natural channels through barrier islands allowing movement of fresh and salt water between the ocean and the back bay system. Inlets naturally have delta fans of sediment seaward and landward, deposited by the ebb and flow of the tide.
1. (No change.)

2. If there is doubt about the extent of these fans, the applicant shall submit up-to-date bathymetric surveys and **[**DEP**]** **Department** staff will determine the boundary on a case-by-case basis.

(b) **[**Policy: Inlets consist of an ocean portion and a semi-enclosed or back bay portion.**]** Development in inlets **[**must be consistent with the General Water Area Policy for one of these water area types, and with the following policies.**]** **shall comply with the following:**
1. Filling is prohibited**[**.**]** **; and**
2. (No change.)

(c) (No change.)

7:7E-3.10 Marina moorings

(a) – (c) (No change.)

[(d) New or maintenance dredging in marina mooring areas and access channels is conditionally acceptable, provided that the proposed dredging complies with the provisions applicable to new and maintenance dredging, N.J.A.C. 7:7E-4.2(f) and (g).**]**

[(e)**]** **(d)** (No change in text.)

7:7E-3.11 Ports

(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 **[**may be**]** **are** found **[**under the General Water Area rule for Docks and Piers (commercial) (N.J.A.C. 7:7E-4.2)**]** **at N.J.A.C. 7:7E-4.4, Docks and piers for cargo and commercial fisheries.**

(b) – (f) (No change.)

7:7E-3.12 Submerged infrastructure routes

(a) A **["]**submerged infrastructure route**["]** is the corridor in which a pipe or cable runs on or below a submerged land surface.

(b) – (c) (No change.)

7:7E-3.13 Shipwreck**[**s**]** and artificial reef**[**s**]** **habitats**

(a) **[**A "**]** **The** shipwreck**[**s**]** and artificial reef**[**s"**]** **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. **[**This policy applies to tidal and ocean waters of the State of New Jersey three mile territorial sea, but outside of navigation channels.**]** **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 listed **[**in the definition above of the**]** **at N.J.A.C. 7:7E-3.7(a), the** Navigation Channel **[**Special Area**]** **rule**, **[**or listed in the definition of the Navigation Channel Special Area (N.J.A.C. 7:7E-3.7(a))**]**, or listed in **the following publications**: W. Krotee and R. Krotee, Shipwrecks Off the New Jersey Coast (1966), **[**and**]** 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)**. In addition to known sites, unidentified remains of vessels may exist within tidal water**s**. **Shipwrecks may also be considered historic or archaeological resources pursuant to N.J.A.C. 7:7E-3.36.**

2. **[**Also included in this category are artificial fishing reefs which serve the same natural function as a habitat for living marine resources. (See also 7:7E-3.35, Historic and Archeological Resources).**]** **Shipwreck and artificial reef habitats may be subject to the Marine fish and fisheries rule, N.J.A.C. 7:7E-8.2.**

(b) Acceptable uses of **[**these submerged habitats**]** **shipwreck and artificial reef habitats** include **[**recreational and commercial**]** finfishing **[**and**]**, shellfishing, and scuba diving.

[In addition, construction of new or expanded artificial reefs by the deposition of weighted non-toxic material is conditionally acceptable provided that:

1. It can be demonstrated that the material will not wash ashore and interfere with either navigation as regulated by U.S. Coast Guard or commercial fishing operations; and

2. Placement of the material and ultimate management of the habitat is coordinated with the DEP Division of Fish, Game and Wildlife.**]**

(c) Any use, except archeological research, which would significantly adversely affect the usefulness of this special area as a **[**fisheries resource**]** **fish habitat** is prohibited. Persons conducting archeological research which significantly affects the usefulness of a shipwreck for fisheries purpose shall compensate for this loss by creation of an artificial reef **[**or**]** **of** equal habitat value.

(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 **[**recreational fishing by private boats, commercial party boats, and commercial lobstering**] 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, New Jersey had 14 reef sites encompassing a total of 25 square miles of sea floor. The sites are located along the State's 120 mile coastline, with at least two reef sites within boat range from each of New Jersey's ocean inlets.** Shipwrecks are also fragile historic and cultural resources. Scuba **[**diving club members**] divers** from New Jersey and other states visit **[**these resources**] artificial reefs extensively**. **[**This policy does not conflict with waterfront cleanup efforts. **]**

7:7E-3.14 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, N.J.A.C. 7:7E-3.27,** and/or Wetlands Buffers **[**Rules**] rule, N.J.A.C. 7:7E-3.28,** shall apply. **[**(See N.J.A.C. 7:7E-3.27 and 3.28).**]**

(b) – (c) (No change.)

(d) Surface mining is conditionally acceptable provided condition (b) above **[**is met and the Use Rules for Mining (see N.J.A.C. 7:7E-7.8) are complied with**] and the Mining**

rule, N.J.A.C. 7:7E-7.8, 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. (No change.)

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 design**ed** to maximize wildlife habitat value and create wetland areas, except that the entire lake may be filled if necessary to prevent the lake from acting as a channel for salt water intrusion into aquifers.

(g) Filling of wet borrow pits for construction is conditionally acceptable provided that:

1. –3. (No change.)

4. **[**There is designation of a**]** **A** water quality buffer zone **of at least 50 feet is designated in accordance with (j) below** around **remaining** water areas **[**of at least 50 feet. Structures and paving, except at limited water access points, are prohibited in the water quality buffer. In general, the water quality buffer area shall be allowed to succeed naturally to water's edge wetland and forest with minimum disturbance and runoff**]**;

5. A program for water quality monitoring and maintenance is included with the application; **and**

6. Recreational uses in water and water quality buffer areas minimize wildlife disturbance**[**; and

7. All requirements of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., are satisfied**]**.

(h) – (i) (No change.)

[(j) Limited recreational use of the wet borrow pit margin is acceptable providing that the water buffer disturbance is limited in extent and wildlife habitat disturbance is minimized. **]**

[(k)**]** **(j)** A water quality buffer area is required around the perimeter of wet borrow pits. The minimum width of this buffer area will be 100 feet where soils are coarse (sands and gravels) and 50 feet elsewhere. **Recreational use of the water quality buffer is acceptable provided that the disturbance is limited in extent and wildlife habitat disturbance is minimized. The remainder of the buffer area shall be allowed to succeed naturally to water's edge. Structures and paving, except at limited water access points for recreational use, are prohibited in the water quality buffer.**

Recodify existing (l) as (k) (No change in text)

7:7E-3.15 Intertidal and subtidal shallows

(a) Intertidal and subtidal shallows means all permanently or **[**twice daily**]** **temporarily** submerged areas from the spring high **[**tide**]** **water line** to a depth of four feet below mean low water.

(b) Development, filling, new dredging or other disturbance is discouraged but may be permitted in accordance with **[**the acceptability conditions found at**]** **(c), (d), (e), and (f) below and with** N.J.A.C. 7:7E-4.2 **through 4.20**. **[**Dredging is acceptable only if the following criteria are satisfied in addition to the acceptability conditions found at N.J.A.C. 7:7E-4.2:**]**

[1. The**]** **(c) Maintenance** dredging of intertidal and subtidal shallows **[**may be**]** **is** acceptable to maintain adequate water depths **in accordance with N.J.A.C. 7:7E-4.6** **[**for any existing or new marinas with 25 or more slips or public launching facilities and existing ports**]**.

[2. Maintenance dredging of intertidal and subtidal shallows for legally constructed, existing docks other than those identified in (b)1 above, is acceptable provided the following criteria are met:

i. The depth of the proposed dredge area does not exceed four feet mean low water;

ii. The width of the access channel is the minimum width required to moor a boat at the dock; and

iii. The maintenance dredging complies with all applicable Special Water Area Rules (N.J.A.C. 7:7E-3).**]**

(d) New dredging in intertidal and subtidal shallows is discouraged, unless it complies with the following conditions:

1. There is a need for the proposed facility that requires the dredging that cannot be met by other similar facilities in reasonable proximity taking into account scope and purpose of the proposed facility;

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; and

3. The proposed dredging and the facility that requires the dredging have been designed to minimize impacts to intertidal and subtidal shallows.

[3.**] (e) The installation of [**Submerged**] submerged** infrastructure **within intertidal and subtidal shallows** is conditionally acceptable, provided **[**that**]**:

1. Directional drilling is used unless it can be demonstrated that the use of directional drilling is not feasible;

[i.**] 2. Where directional drilling is not feasible, [**There**] there** is no feasible alternative route that would not disturb intertidal and subtidal shallows;

[ii.**] 3.** The infrastructure is **[**buried**] located** deeply enough to avoid exposure or hazard; **and**

[iii. Directional drilling for the purpose of installation of submerged infrastructure is preferred to trenching where feasible; and**]**

[iv.**] 4.** All trenches are backfilled to the preconstruction depth with naturally occurring sediment.

[4.**] (f)** The filling of intertidal and subtidal shallows for beach nourishment is conditionally acceptable provided it meets the requirements **[**found under**] of** the Filling rule **[**(**] at** N.J.A.C. 7:7E-**[**4.2(j))**] 4.10(f)** and the Coastal Engineering rule **[**(**] at** N.J.A.C. 7:7E-7.11(d)**[**)**]**.

[(c) If the destruction of intertidal and subtidal shallows takes place, mitigation shall be carried out at a ratio of one acre created to one acre lost. Mitigation sites shall be located within the same estuary whenever feasible. Specific filling activities acceptable under N.J.A.C. 7:7E-4.2(j)2iii(1) and 7.11(d) are exempt from this mitigation requirement.

1. Dredging activities for residential noncommercial docks will not require mitigation. Dredging activities for projects which do not meet the criteria at (b)1 and 2 above, marinas and ports will not require mitigation provided the dredged area is reduced to the minimum extent practicable (minimum being the smallest area compared to the area needed to develop the same project at another site)**]**

(g) Mitigation shall be required for the destruction of intertidal and subtidal shallows in accordance with (h) below. Mitigation proposals shall comply with the standards of N.J.A.C. 7:7E-3B. Mitigation shall not be required for the following:

1. Filing in accordance with N.J.A.C. 7:7E-4.10(c) and (f);

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

3. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d);

4. New Dredging in accordance with N.J.A.C. 7:7E-4.7 to a depth not to exceed four feet below mean low water; and

5. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(h) 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 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;

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 hydrological unit code where the destruction is located;

iv. 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 lost 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.

[(d)**]** **(i)** Rationale: Intertidal and subtidal shallows play a critical role in estuarine ecosystems. They are a land-water ecotone, or ecological edge where many material and energy exchanges between land and water take place. They are critical habitats for many benthic organisms and are critical forage areas for fishes and many migrant waterfowl. The sediments laid down in intertidal and subtidal flats contain much organic detritus from decaying land and water's edge vegetation, and the food webs in these areas are an important link in the maintenance of estuarine productivity. Preservation is, therefore, the intent of these rules, with limited exceptions to allow for needed water-dependent uses and submerged infrastructure. **In most cases, mitigation is required to offset habitat losses where new disturbance of intertidal and subtidal shallows is permitted.**

7:7E-3.16 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 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. - 5. (No change.)

6. Shore protection structures which meet the **[**use conditions of**]** **Coastal Engineering rule at** N.J.A.C. 7:7E-7.11(e); and

7. (No change.)

(c) (No change.)

(d) Rationale: Ocean and bayfront dunes are an irreplaceable physical feature of the natural environment possessing outstanding geological, recreational, scenic and protective value. Protection and preservation in a natural state is vital to this and succeeding generations of citizens of the State and the Nation. The dunes are a dynamic migrating natural phenomenon that helps protect lives and property in adjacent landward areas, and buffers barrier islands and barrier beach spits from the effects of major natural coastal hazards such as hurricanes, storms, flooding and erosion. Natural dune systems also help promote wide sandy beaches and provide important habitats for wildlife species.

Extensive destruction of dunes has taken place in this century along much of the coast. This disruption of the natural processes of the beach and dune system has led to severe erosion of some beach areas; jeopardized the safety of existing structures on and behind the remaining dunes and upland of the beaches; increased the need to manage development in shorefront areas no longer protected by dunes; interfered with the sand balance that is so essential for recreational beaches and the coastal resort economy; necessitated increased public expenditures by citizens of the entire State for shore protection structures and programs; and increased the likelihood of major losses of life and property from flooding and storm surges.

The rule encourages the natural functioning of the dune system and encourages restoration of destroyed dunes, to protect and enhance the coastal beach dune areas, and to devote these precious areas to only those limited land uses which preserve, protect and enhance the natural environment of the dynamic dune system.

The Department strongly supports the creation, enhancement and maintenance of coastal sand dunes as cost-effective shore protection. The value of dunes in protecting the densely developed oceanfront from coastal storm hazards has been well documented by the Department, the Federal Emergency Management Agency, the Army Corps of Engineers, and others. In fact, the New Jersey Hazard Mitigation Plan (Section 406) specifically identifies dune creation and enhancement as a primary storm hazard mitigation strategy.

In addition to the benefits that dunes provide as a natural form of shore protection, dunes often provide important habitat for numerous species of plants and wildlife. Moreover, dunes are important aesthetic resources that complement and promote tourism along the New Jersey shore. With large quantities of sand being placed on New Jersey beaches as part of the State-Federal shore protection program, opportunities to restore beach and dune habitats and associated biodiversity have increased tremendously. Beach nourishment provides the basis for restoration of coastal landforms (beaches and dunes) and biota, and rediscovery of lost environmental heritage. A large variety of species inhabit coastal dune environments, including plants (beachgrass, beach plum, beach pea, goldenrod, bayberry, juniper, cedar, virginia creeper) and animals (sparrows, warblers, waxwings, kinglets, tanagers, tiger beetles, burrowing spiders, grasshoppers, butterflies).

The natural and aesthetic values of habitat restoration are an important byproduct of the State's beach and dune restoration efforts. Dunes can evolve as natural dynamic landforms that restore an important component of New Jersey's coastal heritage, while providing significant areas of vegetated habitat for coastal biota. The restoration of the natural and beneficial functions of beaches and dunes has become the cornerstone of New Jersey's shore protection program. These benefits are described in Nordstrom and Mauriello (2001), Restoring and Maintaining Naturally Functioning Landforms and Biota on Intensively Developed Barrier Islands Under a No-Retreat Scenario. In addition, dune restoration for the purpose of providing wildlife habitat and scenic amenities is consistent with the goals of CAFRA to preserve and enhance the unique environmental and aesthetic resources of the coastal area.

7:7E-3.17 Overwash areas

(a) (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. – 3. (No change.)

4. Shore protection structures which meet the **[**use conditions of**]** **Coastal Engineering rule at** N.J.A.C. 7:7E-7.11(e);

5. – 7. (No change.)

(c) – (f) (No change.)

7:7E-3.20 Barrier island corridor

(a) **["]**Barrier island corridors**["]** are the interior portions of oceanfront barrier islands, spits and peninsulas. Along the New Jersey Coast, headlands are located between Monmouth Beach, Monmouth County and Pt. Pleasant Beach, Ocean County.

1. (No change.)

(b) – (c) (No change.)

7:7E-3.21 Bay islands

(a) Bay islands are islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island**[**s**]**. 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. – 2. (No change.)

(b) – (d) (No change.)

7:7E-3.22 Beaches

(No change.)

7:7E-3.23 Filled water's edge

(a) – (b) (No change.)

(c) On filled water's edge sites with direct water access, (that is, those sites without extensive inter-tidal shallows or wetlands between the upland and navigable water), development **[**must**]** **shall** comply with the following **[**conditions**]**:

1. The waterfront portion of the site shall be**:**

i. [developed**]** **Developed** with a water dependent use **[**(see N.J.A.C. 7:7E-1.5(c) for definitions)**]** **, as defined at N.J.A.C. 7:7E-1.8;**

ii. Developed with an at-grade deck provided:

(1) The deck is open to the general public;

(2) The use of the deck is water oriented;

(3) The deck is not enclosed; and

(4) A public walkway is provided around the deck landward of the mean high water line at the water's edge; or

iii. [or left**]** **Left** undeveloped for future water dependent uses;

2. –3. (No change.)

(d) – (i) (No change.)

(j) 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 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. 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 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 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 (i.e., water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (i.e., 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 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 by attracting tourists and associated revenues

and by serving **[**the estimated 25 percent of**]** residents who go boating in New Jersey's coastal waters **[**(1977 Eagleton Institute Poll). The vast majority of **]** **Many** existing marinas **[**(70%)**]** are filled to capacity with **[**most having**]** waiting lists of one season or more**[**, evidence of a large unmet demand (Rogers, Golden and Halpren for New Jersey DEPE, Developing a Marina in New Jersey 1982). According to the New Jersey State Comprehensive Management Outdoor Recreation Plan (SCORP),**]**. **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 **[**through 1995**]** 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%) of a marina's large boats, which cannot be easily trailered off-site, must be accommodated. However, space for only a small portion (25%) 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.

7:7E-3.24 Existing lagoon edges

(a) **["]**Existing lagoon edges**["]** are defined as existing man-made land areas resulting from the dredging and filling of wetlands, bay bottom and other estuarine water areas for the purpose of creating waterfront lots along lagoons for residential and commercial development.

1. (No change.)

(b) Development of Existing Lagoon Edges is acceptable provided **[**that**]**:

1. – 2. (No change.)

3. New or reconstructed retaining structures are consistent with the **[**Acceptability

Conditions for Filling (N.J.A.C. 7:7E-4.11(i)), 7:7E-4.11(j))**]** **the Filling rule at N.J.A.C. 7:7E-4.10** and Structural Shore Protection **rule** **[**(**]**N.J.A.C. 7:7E-7.11(e)**[**) policies**]**; and

4. (No change.)

(c) (No change.)

7:7E-3.25 Flood hazard areas

(a) Flood hazard areas are the floodway and flood fringe area around rivers, creeks and streams as delineated by **[**DEP**]** **the Department** under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.); and areas defined or delineated as an A or a V zone by the Federal Emergency Management Agency (FEMA). They are areas subject to either tidal or fluvial flooding. Where flood hazard areas have been delineated by both **[**DEP**]** **the Department** and FEMA, **[**DEP**]** **the Department** delineations shall be used. Where flood hazard areas have not been delineated by **[**DEP**]** **the Department** or FEMA, limits of the 100 year floodplain will be established by computation on a case-by-case basis. The seaward boundary shall be the mean high water line (see Appendix 1, Figures 6 and 7, incorporated herein by reference).

1- 2. (No change.)

3. Where portions of the flood hazard areas meet the definition of another Special Water's Edge type (Filled Water's Edge, Lagoon Edge, **[**Alluvial Flood Margins,**]** Beaches, Dunes, Overwash Areas, Erosion Hazard Areas, Coastal High Hazard Areas, Barrier Island Corridor, Bay Islands, Wetlands, Wetlands Buffer, Coastal Bluffs, and Intermittent Stream Corridors), the Special Water's Edge **[**policies**]** **rules** shall apply in terms of location acceptability and the flood hazard areas rule shall apply in terms of setback and flood proofing requirements.

(b) Dedication of flood hazard areas for purposes of public open space is encouraged**[**, especially where such areas are designated to the New Jersey Wild and Scenic Rivers System (see N.J.S.A. 13:8-45 et seq.)**]**.

(c) 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 for water dependent use. **"**Navigable" and "water dependent" are defined at N.J.A.C. 7:7E-**[**1.5(c)**]** **1.8**. For the purposes of this subsection and (d) below, an "undeveloped" area is an area that has no impervious cover.

(d) (No change.)

(e) Retention and detention basins developed specifically for storm water management purposes are conditionally acceptable provided they are constructed in accordance with the Stormwater **[**Runoff**]** **Management** rule (N.J.A.C. 7:7E-8.7).

(f)- h) (No change.)

7:7E-3.26 (Reserved)

7:7E-3.27 Wetlands

(a) – (b) (No change.)

(c) 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-**[**1.5**]**1.8;

2. – 4. (No change.)

(d) – (g) (No change.)

(h) 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 the following:

1. – 2. (No change.)

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. **[**Applicants shall be required to obtain a secured bond, or other surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the applicant default. The performance bond for the construction of the proposed mitigation shall be posted in an amount equal to 115 percent of the estimated cost of construction of the mitigation activity. In addition, a maintenance bond to assure the success of the mitigation shall be posted in the amount equal to 30 percent of the estimated cost of construction. The performance and maintenance bonds will be reviewed annually and shall be adjusted to reflect current economic factors.

i. The performance bond or other surety will be released upon an inspection by the Department confirming completion of construction and planting of the mitigation site. The maintenance bond will be released upon the Department's confirmation that the three-year, post-planting monitoring period has been successfully completed and that no additional maintenance is required in order to meet the specifications of the approved mitigation plan.**]** **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.**

(i) (No change.)

7:7E-3.29 – 7:7E-3.30(Reserved)

7:7E-3.31 Coastal Bluffs

(No change.)

7:7E-3.32 Intermittent stream corridors

(No change.)

7:7E-3.33 Farmland conservation areas

(No change.)

7:7E-3.34 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-**[**3.30**]** **3.31**). Steep slopes include natural swales and ravines, as well as manmade areas, such as those created through mining for sand, gravel, or fill, or road grading. Slopes of less than 15 percent are not considered to be steep slopes **[**(see Resource Policy on Soil Erosion and Sedimentation, N.J.A.C. 7:7E-8.8)**]**.

(b) Development on steep slopes is discouraged **[**unless its use is essential to a reasonable use of the site and it can be shown to the satisfaction of the Division that the development will:

1. Produce minimum feasible site disturbance;**]** **where wetlands, wetland buffers, intermittent stream corridors, threatened and endangered species habitats 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).**

(c) Development on steep slopes other than those listed in (b) above, is conditionally acceptable provided:

[2.**]** **1.** **[**Provide for maximum feasible vegetation of the**]** **The** steep slope **[**, especially**]** **is vegetated** with native woody vegetation **to the maximum extent practicable**; **and**

[3. Be consistent with the natural contour of the site to the maximum extent feasible; and**]**

[4.**]** **2.** **[**Include limited stabilization**]** **Stabilization** measures **are used**, if necessary, such as terracing and paving, that are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable**[**; and

5. Meet the Resource Policies for Runoff, and Soil Erosion and Sedimentation (N.J.A.C. 7:7E-8.7 and 8.8)**]**.

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

7:7E-3.35 Dry borrow pits

(a) **["]**Dry borrow pits**["]** are excavations for the purpose of extracting coastal minerals which have not extended below the groundwater level. This includes, but is not limited to, dry sand, gravel and clay pits, and stone quarries.

(b) Surface mining is conditionally acceptable, provided the Mining Use **[**Policies (**]** **rule at** N.J.A.C. 7:7E-7.8**[**) are complied with**] is satisfied**.

(c) – (e) (No change.)

(f) Dredge**d** **[**spoil**]** **material** disposal is conditionally acceptable provided that:
1. The **[**spoil**]** **dredged material** will not degrade groundwater quality;
2. The **[**spoil**]** **dredged material** is of a particle size that will not disturb groundwater hydrology; and
3. **[**Spoil**]** **Dredged material** disposal is compatible with neighboring uses.

(g) Solid waste disposal **[**other than clean dredge spoil, and not including radioactive or carcinogenic waste,**]** is conditionally acceptable on a case-by-case basis provided that:
1. Waste disposal is compatible with neighboring uses;
[2. The borrow pit is lined with clay, plastic or other impermeable material; leachate is collected, treated and discharged to the ground through an injection well or other technique that will not degrade groundwater quality; and maintenance will be available for the life of the landfill;

3. The solid waste is stacked and interlayed with inert material;

4. A reclamation plan is submitted with the application showing naturalistic final grading, surface improvement with topsoil and organic additives and planting to initial native successions with guarantees of survival for the first five years;

5**.** Elevations of landfill do not exceed original surface elevations before mining;

6. The reclamation proposals are worked toward during dumping, and completed at conclusion; and

7. The applicant can demonstrate that even during accidental failure of a treatment plant, the leachate cannot degrade ground or surface water.**]**

2. Elevations of the landfill do not exceed original surface elevations before mining; and

3. The waste disposal complies with the Solid and Hazardous Waste rule at N.J.A.C. 7:7E-8.22.

(h) Filling or grading for construction is conditionally acceptable provided **[**that:

1. Other coastal policies are satisfied; and

2. The**]** **the** fill is clean and of a texture **that will** not **[**to**]** disturb local groundwater flow.

(i) – (j) (No change.)

7:7E-3.36 Historic and archaeological resources

(a)-(e) (No change.)

(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 [following**]** 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.**

1. – 7. (No change.)

(g) – (h) (No change.)

(i) Rationale: The range of historic and archaeological resources along the coast is diverse, from the oceanfront Victorian era architecture, to examples of New Jersey's maritime heritage, to colonial homes, and to American Indian 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, 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 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, and the staff of the DEP's Historic Preservation Office advise DEP's 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 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).

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 Specimen trees

(a) Specimen trees are the largest known individual trees of each species in New Jersey. The Department's **[**Bureau**]** **Division** of Parks and Forestry maintains a list of these trees (see "New Jersey's Biggest Trees", published by **[**DEP**] the Department's** Division of Parks and Forestry, Summer 1991 for a listing of specimen trees). In addition, large trees approaching the diameter of the known largest tree shall be considered specimen trees. Individual trees with a circumference equal to or greater than 85 percent of the circumference of the record tree, as measured 4.5 feet above the ground surface, for a particular species shall be considered a specimen tree.

(b) – (c) (No change.)

7:7E-3.38 Endangered or threatened wildlife or [vegetation] plant species habitats

(a) Areas known to be **[**inhabitated**] inhabited** on a seasonal or permanent basis by or to be critical at any stage in the life cycle of any wildlife **[**(fauna) or vegetation (flora)**] 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, are **[**considered Special Areas**] endangered or threatened wildlife or plant**

species habitats. **[**The definition also includes**]** **Endangered or threatened wildlife or plant species habitats include** a sufficient buffer area to **[**insure**]** **ensure** continued survival of the population of the species. **[**DEP's Division of Fish, Game and Wildlife and Division of Parks and Forestry intentionally restrict dissemination of data showing the geographic location of these species, in order to protect the species and their habitats.**]**

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

(b) Development of **[**this special area**]** **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 as described at N.J.A.C. 7:7E-3C.2,** that endangered or threatened wildlife or **[**vegetation**]** **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:

1. Demonstrate compliance with this rule by conducting an Endangered or Threatened Wildlife Species Impact Assessment in accordance with N.J.A.C. 7:7E-3C.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 in accordance with N.J.A.C. 7:7E-3C.3.

(d) If the Department becomes aware of an occurrence of an endangered or threatened wildlife species on a site that is not mapped as endangered or threatened wildlife species habitat on the Department's Landscape Maps, and the Department determines that the habitat may be suitable for that species, the Department shall notify the applicant and the applicant shall demonstrate compliance with or inapplicability of this rule in accordance with (c) above.

(e) If the Department becomes aware of an occurrence of an endangered or threatened plant species on a site that is not in the Natural Heritage Database, the Department will notify the applicant and the applicant shall demonstrate compliance with this rule in accordance with (b) above.

[(c) The following wildlife species were listed as endangered on the State list in January 1984, as amended on May 6, 1985, July 20, 1987 and June 3, 1991:

FISH	
Shortnose Sturgeon[1]	Acipenser brevirostrum
AMPHIBIANS	
Tremblay's Salamander	Ambystoma tremblayi
Blue-spotted Salamander	Ambystoma laterale
Eastern Tiger Salamander	Ambystoma tigrinum tigrinum

Pine Barrens Treefrog	Hyla andersoni
Southern Gray Treefrog	Hyla chrysocelis

REPTILES

Atlantic Hawksbill Turtle[1]	Eretmochelys imbricata
Atlantic Loggerhead Turtle[1]	Caretta caretta
Atlantic Ridley Turtle[1]	Lepidochelys kempi
Atlantic Leather-back Turtle	Dermochelys coriacea
Bog Turtle	Clemmys muhlenbergi
Timber Rattlesnake	Crotalus horridus horridus
Corn Snake	Elaphe guttata guttata

BIRDS

Bald Eagle[1]	Haliaeetus leucocephalus
Peregrine Falcon[1]	Falco peregrinus
Cooper's Hawk	Accipter cooperii
Least Tern	Sterna albifrons
Black Skimme[2]	Rynchops niger
Northern Harrier[2]	Circus cyaneus
Short-eared Owl[2]	Asio flamneus
Pied-billed Grebe	Podilymbus podiceps
Upland Sandpiper	Bartramia longicauda
Sedge Wren[2]	Cistothorus platensis
Henslow's Sparrow	Ammodramus henslowii
Vesper Sparrow[2]	Pooecetes gramineus
Piping Plover	Charadrius melodus
Roseate Tern	Sterna dougallii
Loggerhead Shrike	Larnius ludovicianus
Red-shouldered Hawk[2]	Buteo lineatus

MAMMALS

Sperm Whale[1]	Physter catedon
Blue Whale[1]	Balaenopetera musculus

Fin Whale[1]	Balaenopetera physalus
Sei Whale[1]	Balaenopetera borealis
Humpback Whale[1]	Megaptera novaeangliae
Bobcat	Lynx rufus
Eastern Woodrat	Neotoma floridana
Right Black Whale	Balaena glacialis

INVERTEBRATES

Mitchell's Satyr (butterfly)[1]	Neonympha m. mitchellii
Northeastern Beach Tiger Beetle	Cicindela d. dorsalis
American Buring Beetle[1]	Nicrophorus americanus
Dwarf Wedge Mussel[1]	Alasmidonta heterodon

(d) The following Species were listed as Threatened Species on the State list in January 1984 as amended on May 6, 1985, July 20, 1987 and June 3, 1991.

AMPHIBIANS

Long-tailed Salamander	Eurycea longicauda
Eastern Mud Salamander	Pseudotriton montanus

REPTILES

Wood Turtle	Clemmys insculpta
Northern Pine Snake	Pituophis m. melanoleucus
Atlantic Green Turtle [1&3]	Chelonia mydas

BIRDS

Osprey	Paridon haliaetus
Great Blue Heron	Ardea herodias
Red-shouldered Hawk	Buteo lineatus
Red-headed Woodpecker	Melanerpes erythrocephalus
Bobolink[2]	Dolichonyx oryzivorus
Savannah Sparrow[2]	Passerculus sandwichensis
Ipswich Sparrow[2]	Passerculus sandwichensis princeps

Grasshopper Sparrow[2]	Ammodramus savannarum
Yellow-crowned Night Heron	Nyctanassa violacca
American bittern	Botaurus legtigimosos
Northern Goshawk	Accipiter gentilis
Black Rail	Laccipiter jamaicensis
Barred owl	Strix varia
Little Blue Heron[2]	Egretta caerulea
Long-eared Owl	Asio otus
Cliff Swallow[2]	Hirundo pyrrhonota

[1]Also on the Federal List

[2]Status designation applicable to breeding populations only

[3]Does not nest regularly in New Jersey**]**

(f)The Department is responsible for the promulgation of the official Endangered and Threatened Wildlife lists pursuant to the Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A 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 N.J.A.C. 7:25-4.17, the rules adopted pursuant to the Endangered and Non-Game 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, or by writing to the Division at PO Box 400, Trenton, New Jersey 08625-0400.

[(e**]****(g)**The **Department** **[**Division of Parks and Forestry**]** is responsible for promulgation of the official Endangered Plant Species List pursuant to N.J.S.A. 13:1B-15. The Endangered Plant Species List, N.J.A.C. 7:5C-5.1, **[**currently contains 308 native plant species, and**]** includes **plant** species determined by the **[**DEP**]** **Department** to be endangered in the State as well as plant species officially listed as **[**Endangered or

Threatened**]** **endangered or threatened** or under active consideration for Federal listing as Endangered or Threatened. Because the Endangered Plant Species List is periodically revised based on new information documented by the **[**DEP**]** **the Department**, it is not published as part of this rule. To obtain the most current Endangered Plant Species List, please contact the **[**NJDEP**]** **the Department**, Division of Parks and Forestry, Office of Natural Land Management, **[**CN**]** **PO Box** 404, Trenton, NJ 08625**-0404**.

[(f)**]** **(h)** For sites located within the Pinelands National Reserve and the Pinelands Protection Area, the plant species listed in **[**Section 6-204 of**]** the Pinelands Comprehensive Management Plan **(N.J.A.C. 7:50-6.24) are also considered endangered or threatened plant species** **[**shall also apply (N.J.A.C. 7:50-6.24)**].**

[(g) For projects which require a habitat assessment, the guidelines found at N.J.A.C. 7:7E-3C shall be used.**]**

[(h)**]** **(i)** Rationale: Endangered and threatened species are organisms which are facing possible extinction **in the State** in the immediate future due to loss of suitable habitat, and past overexploitation through human activities or natural causes. Extinction [is an irreversible event and] represents a loss **of biodiversity** **[**to both future human use**]**, **which would adversely affect** education, research and **[**to**]** the interrelationship of all living creatures **[**with**]** **within** the **coastal** ecosystem.

7:7E-3.39 Critical wildlife habitats

(a) **["]**Critical wildlife habitats**["]** are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating.

1. – 2. (No change.)

3. Definitions and maps of critical wildlife habitats are currently available only for colonial waterbird habitat in the 1979 Aerial Colony Nesting Waterbird Survey for New Jersey (NJDEP, Division of Fish**[**, Game**]** and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish**[**, Game and**]**

Wildlife.

(b) – (d) (No change.)

7:7E-3.40 Public open space

(a) – (c) (No change.)

(d) Development within existing public open space is conditionally acceptable, provided that the development **[**complies with the Rules on Coastal Zone Management and**]** is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists.

(e) – (h) (No change.)

7:7E-3.41 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.)

(c) Approvals from the **[**DEP's**]** **Department's** Division of **Solid and** Hazardous Waste **[**Management**]** shall be obtained prior to the commencement of any hazardous substance investigations or clean-up activities at contaminated sites.

(d) (No change.)

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

7:7E-3.42 Excluded Federal lands

(a) **[**"**]**Excluded Federal lands**[**"**]** are those lands**, [**that are owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the United States of America**]** **the use of which is, by law, subject solely to the discretion of or held in trust by the Federal Government**, its officers or agents **[**, and**]**. **These lands** are excluded from **[**New Jersey's Coastal Zone**]** **the coastal zone** as required by **Section 304 of** the Federal Coastal Zone Management Act. **[**They are listed in the New Jersey Coastal Management Program (August, 1980) at page 370.**]**

1. The list of excluded Federal lands is found in the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 370.

(b) Federal actions on excluded Federal lands **[**that significantly affect the coastal zone (spillover impacts)**]** **that affect any land or water use, or natural resource of the coastal zone** shall be consistent with the Coastal **[**Resource and Development Policies,**]** **Zone Management rules** to the maximum extent practicable. **The effects on the land or water use or natural resource maybe direct, indirect, cumulative, secondary or reasonably foreseeable effects.**

(c) Rationale: **[**While the Federal Coastal Zone Management Act requires that Federal lands be excluded from a state's coastal zone, New Jersey has the authority to review activities on Federal lands under Section 307 of the Act when they may have spillover impacts which would significantly affect New Jersey's Coastal Zone.**]** **Although the Federal Coastal Zone Management Act excludes from the coastal zone those lands, the use of which is solely subject to the discretion of or held in trust by the Federal Government, the Federal Coastal Zone Management Act requires that actions of Federal Agency's within or outside of the coastal zone that affect any land or water use or natural resource of the coastal zone be carried out in a manner that is consistent to the maximum extent with the state's approved coastal management program. Federal consistency is a method of ensuring protection of coastal resources through the coastal management policies of**

states and by assisting states in managing coastal uses and resources. Federal consistency can help protect entire ecosystems as well as individual resources and uses.

7:7E-3.43 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. [**The following municipalities within the coastal zone qualify as special urban areas in 1993:

Asbury Park
Atlantic City
Bayonne
Bellville
Bridgeton
Camden
Carteret Borough
Commercial Twp.
Elizabeth
Glassboro
Gloucester City
Gloucester Twp.
Hoboken
Jersey City
Keansburg
Kearny
Lakewood

Long Branch

Millville

Mt. Holly Twp.

Neptune Twp.

New Brunswick

Newark

North Bergen

Old Bridge City

Passaic

Paulsboro

Pennsauken

Penns Grove

Perth Amboy

Pleasantville

Rahway

Salem

Trenton

West New York

Weehawken

Willingboro

Woodbridge

Woodbury**]**

(b) – (c) (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 (N.J.A.C. 7:7E-3.23) and public access is provided for, as required by **the Public Access to the Waterfront rule (**N.J.A.C. 7:7E-8.11**)**.

(e) (No change.)

7:7E-3.44 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 Land Use Regulation Program and the Pinelands Commission will coordinate the permit review process through the procedure outlined in the February 8, 1988 Memorandum of Agreement between the two agencies and any subsequent amendments to that agreement. Copies are available from the **[**Environmental Regulations' Coastal/Land Planning Group at CN 423, 401 East State Street**]** **Department's Land Use Regulation Program, PO Box 439,** Trenton, New Jersey 08625**-0439, (609) 292-0060**.

(c) – (d) (No change.)

7:7E-3.45 Hackensack Meadowlands District

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

(b) The **[**HMDC**]** **New Jersey Meadowlands Commission** will act as the lead coastal planning and management agency within this Special Area. The **[**HMDC**]** **New Jersey Meadowlands Commission** Master Plan Zoning Rules (N.J.A.C. 19:4) are adopted as part of the Coastal Management Program (see Appendix I) and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern (see

[section on GAPS in Chapter 4**]** **the New Jersey Coastal Management Program, Final Environmental Impact Statement, August 1980, page 263**). The **[**Division**]** **Department** will periodically review Commission actions and will consider incorporating any proposed changes in **[**HMDC**]** **New Jersey Meadowlands Commission** plans or policies into the Coastal Management Program with particular attention to continued protection of wetlands and other environmental resources.

(c) Coastal activities under the jurisdiction of the **[**HMDC**]** **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.

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

7:7E-3.46 Wild and Scenic River Corridors

[(a) "Wild and Scenic River Corridors" are components of the New Jersey Wild and Scenic Rivers System designated by the DEP Commissioner under N.J.S.A. 13:8-45 et seq. River corridors include the river and adjacent upland to the limit of the Flood Hazard Area or to the limit of State owned lands, whichever is furthest inland.

1. "Wild and Scenic River Corridors" shall also mean any river adopted into the National Wild and Scenic Rivers System or any rivers or segments thereof being studied for possible inclusion into that system pursuant to the Wild and Scenic River Act (16 U.S.C. 1271-1278). River corridors established under the Federal Wild and Scenic River Act**]**

shall include the river and adjacent areas defined as the Wild and Scenic River Corridor by the River Management Plan. For rivers under study for possible inclusion into the National System, the river corridor shall include the river and adjacent area extending one-quarter mile on each side of the river from annual mean high water.

(b) Policy relevant to Wild and Scenic River Corridors is as follows:

1. Development may be permitted in designated river areas in accordance with N.J.A.C. 7:38-1, including special regulations for a particular river, or sections thereof, adopted upon designations to the New Jersey Wild and Scenic Rivers System.
2. Development which provides general public recreational use of and access to a designated river area, consistent with classification and flood plain regulations, is encouraged.
3. Development must be consistent with all other coastal policies, in particular the performance standards found in the Flood Hazard Areas Resource Policy (7:7E-8.23) and Other Special Areas policies.
4. Development which would have an adverse effect on the values for which a river is being considered as a potential addition to the National Wild and Scenic Rivers System, including but not limited to the scenic, recreational, and fish and wildlife attributes of the river corridor, is prohibited.
5. Development shall conform to the standards set forth by the locally adopted River Management Plan.

(c) Rationale: This policy reflects and incorporate the goals of the New Jersey Wild and Scenic Rivers Act and the federal Wild and Scenic River Act, which recognizes the outstanding scenic, recreational, fish and wildlife, floral, 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 unwise development of floodplain. Uses compatible with the recognized values of designated river areas and their classification as "wild", "scenic", "recreational", or "developed recreational" river areas may be allowed to further the use and availability of the open space resources which the river areas represent.

(d) River Corridors will be administered according to N.J.A.C. 7:38-1, according to four classifications:

1. "Wild", meaning a river or section thereof, that is free of impoundment, and generally inaccessible by trail, with watershed or shoreline essentially primitive and undeveloped and water unpolluted. Wild river areas are also consistent with Natural Areas;

2. "Scenic", meaning a river, or section thereof, that is free of impoundment, with watershed or shoreline still largely primitive and undeveloped, but accessible in places by road;

3. "Recreational", meaning a river, or section thereof, that is readily accessible, that may have some shoreline development, and that may have undergone some impoundment or diversion; and

4. "Developed recreational", meaning a river, or section thereof, that is readily accessible, that may have substantial shoreline development, that may have undergone substantial impoundment or diversion, but which remains suitable for a variety of recreational uses.**]**

(a) Wild and scenic river corridors are all rivers designated into the National Wild and Scenic Rivers System and any rivers or segments thereof being studied for possible designation into that system pursuant to the National Wild and Scenic Rivers Act (16 U.S.C. 1271-1278). For rivers designated into the national system, the wild and scenic river corridor shall include the river and adjacent areas located within one-quarter mile from the mean high water line on each side of the river until a Federal River Management Plan has been adopted, after which time the wild and scenic corridor shall be the area defined in the adopted plan. For rivers under study for possible designation into the national system, the wild and scenic river corridor shall include the river and adjacent areas extending one-quarter mile from the mean high water line on each side of the river.

(b) Development in wild and scenic river corridors shall comply with (b)1 and 2 below, and the standards for the specific type of development at (c), (d), (f), (g) and (h) below. The standards for linear development are found at (e) below.

1. Development that would have a direct and adverse effect on any "outstandingly remarkable resource value" for which the river was designated or is being studied for possible designation into the National Wild and Scenic Rivers System is prohibited. For the purposes of this rule, "outstandingly remarkable resource

values" means any of those extraordinary scenic, recreational, cultural, historical, or fish and wildlife attributes of a river corridor which, under the National Wild and Scenic Rivers Act, are required to be preserved and protected for the benefit and enjoyment of future generations.

2. The development shall comply with the standards set forth in the Federal River Management Plan adopted pursuant to the National Wild and Scenic Rivers Act for the wild and scenic river corridor if a plan exists.

(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. A dock, pier or mooring shall not extend to a depth greater than two feet at mean high water or further than 20 percent of the river width, as measured from mean high water line on one side of the river to the mean high water line on the opposite side of the river, whichever is less.

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, choir 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 Protection," of the Natural Resources Conservation Service Engineering Field 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 for a fee (order number PB98114358). Standards for structural shore protection are found at N.J.A.C. 7:7E-7.11.

(e) Linear development shall be located within the right of way of an existing linear development route or outside of the wild and scenic river corridor where feasible. Where an analysis of alternatives demonstrates that proposed development which is in the public interest can not be so located, the linear development shall be located and designed to minimize adverse effect on outstandingly remarkable resource values and the width of the clearing for the linear development shall be minimized.

(f) Communication and cellular towers are prohibited in a wild and scenic river corridor.

(g) Development of bridges is conditionally acceptable provided it complies with the following:

1. The structure spans the entire width of the water body, and has no associated structures located below the mean high water line, unless it is demonstrated that such a structure is not feasible;

2. The bridge is non-obtrusive, including siting, design and materials, all of which are in character with the surrounding development;

3. A vertical clearance of five feet is maintained between the elevation of the water body at mean high water and the lowest structural member of the bridge where the water depth is greater than two feet at mean high water;

4. A single crossing is used where feasible;

5. There is no reduction of the total width and volume of the water body passing under the bridge;

6. The water body is crossed by a method which minimizes disruption to the bottom of the water body; and

7. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(h) Development of culverts is conditionally acceptable provided it complies with the following:

1. A natural streambed is provided through either the use of a bottomless structure or by recessing the culvert bottom a minimum of 12 inches below the bottom of the water body;

2. There is no reduction of the total pre-construction width and volume of the water body passing through the culvert; and

3. The crossing is designed to minimize impacts to the fishery resources, and is generally at a 90 degree angle to the shoreline.

(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 effect the reasons why a river was designated into the national system is prohibited, except for linear development in the pulbic 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 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.

7:7E-3.47 Geodetic control reference marks

(a) **["]**Geodetic control reference marks**["]** are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey pursuant to P.L. 1934, C.116. They include the following types:

1. – 4. (No change.)

(b) – (c) (No change.)

7:7E-3.48 Hudson River Waterfront Area

(a) – (b) (No change.)

(c) Hudson River Waterfront Area development shall be consistent with all other applicable Coastal **[**Resource and Development Policies**]** **Zone Management rules** with particular attention given to N.J.A.C. 7:7E-3.38 Public open space, N.J.A.C. 7:7E-3.39 Special hazards areas, N.J.A.C. 7:7E-3.41 Special urban area, N.J.A.C. 7:7E-7.14 High rise structures, N.J.A.C. 7:7E-8.11 Public Access to the Waterfront, N.J.A.C. 7:7E-8.12 Scenic Resources and Design, and N.J.A.C. 7:7E-8.4 Water Quality.

(d) The following standards apply to all developments proposed on piers and will be used by the **[**Division**]** **Department** as a guide for developments proposed on platforms. In some cases, a platform may, in effect, function as upland and, thus, be more appropriately reviewed under **[**policies**]** **rules** that regulate upland development. **[** Developers proposing platform development that does not adhere to this section's requirements are encouraged to contact the Division for guidance when conceptual plans have been prepared.**]**

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. –iv. (No change.)

v. The area of public open space at the ends of piers required by this section shall be the minimum length times the width of the pier. The public open space areas do not have to occupy the entire width of the pier for the full minimum length required, and do not have to be entirely at pier deck level, provided the following criteria are satisfied:

(1) (No change.)

(2) The remaining area of public open space (up to 30 **[**per cent**]** **<u>percent</u>** of the minimum length times the average width of the pier) must be contiguous with the public open space at the end of the pier; and

(3) Up to 50 **[**per cent**]** **<u>percent</u>** of the public open space at pier ends may be elevated up to 12 feet above pier deck level provided that easy access is provided between elevated and pier deck level public open space areas, for able bodied and disabled people;

vi. – ix. (No change.)

(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 easement in favor of the Department. The conservation easement 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. With the exception of water dependent industrial uses, all Hudson River pier development shall provide unrestricted, landscaped public access as required by (d) above. Public access on piers shall be on a 24-hour basis, but the **[**Division**]** **<u>Department</u>** will consider requests to limit access late at night if the applicant submits an enforceable agreement to ensure that access will be maintained for the agreed upon hours. Public access to the main route of the Hudson Waterfront Walkway shall be on a 24-hour basis.

2. – 3. (No change.)

(f) Applications which vary in detail from the standards of this **[**policy**]** **rule** are discouraged, but will be considered for approval if they would provide greater public access and/or protection of natural or scenic resources than would be afforded by strict **[**policy**]** compliance **with this rule**. **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 Atlantic City

(No change.)

SUBCHAPTER 3A. STANDARDS FOR BEACH AND DUNE ACTIVITIES

7:7E-3A.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 reference at N.J.A.C. 7:7E-3.16 Dunes; N.J.A.C. 7:7E-3.17, Overwash Areas; N.J.A.C. 7:7E-3.19 erosion hazard areas; N.J.A.C. 7:7E-3.22 Beaches; and N.J.A.C. 7:7E-7.11 Coastal Engineering. In addition, N.J.A.C. 7:7E-3A.2, 3A.3 and 3A.4 are the standards for the coastal general permit for beach and dune maintenance activities, N.J.A.C. 7:7-7.6.

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 existing gazebos and dune walkover structures, and limited sand transfers from the lower beach to he upper beach or alongshore are found at N.J.A.C. 7:7E-3A.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;

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 8

feet in width; and the construction or repair of approved dune walkover structures are found at N.J.A.C. 7:7E-3A.4; and

4. The standards for construction of boardwalks along tidal shorelines are found at N.J.A.C. 7:7E-3A.5.

[7:7E-3A.1**] 7:7E-3A.2** Standards applicable to routine beach maintenance

(No change in text.)

7:7E-**[**3A.2**] 3A.3** Standards applicable to emergency post-storm beach restoration

(a) – (f) (No change.)

(g) The placement of sand, gravel, rubble, concrete, or other inert material, as part of an emergency post-storm beach restoration plan, is acceptable, in accordance with the following standards:

1. – 2. (No change.)

3. All concrete and rubble placed on the beach shall be removed within 90 days, unless the placement is part of a **[**DEPE**] Department** approved, engineered design for permanent shore protection; and

4. (No change.)

7:7E-**[**3A.3**] 3A.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 DEP, Land

Use Regulation Program, **[**CN 401**]** **PO Box 439**, Trenton, NJ 08625**-0439**. Copies of the Soil Conservation Service report are available directly from the Soil Conservation Service, Plant Materials Center, 1536 Route 9 North, Cape May Court House, NJ 08210.

(e) – (f) (No change.)

SUBCHAPTER 3B. INFORMATION REQUIRED IN WETLAND **AND INTERTIDAL AND SUBTIDAL SHALLOWS** MITIGATION PROPOSALS

7:7E-3B.1 Purpose and scope

(a) This subchapter sets forth the standards for mitigation proposals pursuant to N.J.A.C. 7:7E-3.15 and N.J.A.C. 7:7E-3.27.

1. Mitigation for the loss of tidal wetlands and intertidal and subtidal shallows shall comply with the Coastal Permit Program rules, N.J.A.C. 7:7 and the Coastal Zone Management rules, N.J.A.C. 7:7E and include an appropriate buffer area; and

2. Mitigation for the loss of freshwater wetlands shall comply with the Freshwater Wetlands Protection Act rules, N.J.A.C. 7:7A, Coastal Permit Program rules, N.J.A.C. 7:7 and the Coastal Zone Management rules, N.J.A.C. 7:7E.

[7:7E-3B.1**]** **7:7E-3B.2 [**Mitigation proposal requirements**]** **Tidal wetland and intertidal and subtidal shallows mitigation proposal requirements**

(a). **[**Mitigation proposals based on the disturbance of freshwater wetlands must also conform to the standards found at N.J.A.C. 7:7A-14.4.**]** All **tidal wetland and intertidal and subtidal shallows** mitigation proposals submitted to the Land Use Regulation Program shall include, but not be limited to:

1. An introduction describing the wetland **or intertidal and subtidal shallows** mitigation proposal. The introduction **[**should**]** **shall** include the **[**specific goals of the mitigation proposal and a discussion of how the mitigation proposal will satisfy those goals**]** **following[**;**]:**

i. The amount, in acres, of:

(1) Wetlands to be created, enhanced, or restored, in accordance with N.J.A.C. 7:7E-3.27 and the associated wetlands buffer area required by N.J.A.C. 7:7E-3.28;

or

(2) The amount of intertidal and subtidal shallows to be created as required by N.J.A.C. 7:7E-3.15;

ii. The goals of the mitigation project in terms of either (a)1ii(1) or (2) below:

(1) For creation, restoration or enhancement of wetlands, the wetlands types, values, and functions, and a discussion of how the mitigation proposal will satisfy those goals. For example, the goal of the wetlands mitigation project is to establish a low marsh wetland complex dominated by *Spartina alterniflora* that is flowed twice daily by the tide; or

(2) For intertidal and subtidal shallows creation, the area, depth, and duration of tidal inundation;

iii. The reasons why the mitigation site is an appropriate site for meeting the goals in (a)1ii above, and the aspects of the site that will ensure the success of the mitigation project;

iv. A copy of the USGS quad map(s) showing the location of the permitted activity and showing the mitigation site with the state plane coordinates of the mitigation site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear mitigation projects 2000 feet in length and longer, additional coordinates shall be provided at each 1000 foot interval; and

v. The New Jersey Wetlands/Tidelands Map number(s) for the development and for the mitigation site, if the mitigation site is at a different location;

2. A description (**[**that is,**]** **such as** size, type, vegetation, hydrology, and **wildlife use**) of the wetlands **or intertidal and subtidal shallows** that are being destroyed or disturbed **by the permitted activity**;

3. Photographs of the proposed mitigation site **showing topography, vegetation, tidal streams and wetland features**;

4. The names and addresses of **all** current and proposed owner(s) of the mitigation **[**project**]** site;

5. The lot, block , municipality and county of the proposed mitigation site. This information shall also be visible on the front page of the proposal and on the site plan;

Recodify 5 as 6. (No change in text.)

[6. A discussion relative to the proposed hydrology of the mitigation site. The discussion should focus on the sources of water for the mitigation project, provide seasonal high

water table information as well as the projected elevation of final grade of the mitigation project in relation to mean sea level (MSL), along with slope percent;

7. The tidal range of the mitigation site and the salinity range of adjacent inundating waters;**]**

7. A projected water budget for the proposed mitigation site. The water budget should detail the sources of water for the mitigation project as well as the water losses. The projected water budget should document that an ample supply of water is available to create, enhance, or restore wetland conditions, as applicable. The water budget must contain sufficient data to show that the mitigation project will indefinitely in the future have sustained wetland hydrology, or for intertidal and subtidal shallows, that the mitigation project will have sustained tidal inundation. The water budget shall include the following regional information for the proposed and existing site conditions:

i. The seasonal high water table;

ii. The tidal range (low, high and spring high tide) over the course of a month;

iii. For wetland creation, restoration or enhancement, the elevation of the existing reference wetland system in the vicinity of the project site, if applicable; and

iv. For wetland creation, restoration or enhancement, the salinity range of adjacent waters;

8. **[**~~The existing soils types with soil borings to document seasonal high water tables, with a~~**] For wetland creation, restoration and enhancement, a detailed** discussion relating to the created substrate of the proposed mitigation site, including a description of how the substrate of the site will be prepared, **as well as a demonstration that the soil texture and pH are appropriate for the proposed wetland community;[**~~whether the pH is appropriate and any other pertinent factors~~**]**;

9. **[**A planting scheme of the proposed vegetative community depicted on the mitigation site plans, including spacing of all plantings, stock type (bare root, potted, seed), size, and the source of the plant material;**] For wetland creation, restoration and enhancement, a landscape plan showing the proposed vegetative community on the proposed mitigation site, including the buffer area defined at N.J.A.C. 7:7E-3.28. The landscape plan shall include the following:**

i. The species;

ii. The quantity and location of each species;

iii. The stock type (for example, plugs, potted, seed);

iv. The source of the plant material;

v. The proper time to plant; and

vi. Any appropriate substitutions as approved by the Department;

10. For wetland creation, restoration and enhancement, a preventative maintenance plan detailing how invasive or noxious vegetation will be controlled, and how predation of the mitigation plantings will be prevented. The plan shall describe the measures to be taken if a problem with invasive or noxious plants or predation occurs during the construction or monitoring period. The installation of goose fences to control problems resulting from the presence of geese in the State is encouraged;

[10. A copy of a deed restriction which provides that no regulated activities will occur in the mitigation area or its associated transition area and that it will remain as a natural area in perpetuity.**]** **11. A draft conservation restriction that meets the requirements of N.J.A.C. 7:7E-3.27(h)6. A model conservation restriction is available from the Land Use Regulation Program, PO Box 439, Trenton, New Jersey 08625-0439, (609) 777-0454** **[**Proof that the deed restriction has been registered with the County Clerk (or the Registrar of Deeds and Mortgages if applicable) is required within 60 days following approval of the mitigation proposal**]**;

[11.**]** **12.** A metes and bounds description of the proposed mitigation site **[**which forms the basis for the deed restriction**]**. **For wetland creation, restoration or enhancement, the** **[**The**]** metes and bounds description shall include the **[**transition**]** **buffer** area **as defined at N.J.A.C. 7:7E-3.28;**

[12. The New Jersey Wetlands/Tidelands Map number(s) for the development site (and the mitigation site if it is at a different location) as well as block and lot numbers and ownership of the mitigation site;**]**

[13. The**]** **13. An estimate of the** actual cost **[**estimate**]** of **carrying out the construction of** the mitigation **[**proposal**]** **project**. The cost estimate **[**should**]** **shall** include the **[**cost**]** **value** of **the** land, site preparation **costs**, engineering costs, plantings **costs,** **[**and any other items incidental to the mitigation proposal**]** **environmental consultant fees, attorney fees, construction costs, supervising construction fees and monitoring costs. The cost estimate of the project will be used when determining the amount of the financial assurance required**;

14. **[**Five folded copies of a**]** **A** site plan for the mitigation project which includes:

i. **[**The project location within the region;

ii. The lot and block number of the mitigation project location;**] The lot, block , municipality and county of the proposed mitigation site; and**

[iii.**]ii.** Existing and proposed elevations and grades of the mitigation site**, [**in one foot intervals**] and off-site elevations and grades when the proposed elevations on the mitigation project site will create potentially unstable conditions on the adjoining parcel or create slopes greater than 15 percent. All existing and proposed elevations and grades must be shown in at least one foot intervals. For wetland creation, restoration or enhancement, only, the slope of the proposed mitigation site shall have a run to rise ratio no greater than 10 feet vertical to one foot horizontal (10:1) along a created buffer area as well as along any berms that are intended to function as water control structures or berms created along a stream**;

[and**]**

[iv.**] iii. Pre- and post- construction [**Plan**] plan** views and cross sectional views **of the mitigation site**;

iv. For wetland creation, restoration or enhancement only, the buffer area required under N.J.A.C. 7:7E-3.28;

v. For wetland creation, restoration or enhancement only, a detail that shows, or a statement indicating the soil amendments and the seed stabilization mix, if any, to be used on the mitigation site;

[15. A copy or photocopy of a portion of the U.S.G.S. 7.5 minute quadrangle map showing the location of the property and its general vicinity, indicating and labeling the location of the proposed mitigation and the property boundaries, and a determination of the State Plane Coordinates for the center of the mitigation site. The accuracy of these coordinates should be within 50 feet of the actual center point. For linear mitigation projects, the applicant shall provide State Plane Coordinates for the endpoints of those projects which are 1,999 feet or less, and for those projects which are 2,000 feet and longer, additional coordinates at each 1,000 foot interval; and**]**

15. A construction schedule including projected dates of excavation, planting, fertilizing, as appropriate; and

16. Certification demonstrating that the proposed mitigation will not adversely affect districts, buildings, structures, or archaeological sites that are listed in, or eligible for

listing in, the National Register of Historic Places. If during construction of the mitigation site the mitigator encounters National Register of Historic Places listed or eligible historic districts, buildings, structures, or archaeological sites, the mitigator shall notify the Department immediately and proceed as directed by the Department;

[16. In accordance with N.J.A.C. 7:7A-14.1, obtain a secured bond or other financial surety acceptable to the Department including an irrevocable letter of credit or money in escrow, that shall be sufficient to hire an independent contractor to complete and maintain the proposed mitigation should the permittee default. The financial surety for the construction of the mitigation project shall be posted in an amount equal to 115 percent of the estimated cost of construction. In addition, the financial surety to assure success of the mitigation shall be posted in an amount equal to 30 percent of the estimated cost of construction. The financial surety will be reviewed annually and shall be adjusted to reflect current economic factors. Mitigation for the loss of freshwater wetlands within the coastal zone shall comply with the Coastal Permit Program Rules at N.J.A.C. 7:7, Rules on Coastal Zone Management at N.J.A.C. 7:7E, and Freshwater Wetlands Protection Act Rules at N.J.A.C. 7:7A. Mitigation for the loss of tidal wetlands must comply with the Coastal Permit Program Rules at N.J.A.C. 7:7 and the Rules on Coastal Zone Management at N.J.A.C. 7:7E.**]**

17. A financial assurance that meets the requirements at N.J.A.C. 7:7E-3B.3 below; and

18. Any additional information the Department determines necessary to review an individual mitigation project.

7:7E-3B.3 Financial Assurance Requirements

(a) 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 an entity that is exempt from this requirement under Federal Law. The letter of credit or other financial assurance shall be obtained from a firm licensed to do business in New Jersey.

(b) The letter of credit or other financial assurance shall be in the amount sufficient for the Department to hire an independent contractor to complete and

maintain the mitigation project should the mitigator default. The financial assurance shall be in the following amounts:

1. For wetland creation, restoration or enhancement, and for intertidal and subtidal shallows creation, a construction assurance, equal to 115 percent of the estimated cost of completing the mitigation; and

2. For wetland creation, restoration or enhancement, a maintenance assurance to ensure success of the mitigation through the completion of the monitoring period, equal to 115 percent of the estimated cost of maintaining and monitoring the mitigation project.

(c) The financial assurance will be reviewed annually by the Department and shall be adjusted to reflect current economic factors.

(d) The portion of the financial assurance required under (b)1 above, shall be released upon the Department's determination that the construction phase and planting phase, if any, of the mitigation project have been successfully completed in accordance with the mitigation proposal; and

(e) The portion of the financial assurance required under (b)2 above, shall be released upon the Department's finding that the mitigation project is successful in accordance with N.J.A.C. 7:7E-3B.5.

7:7E-3B.4 Department review of mitigation proposal

(a) The Department shall, within 60 days after receiving a mitigation proposal, review the proposal for completeness and:

1. Request any addition information; or

2. Declare the mitigation proposal complete.

(b) The Department shall approve a mitigation proposal only if it meets all of the applicable requirements of this subchapter.

(c) Prior to the commencement of mitigation, the mitigator shall submit proof that

the conservation restriction required at N.J.A.C. 7:7E-3B.2(a)11 was recorded with the County Clerk (or the Registrar of Deeds and Mortgages, if applicable).

7:7E-3B.5 Post-construction monitoring of the mitigation site

(a) All mitigation projects subject to this subchapter shall perform post-construction monitoring in accordance with (a)1 or 2 below.

1. All tidal wetland mitigation sites shall demonstrate compliance with each post-construction monitoring season specified in (b) 1, 2 and 3 below. Post-construction monitoring shall begin the first full growing season after the construction/planting of the mitigation project is completed. A full growing post-construction monitoring season, in general, is the period from the beginning of April through the beginning of October, depending upon the location of the site in the State.

2. All intertidal and subtidal shallows mitigation sites shall demonstrate compliance with the post-construction monitoring standards at (c)1 and 2 below for a lunar month after construction of the mitigation site is completed. A lunar month is the period between two successive full moons.

(b) For wetland mitigation projects, the post-construction monitoring required at (a)1 above shall meet the standards listed below for each full growing post-construction monitoring season. Failure to meet the standards for a given post-construction monitoring season described at (b)1, 2 or 3 below shall result in a remedial action by the mitigator. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remedial action may include, but not be limited to, regrading, replanting, or relocation of the mitigation site.

1. For the first post-construction monitoring season to be considered successful, the post-construction monitoring report described at N.J.A.C. 7:7E-3B.5(d) below shall provide documentation demonstrating that the standards listed at 1i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described in (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Documentation through soil borings, demonstrating that the appropriate soil was used on the site as indicated in the mitigation approval;

ii. As-built plans, demonstrating that the site was graded and planted in accordance with the approved mitigation plans;

iii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating the mitigation site is a wetland;

iv. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.

2. For the second post-construction monitoring season to be considered successful, the post-construction monitoring report described at N.J.A.C. 7:7E-3B.5(d) below shall provide documentation demonstrating that the standards listed at (b)2i and ii below are satisfied. If the standards at (b)2i and ii listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site continues to be a wetland;

ii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved.

3. For the final post-construction monitoring season to be considered successful, the post-construction monitoring report described at N.J.A.C. 7:7E-3B.5(d) below shall provide documentation demonstrating that the standards listed at (b)3i through iv below are satisfied. If one or more of the standards listed below are not satisfied, then a remedial action as described at (b) above will be required, and this full growing post-construction monitoring season shall be repeated.

i. Documentation demonstrating that the approved goals of the wetland mitigation project (including the required buffer area) prepared pursuant to N.J.A.C. 7:7E-3B.2(a) and the permit are satisfied. This documentation shall include information concerning invasive/noxious plant species and the percent coverage of these species on the site;

ii. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland. The documentation shall include, when appropriate, monitoring well data, stream gauge data, photographs and field observation notes collected throughout the monitoring period;

iii. Documentation demonstrating that the percent coverage of the planted vegetation or targeted hydrophytes as detailed in the approved mitigation plan has been achieved;

iv. 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 (1989) herein incorporated by reference. This manual is available from the Department's Office of Maps and Publications at (609)77-1038 for a fee; and

v. A plan showing the flagged wetland delineation required at (b)3iv above. The wetland line shall include global positioning system data points.

(c) For intertidal and subtidal shallows mitigation projects, the post-construction monitoring required at (a)2 above shall comply with (c)1 and 2 below. If one or more of the standards listed below are not satisfied, then the post-construction monitoring shall be repeated the following lunar month(s) until all of the standards listed below are satisfied. Failure to meet the standards for a given post-construction monitoring season described at (c)1 or 2 below shall result in a remedial action. The Department, after consultation with the mitigator, shall determine the remedial actions necessary to correct the unsatisfactory condition. Remediation may include, but not be limited to, regrading of the mitigation site. The mitigator shall submit:

1. As-built plans with soundings demonstrating that the site was graded according to the approved mitigation plans; and

2. Documentation demonstrating that the mitigation site meets the definition of an intertidal subtidal shallow, that is it is permanently or twice daily submerged from the spring high tide to a depth of four feet below mean low water.

(d) The post-construction monitoring reports required at N.J.A.C. 7:7E-3B.5(b)

and (c) above shall be submitted to the Department by November 15 of each year and shall include five copies of the following:

1. A USGS quad map showing the location of the mitigation site; a county road map showing the location (including the lot and block) of the mitigation site, of the mitigation site; and a copy of an aerial photograph of the mitigation site. The point(s) of access to the mitigation site must be clearly indicated on all maps;

2. A copy of the permit that required the mitigation;

3. A brief description of the mitigation project;

4. Photographs of the mitigation site with a location map indicating the location and direction of each photograph;

5. For mitigation projects requiring the establishment of a vegetative community, an assessment of the planted vegetation and the species that are naturally colonizing the site. This assessment shall include data sheets from the sampling points which describe the vegetation present, the percent coverage of the vegetation, the results of the analysis of the soil borings and the location of the water table;

6. Based on the approved water budget prepared in accordance with N.J.A.C. 7:7E-3B.2(a)7, documentation demonstrating that the mitigation site is a wetland or intertidal or subtidal shallows. The documentation shall include, as appropriate, monitoring well data, stream gauge data, photographs and/or field observation notes collected throughout the post-construction monitoring period;

7. Documentation, based on field data, that the approved goals of the mitigation project (including the buffer area, for wetland creation, restoration or enhancement only) prepared pursuant to N.J.A.C. 7:7E-3B.2(a), are satisfied;

8. A narrative evaluating the success/failure of the project in accordance with (b) and/or (c) above; and

9. In the event the mitigation monitoring period is a failure in accordance with (b) and/or (c) above, a narrative description of proposed actions that will permanently rectify the problems.

SUBCHAPTER 3C. [ASSESSING IMPACTS TO ENDANGERED AND THREATENED WILDLIFE SPECIES IN ENVIRONMENTAL IMPACT STATEMENTS] 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 Performance standards

(a) Performance standards for habitat assessments are as follows:

1. Assessments of endangered or threatened wildlife should begin by contacting the New Jersey Natural Heritage Program to obtain information on the known occurrences of endangered and threatened species on and within the vicinity of the site. This is known as the "Master" species list

2. An evaluation of habitat including examination of vegetation cover, soils, hydrology and existing land use. The site's vegetative analysis shall include an on-site investigation and evaluation. The surrounding areas investigation shall consist of air photos or appropriate cover maps.

3. Based on the assessment of habitat and general habitat associations of species on the “Master” list, a list of endangered, threatened, or other rare species that may be present on the site shall be developed. This is known as the potential species list. The applicant shall be able to justify excluding any species from the master list in developing the list of potential species.

4. A survey shall be performed for all species on the list of potential species unless detailed evaluation of habitat and comparison with individual species habitat requirements suggests that no suitable habitat exists on, or immediately adjacent to, the subject property. The "survey" list is therefore comprised of all species on the potential list except those for which the consultant presents convincing evidence that suitable habitat does not exist. Most of the species on the survey list will be species that could occur based on the presence of suitable habitat and/or known occurrences within the site's vicinity. No survey need be performed for species confirmed to occur on the site according to the Natural Heritage Database. In such a case, the National Heritage

Database provides positive evidence to support a finding of potential negative impacts to endangered or threatened species habitats. Field studies should focus on documenting the location and extent of habitats for the confirmed species. Surveys for all species on the survey list should be performed using scientific methodology appropriate for each species or species group. When surveys confirm the occurrence of any endangered or threatened species, additional habitat assessment should be performed to determine the location and extent of habitat for the confirmed species.

7:7E-3C.2 Reporting standards

(a) Reporting standards for habitat assessments are as follows:

1. The environmental impact assessment shall provide proof of correspondence with the Natural Heritage Program including copies of all correspondence with the Natural Heritage Program and, if applicable, the DEP's Endangered and Nongame Species Programs.

2. The environmental impact assessment shall provide a description of the habitat on site and a description of the surrounding habitat.

3. The environmental impact assessment shall provide the list of potential species as described in N.J.A.C. 7:7E-3C.1(a)3. It shall provide justification for excluding any species mentioned by the New Jersey Natural Heritage Program as occurring on site or in the vicinity of the subject property. For example, the Natural Heritage Program list of species occurring in the areas may include Bog Turtle. If the subject property is comprised entirely of uplands, justification for excluding the Bog Turtle from the list of potential species would be based on the lack of a suitable habitat.

4. A description of the habitat requirements for each species on the potential list shall be provided, including appropriate literature citations.

5. The environmental impact assessment shall provide the survey list of species as described in N.J.A.C. 7:7E-3C.1(a)4. The environmental impact assessment shall also

provide detailed justification for excluding any species from the survey list that appears on the potential list. This justification shall consist of a detailed assessment of habitat conditions on and within the vicinity of the project site in comparison with known habitat requirements of the particular species . Habitat requirements of that particular species should be obtained from review of the appropriate scientific literature and/or from the Natural Heritage Program, Endangered and Nongame Species Program, or (for wetlands species) from the DEP Land Use Regulation Program. Literature citations shall be provided.

7. The assessment shall provide the names and qualifications of all investigators performing habitat and/or species surveys.

8. The findings of all species surveys shall be provided whether negative or positive.

9. The assessment of potential impacts shall reflect reasonable ecological principles. That is, if any rare or endangered species or potential habitats are found to be present on or immediately adjacent to the site, the environmental impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species. This evaluation should be based on habitat requirements and life history of each species, and the way in which the proposed development may alter habitat, including: vegetation, soils, hydrology, affects on competitor, parasite, or predator species, human disturbance, etc. For example, a golf course will introduce pesticides and fertilizers into the groundwater, affecting the physical and biological characteristics of nearby streams and ponds that may serve as breeding sites for rare amphibians. The report should present detailed information, including maps, showing the location of all confirmed endangered and threatened species occurrences. The report should also include a description or maps illustrating the location and extent of suitable habitat for all species for which suitable habitat is confirmed to occur on the project site.**]**

7:7E-3C.1 Purpose and Scope

(a) This subchapter sets forth the standards for conducting an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and for

conducting an 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 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 and an Endangered or Threatened Wildlife Species Habitat Evaluation.

(b) An Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment is required to demonstrate 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 by the proposed development. The standards for conducting an impact assessment pursuant to N.J.A.C. 7:7E-3.38(b), (d) and (e) are found at N.J.A.C. 7:7E-3C.2.

(c) An Endangered or Threatened Wildlife Species Habitat Evaluation is required to demonstrate that a site does not contain suitable habitat, including sufficient buffer to ensure continued survival of the population of the species, pursuant to N.J.A.C. 7:7E-3.38(c). The standards for conducting an evaluation are found at N.J.A.C. 7:7E-3C.3.

(d) The reporting requirements for habitat evaluations and impact assessments are found at N.J.A.C. 7:7E-3C.4.

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

(a) These standards shall be used by 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) by providing information required at N.J.A.C. 7:7E-3C.2 and N.J.A.C. 7:7E-3C.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) and/or (d).

(b) These standards shall be used by applicants 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 shall demonstrate compliance with N.J.A.C. 7:7E-3.38(b) by providing information required at N.J.A.C. 7:7E-3C.2 and N.J.A.C. 7:7E-3C.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) 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, hydrology, human disturbance, and effects on competitor, parasite, or predator species.

7:7E-3C.3 Standards for Conducting Endangered or Threatened Wildlife Species Habitat Evaluations

(a) These standards shall be used by 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) and/or (d).

(b) Habitat evaluations for endangered or threatened wildlife species pursuant to N.J.A.C. 7:7E-3.38(c) shall be conducted for each wildlife species described in (a) above. This habitat evaluation shall:

1. Use scientific methodology appropriate for each species or species group;

2. Examine specific attributes and characteristics of the site that limit or eliminate its suitability as habitat, including, but not limited to, an examination of vegetative cover, soils, hydrology, existing land use and any other factors that are used to determine suitability of a site for the species. The site's vegetative analysis shall include an on-site investigation and evaluation; and

3. Include an examination of the area surrounding the site using aerial photographs and/or appropriate cover maps.

(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) 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 Standards for Reporting the Results of Impact Assessments and Habitat Evaluations

(a) All habitat evaluations and impact assessments submitted to the Department shall include:

1. An introduction describing the goals of the habitat evaluation and/or impact assessment;

2. A copy of the USGS quad map(s) showing the location of the site, with the State plane coordinates of the site. The accuracy of these coordinates shall be within 50 feet of the actual center point of the site. For linear sites, 2000 feet in length and longer, additional coordinates shall be provided at each 1000 foot interval;

3. The lot, block, municipality and county in which the site is located;

4. For wildlife habitat evaluations and impacts assessments only, a map identifying the site, and the areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps onsite and abutting the site, along with a list of the endangered or threatened species that resulted in the mapping of endangered or threatened species habitat;

5. For impact assessments for plant species only, a map identifying the location of the species habitat on the site or abutting the site along with a list of the potential plant species from the Department's Natural Heritage Database;

6. A description of the habitat requirements for each of these species identified at (a)4 and/or 5 above, including appropriate literature citations; and

7. The names and qualifications of all investigators who performed habitat evaluations, species surveys, and/or impact assessments.

(b) For wildlife habitat evaluations only, a narrative, including 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;

2. If a survey was conducted in accordance with N.J.A.C. 7:7E-3C. 3(b), 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.

3. A comparison of the findings of the habitat evaluation with the known habitat requirements for each species, as provided at (a)6 above, and a description of the specific attributes and characteristics of the site that limit or eliminate the site's suitability as habitat;

(c) For impact assessments only, a narrative, including supporting documentation, such as maps and photographs, which contains the following:

1. A description for each species, of how the proposed development will alter habitat, including vegetation, soils, hydrology, human disturbance, and effects on

competitor, parasite, or predator species. The impact assessment shall describe the likely affects of the proposed development on the local populations of the particular species on or abutting the site and why the development would not directly or through secondary impacts adversely affect each endangered or threatened species habitat; and

2. Literature citations used to reach the conclusions in (c)1 above.

SUBCHAPTER 4. GENERAL WATER AREAS

7:7E-4.1 **[**Definition**]** **Purpose and Scope**

(a) General Water Areas are **[**first divided into water and land by the same definitions used for Special Areas, N.J.A.C. 7:7E-3.1. Water and land are further subdivided into General Area types. The water's edge has no General Area types since all water's edge areas are one or more Special Area types.**]** **all water areas which are located below either the spring high water line or the normal water level of non-tidal water that are subject to this subchapter and to Special Area rules.**

(b) **[**This subchapter defines General Water types, assigns General Water Area rules to each and summarizes the rationale and intent of the rules.

1. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area rules will apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

2. General Water Areas are areas which lie below either the Spring high water line or the normal water level of non-tidal waters. Except at a time of drought or extreme low tide, these areas are permanently inundated.

~~3.~~**]** General Water Areas are divided by volume and flushing rate into eight categories as **[**defined**]** **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).

[i.**]****2.** "Lakes, ponds and reservoirs" **[**includes**]** **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, Wet Borrow Pits.

[ii.**]**__3.__ "Large rivers" **[**means**]** __are__ waterways with watersheds greater than 1,000 square miles. Large Rivers are limited to the Delaware, Hudson and Raritan Rivers.

[(1)**]** __i.__ The Delaware River is a tidal river from the Bridge Street Bridge in Trenton to its mouth at Delaware Bay, defined as a line between Alder Cover, Lower Alloways Creek Township and the Delaware River Basin Commission-River and Bay Memorial at Liston Point, Delaware.

[(2)**]** __ii.__ The Hudson River is a tidal river from the New York State Line to its mouth at Upper New York Bay at the Morris Canal, Jersey City.

[(3)**]** __iii.__ The Raritan River is a tidal river from a point approximately 1.1 miles upstream from the Landing Lane Bridge between Piscataway and Franklin Townships to its mouth at Raritan Bay and the Arthur Kill.

[iii.**]** __3.__ "Man-made harbors" **[**means**]** __are__ semi-enclosed or protected water areas which have been developed for boat mooring or docking.

[iv.**]** __5.__ "Medium rivers, creeks and streams" **[**means**]** __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).

[v. “Ocean” includes the area of the area of the Atlantic Ocean from the marine boundary with the State of New York in the Raritan Bay and Sandy Hook Bay south to the marine boundary with the State of Delaware in Delaware Bay, near Cape May Point (see Appendix, Figure 13c). **]**

[vi.**]**__6.__ "Open bay__s__" **[**means**]** __are__ a large, semi-confined **[**estuary**]** __estuaries__ with a wide unrestricted inlet to the ocean and with a major river mouth discharging directly into **[**its**]** __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).

[vii.**]**__7.__ "Semi-enclosed and back bay__s__" **[**means**]** __are__ a partially confined estuary with direct inlet connection and some inflow of freshwater. Semi-enclosed bays differ from **[**black**]** __back__ bays in depth, degree of restriction of inlet and level of freshwater flow.

[viii.**]**__8.__ "Tidal guts" **[**means**]** __are__ the waterway connection__s__ 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 set forth the requirements for specific types of development within General Water Areas as defined at (a) above. In many cases an area already identified as a Special Area will also fall within the definition of a General Area. In these cases, both General and Special Area rules apply. In case of conflict between General and Special Area rules, the more specific Special Area rules shall apply.

[7:7E-4.2 Acceptability Conditions for Uses

(a) Numerous developments or activities seek locations in New Jersey's coastal waters. Some uses involve locations both above and below the mean high water line, in both Water and Water's Edge areas. This section defines the important uses of water areas managed by the Coastal Management Program and the conditions under which those uses are acceptable. Some projects involve combinations of uses, such as retaining structures, dredging, and filling. Other uses, such as Shore Protection uses, are defined elsewhere under Use rules.

(b) Standards relevant to aquaculture are as follows:

1. Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

2. Aquaculture is encouraged in all General Water Areas provided that:

i. It does not unreasonably conflict with resort or recreation uses;

ii. It does not cause significant adverse off-site environmental impacts; and

iii. It does not present a hazard to navigation.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(c) Standards relevant to boat ramps are as follows:

1. Boat ramps are inclined planes, extending from the land into a water body for the

purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently paved with asphalt or concrete, or covered with metal grates.

2. The acceptability conditions for boat ramps are as follows:

i. Boat ramps are conditionally acceptable provided they meet the following conditions:

(1) There is a demonstrated need that cannot be met by existing facilities;

(2) They cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;

(3) Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells;

(4) Garbage cans shall be provided near the boat ramp.

ii. Public use ramps shall have priority over restricted use and private ramps.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(d) Standards relevant to docks and piers (for cargo and commercial fisheries) are as follows:

1. "Docks and piers (for cargo and passenger movement and commercial fisheries)" are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with a single industrial or manufacturing facility or to commercial fishing facilities. Rules for docks and piers intended for multiple uses may be found under Use Policies for Ports (N.J.A.C. 7:7E-7.9). Policies for docks composed of fill and retaining structures may be found under the category "filling" (See (j) below).

2. Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable in most General Water Areas, provided that:

i. The width and length of the piers are limited to only what is necessary for the proposed use;

ii. They will not pose a hazard to navigation; and

iii. The associated use of the adjacent land meets all Coastal Resource and Development Policies.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(e) Standards relevant to docks and piers (recreational) are as follows:

1. Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreation or fishing or for the mooring of boats used for recreation or fishing, except for commercial fishing, and house boats.

2. Recreational docks and piers, including mooring piles, are conditionally acceptable in General Water Areas provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. The construction minimizes adverse environmental impact to the maximum extent feasible;

iii. The docks and piers and their associated mooring piles are located so as to not hinder navigation or conflict with overhead transmission lines;

iv. There is minimum feasible interruption of natural water flow patterns;

v. 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.

vi. 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. Under typical circumstances the maximum width of the structure shall be eight feet over water and six feet over marsh, wetlands and mudflats. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

(1) A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet.

(2) Construction and placement of the dock shall be a minimum of four feet from all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline.

vii. In lagoons the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

viii. The proposed structure does not hinder navigation or access to adjacent water areas.

3. The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the Shellfish Habitat rule (N.J.A.C. 7:7E-3.2).

4. The construction of recreational docks within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule (N.J.A.C. 7:7E-3.6).

5. 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.

6. 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 must be reduced to a maximum of eight feet in width. All structures proposed as part of an expansion must comply with all of the applicable Rules on Coastal Zone Management (N.J.A.C. 7:7E.).

7. All docks and pier construction must not hinder access to adjacent docks, piers, moorings or water areas.

8. Rationale: See the OAL Note at the beginning of this subchapter.

(f) Standards relevant to maintenance dredging are as follows:

1. Maintenance dredging 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 an authorized water depth and width for safe navigation. In order to be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length and width of the previous dredging operation. Dredging beyond those authorized dimensions is "new dredging" (see (g) below).

2. Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all General Water Areas to ensure that adequate water depth is available for safe navigation, provided that:

i. An acceptable dredged material disposal site with sufficient capacity exists (see (g) below and N.J.A.C. 7:7E-7.12 for rules on dredged material disposal).

ii. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate may be required where the Department suspects contamination of sediments. Additional testing, such as bioaccumulation testing, and bioassay of sediments, may also be required. 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 disposal method.

iii. Turbidity concentrations (that is, suspended sediments) and other water quality parameters at, downstream, and upstream of the dredging site, and slurry water overflows shall meet applicable State Surface Water Quality Standards in N.J.A.C. 7:9-4. NJDEP 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 will not be exceeded.

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate 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 below.

v. For maintenance dredging using mechanical dredges such as clamshell bucket, dragline, grab, orange peel, or ladders, deploying silt curtains at the dredging site may be required, if feasible based on site conditions. In sites at which the use of silt curtains is infeasible, dredging using closed watertight buckets or lateral digging buckets will be examined. NJDEP may decide not to allow mechanical dredging of highly contaminated sites even if turbidity control measures were planned.

vi. In the waterways characterized below, if the applicant for mechanical maintenance dredging cannot meet the acceptability conditions in (f)2i through v above, then the Department will authorize dredging on a seasonally restricted basis only, in waterways characterized by the following:

(1) Known spawning or nursery areas of endangered shortnose sturgeon (N.J.A.C. 7:7E-3.38);

(2) Known spawning sites of anadromous fishes such as: Atlantic sturgeon; alewife; blueback herring; and striped bass;

(3) Waterbodies downstream of known anadromous fish spawning sites, as in N.J.A.C. 7:7E-3.5, where the predicted turbidity plume will encompass the entire cross-sectional area of the water body, thus forming a potential blockage to upstream migration;

(4) Areas of contaminated sediments with high levels of fecal coliform and/or streptocous bacteria, and/or hazardous substances adjacent to (upstream or downstream) State

approved shellfishing waters and public or private bathing beaches;

(5) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2; or

(6) Known female blue crab winter hibernation areas. These typically are located in higher salinity water near bay mouths.

vii. For hydraulic dredges, if the applicant cannot meet the acceptability conditions in (f)2i through v above, specific operational procedures, such as removal of cutter head, flushing of pipeline sections prior to disconnection, limitations on depth of successive cuts, etc. shall be examined. Seasonal dredging restrictions may be imposed in the following areas to prevent entrainment and mortality of aquatic organisms:

(1) Known female blue crab winter hibernation areas;

(2) Known spawning, nursery, or wintering areas of the endangered shortnose sturgeon as in N.J.A.C. 7:7E-3.38 and/or winter flounder; or

(3) Known wintering areas of adult Atlantic or shortnose sturgeon, striped bass and/or white perch.

3. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2) or Endangered and Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2) and wintering area for finfish or blue crabs, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal limitations may be imposed on maintenance dredging as specifically described in this subsection.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(g) Standards relevant to new dredging are as follows:

1. "New dredging" is the removal of sediment from the bottom of a water body that has not been previously dredged, for the purpose of increasing water depth, or the widening or deepening of navigable channels to a newly authorized depth or width.

2. Acceptability conditions for new dredging are as follows:

i. New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages (docks) provided that:

(1) There is a demonstrated need that cannot be satisfied by existing facilities;

(2) The facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas;

(3) The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;

(4) The dredge area causes no significant disturbance to Special Water or Water's Edge Areas;

(5) The adverse environmental impacts are minimized to the maximum extent feasible;

(6) Dredging will be accomplished consistent with all conditions described under the maintenance dredging provisions, (f)2(i) through vii above, as appropriate to the dredging method;

(7) An acceptable dredge spoil disposal site exists;

(8) The dredge area is reduced to the minimum practical;

(9) The maximum depth of the newly dredged area will not exceed that of the connecting access or navigation channel necessary for vessel passage to bay or ocean; and

(10) Dredging will have no adverse impacts on groundwater resources.

ii. To mitigate adverse impacts upon Shellfish Habitat (N.J.A.C. 7:7E-3.2), Endangered or Threatened Wildlife or Vegetation Species Habitat (N.J.A.C. 7:7E-3.38), Finfish Migratory Pathways (N.J.A.C. 7:7E-3.5), Marine Fish and Fisheries (N.J.A.C. 7:7E-8.2), spawning or wintering areas for finfish, or female blue crab wintering areas, and to prevent reduction of ambient dissolved oxygen below critical levels, or the increase of turbidity or the resuspension of toxic substances above critical levels, seasonal and/or dimensional limitations may be imposed on new dredging.

iii. New dredging or excavation to create new lagoons for residential development is prohibited in Wetlands, Wetlands Buffer, Endangered or Threatened Wildlife or Vegetation Species Habitats as defined in N.J.A.C. 7:7E-3.25, 3.26 and 3.40 and discouraged elsewhere.

iv. New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs, provided that an acceptable sedimentation control plan is developed to address re-sedimentation of these water bodies.

v. Rationale: See the OAL Note at the beginning of this subchapter.

(h) Standards relevant to dredged material disposal are as follows:

1. Dredged material disposal is the discharge of sediments removed during dredging operations.

2. Acceptability conditions relevant to dredged material disposal are as follows:

i. Dredged material disposal is prohibited in tidal guts, man-made harbors, and medium rivers, creeks and streams.

ii. Dredged material disposal is discouraged in open bays, semi-enclosed and backbays where the water depth is less than six feet.

iii. Disposal of dredged materials in the ocean and bays deeper than six feet is conditionally acceptable provided that it is in conformance with the USEPA and US Army Corps of Engineers Guidelines parts 220-228 and 33 CFR, Parts 320-330 and 335-338) established under Section 404(b) of the Clean Water Act.

iv. EPA Guidelines require that consideration be given to the need for the proposed activity, the availability of alternate sites and methods of disposal that are less damaging to the environment, and applicable water quality standards. They also require that the choice of the site minimize harm to municipal water supply intakes, shellfish, fisheries, wildlife, recreation, threatened and endangered species, benthic life, wetlands and submerged vegetation, and that it be confined to the smallest practicable area.

v. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites is conditionally acceptable in existing anoxic dredge holes, provided that data on water quality, benthic productivity and seasonal finfish use evidence limited biological value and a submerged elbow or underwater diffuser is used. The hole shall not be filled higher than the depth of the surrounding waters.

vi. Overboard disposal of sediments less than 90 percent sand shall be acceptable in unconfined disposal sites when shallow waters preclude removal to an upland or confined site provided that: Shellfish Habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters; disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2); and sediment characteristics of the dredged material and disposal site are similar. If unconfined aquatic disposal can not meet these conditions, then NJDEP shall impose a seasonal restriction appropriate to the resource of concern.

vii. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

viii. Dredged material disposal in lakes, ponds and reservoirs is prohibited.

ix. Conditions for dredged material disposal on land are indicated in N.J.A.C. 7:7E-7.12.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(i) Standards relevant to dumping (solid waste or sludge) are as follows:

1. The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

2. Acceptability conditions: The dumping of solid or semi-solid waste of any description in any General Water Area is prohibited.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(j) Standards relevant to filling are as follows:

1. Filling is the deposition of material (sand, soil, earth, dredged material, etc.) into water areas for the purpose of raising water bottom elevations to create land areas.

2. Acceptability conditions relevant to filling are as follows:

i. Filling is prohibited in lakes, ponds, reservoirs, and open bay areas at depths greater than 18 feet, unless the filling is consistent with the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.) and Regulations, N.J.A.C. 7:7A.

ii. In all other natural water areas, filling is discouraged, but limited filling may be considered for acceptability provided that:

(1) The use that requires the fill is water dependent;

(2) There is a demonstrated need that cannot be satisfied by existing facilities;

(3) There is no feasible or practical alternative site on an existing Water's Edge;

(4) The minimum practicable area is filled;

(5) The adverse environmental impacts are minimized, e.g. by compensating for the loss of aquatic habitat by creation of an area of equivalent or greater environmental value elsewhere in the same estuary;

(6) Minimal feasible interference is caused to Special Areas; and

(7) Pilings and columnar support or floating structures are unsuitable for engineering or environmental reasons.

iii. Filling in a man-made lagoon is discouraged unless it complies with the conditions found under (j)2ii above or the following two conditions:

(1) In those areas where two existing lawful bulkheads are not more than 75 feet apart and no limit of fill line has been promulgated, the connecting bulkhead may not extend seaward of a straight line connecting the ends of the existing bulkheads. Compliance

with the mitigation rule shall not be required in such cases.

(2) Elsewhere, the proposed retaining structure shall not extend seaward of the spring high water line.

3. In no event may regulated wetlands be filled except under the conditions of the Wetlands Special Area Rule (N.J.A.C 7:7E-3.27).

4. Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects (see the Coastal Engineering Use Rules N.J.A.C. 7:7E-7.11).

5. Standards relevant to the removal of unauthorized fill are as follows:

i. For filling which took place prior to September 26, 1980 (the effective date of the Rules on Coastal Zone Management, N.J.A.C. 7:7E), or prior to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4 (CAFRA), 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 impacts.

ii. For filling which took place subsequent to September 26, 1980 (or subsequent to September 28, 1978 for areas within the coastal area defined at N.J.S.A. 13:19-4), removal shall be required if it violates the acceptability conditions for filling in water areas set forth in this subsection.

6. Rationale: See the OAL Note at the beginning of this subchapter.

(k) Standards relevant to mooring are as follows:

1. A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

2. Temporary or permanent boat mooring areas are conditionally acceptable in all General Water Areas provided:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Adverse environmental impacts are minimized to the maximum extent practicable;

iii. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(l) Standards relevant to sand and gravel extraction are as follows:

1. Sand and gravel extraction is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

2. Sand and gravel extraction is prohibited in lakes, ponds and reservoirs, man-made harbors and tidal guts unless the water body was created by the extraction process, in which case the use is conditionally acceptable. This activity is discouraged in all other General Water Areas. In these General Water Area types, priority will be given to sand extraction for beach nourishment, and extraction is conditionally acceptable provided that:

i. Special areas are not directly or indirectly degraded;

ii. Turbidity and resuspension of toxic materials is controlled throughout the extraction operation consistent with the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4);

iii. There is an acceptable disposal site for the waste from washing operations;

iv. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet MLW;

v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(m) Standards relevant to bridges are as follows:

1. A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

2. Bridges are conditionally acceptable over all water area types provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. Applicable Location and Resource Rules are satisfied, with special attention to Location Rules on Secondary Impacts and Linear Development;

iii. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

iv. Fishing catwalks and platforms are provided to the maximum extent practicable. This shall be taken into consideration during the design phase of all proposed bridge projects.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(n) Standards relevant to submerged infrastructure are as follows:

1. Submerged infrastructure includes the following:

i. Cables are solid underwater lines such as telecommunication cables or electrical transmission lines.

ii. Pipelines are underwater pipes laid, buried, or trenched for the purpose of transmitting liquids or gas. Examples would be crude oil, natural gas, water, petroleum products or sewage pipelines. Construction of an underwater pipeline may involve trenching, temporary trench spoil storage, and backfilling, or jetting as an alternative to trenching.

2. Submerged infrastructure is conditionally acceptable provided that it is not sited within Special Areas, unless no prudent and feasible alternate route exists. The use of directional drilling for the installation of submerged infrastructure is encouraged over the use of trenching.

i. In the case of pipelines, the following conditions shall also be met:

(1) Trenching takes place to a sufficient depth and is back-filled, either through natural or mechanical means to minimize the possibility of puncturing by snagging anchors or sea clam dredges;

(2) The pipeline is sufficiently deep to avoid uncovering by erosion of water currents; and

(3) The conditions outlined for pipelines in the Energy Use rules (See N.J.A.C. 7:7E-7.4) are satisfied.

ii. Temporary trench spoil storage and backfilling as part of pipeline trenching is acceptable provided that bottom contours are reestablished following trench spoil removal, to the original bottom contours, to the maximum extent practicable.

iii. In the case of cable routes, the following conditions must be met:

(1) The route avoids areas where anchors may foul the cable; and

(2) The alignment of the cable route is marked at the landfall and by buoys at the surface.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(o) Standards relevant to overhead transmission lines are as follows:

1. "Overhead transmission lines" are electrically conducting wires hung between supporting pylons for the transmission of electrical power from generating plant to the

site of consumption.

2. Overhead transmission lines are prohibited or discouraged, except over rivers, streams, creeks, and tidal guts, where transmission lines will be considered for acceptability provided that:

i. There is a demonstrated need that cannot be satisfied by existing facilities;

ii. There is no feasible alternative route that avoids crossing water bodies;

iii. Further development likely to be induced by the transmission lines is acceptable;

iv. The transmission line provides adequate vertical clearance for masts; and

v. Visual impacts are minimized to the maximum extent practicable.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(p) Standards relevant to dams and impoundments are as follows:

1. Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

2. The construction of dams and impoundments is prohibited in all Water Areas except medium rivers, creeks, and streams, unless:

i. The structures are essential for water supply purposes or for the creation of special wildlife habitats;

ii. Adverse impacts are minimized; and

iii. The structures will not adversely affect navigation routes.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(q) Standards relevant to outfalls and intakes are as follows:

1. Outfalls and intakes are pipe openings that are located in Water Areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

2. Outfalls and intakes are conditionally acceptable in most water bodies provided that the use associated with the intake or outfall meets the Rules on Coastal Zone Management. In particular, stormwater discharge pipes shall comply with the Stormwater Management rule (N.J.A.C. 7:7E-8.7) and provide appropriate filtration methods.

3. Rationale: See the OAL Note at the beginning of this subchapter.

(r) Standards relevant to realignment of water areas are as follows:

1. Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.

2. Realignment of naturally occurring water areas is discouraged.

3. Realignment of previously realigned water areas is conditionally acceptable, provided that it can be demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/alteration) will result, and no Resource rules will be contravened by the realignment; and that a net recreational/ecological benefit will demonstrably accrue.

4. Rationale: See the OAL Note at the beginning of this subchapter.

(s) Standards relevant to miscellaneous uses are as follows:

1. Miscellaneous includes uses of Water Areas not specifically defined in this section or addressed in the Use rules

2. Water dependent uses of 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.

(t) Typically, timber breakwaters are designed and utilized to protect boat moorings, while concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

1. Timber breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks. The individual plank width shall not exceed six inches.

2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required.

3. The construction of concrete or rubble mound breakwater structures must be consistent with the acceptability conditions for Structural Shore Protection (N.J.A.C. 7:7E-7.11(e) and Filling (j) above).

4. Rationale: See OAL Note at the beginning of this subchapter.**]**

7:7E-4.2 Aquaculture

(a) Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. Oyster farming in Delaware Bay is a form of aquaculture.

(b) Aquaculture is encouraged in all General Water Areas as defined at N.J.A.C. 7:7E-4.1, provided:

1. It does not unreasonably conflict with resort or recreation uses;

2. It does not cause significant adverse off-site environmental impacts; and

3. It does not present a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers.

(c) Rationale: Aquaculture is a means of food production which can be at least as efficient as land-based agriculture. It is, therefore, encouraged provided that it does not unreasonably affect the coastal recreational economy, the coastal ecosystem or navigation.

7:7E-4.3 Boat ramps

(a) Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps are most frequently constructed of asphalt, concrete or crushed shell.

(b) Boat ramps are conditionally acceptable provided:

1. There is a demonstrated need that cannot be met by existing facilities;

2. They cause minimal practicable disturbance to intertidal flats or subaqueous vegetation;

3. Boat ramps shall be constructed of environmentally acceptable material, such as concrete or oyster shells; and

4. Garbage cans are provided near the boat ramp.

(c) Public use ramps shall have priority over restricted use and private ramps.

(d) Rationale: Boat ramps serve owners of small boats, and are important to the coastal recreational economy. Therefore, they are permitted provided that they are constructed in an environmentally sensitive manner.

7:7E-4.4 Docks and piers for cargo and commercial fisheries

(a) Docks and piers for cargo and passenger movement and commercial fisheries are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with, a single industrial or manufacturing facility or to commercial fishing facilities.

(b) Docks and piers for cargo and passenger movement and commercial fisheries are conditionally acceptable provided:

1. The width and length of the dock or pier is limited to only what is necessary for the proposed use;

2. The dock or pier will not pose a hazard to navigation. A hazard to navigation includes all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers; and

3. The associated use of the adjacent land meets all applicable Coastal Zone Management rules.

(c) The standards for Port uses are found at N.J.A.C. 7:7E-7.9. 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.

(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.

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

7:7E-4.5 Recreational docks and piers

(a) Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used for recreational fishing or for the mooring of boats or jet skis used for recreation or fishing, except for commercial fishing, and house boats.

(b) Recreational docks and piers, including jet ski ramps, mooring piles, are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. The construction minimizes adverse environmental impact to the maximum extent feasible;

3. The docks and piers and their associated mooring piles are located so as to not conflict with overhead transmission lines;

4. There is minimum feasible interruption of natural water flow patterns;

5. 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.

6. 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 below. For the purposes of this section, an intertidal flat is a low lying strip of land along a shoreline located between spring high and spring low tides. The height of the structure over wetlands shall be a minimum of four feet regardless of width;

i. A minimum of eight feet of open water shall be provided between any docks if the combined width of the docks over the water exceeds eight feet.

ii. Construction and placement of the dock shall be a minimum of four feet from

all property lines, for docks which are perpendicular to the adjacent bulkhead or shoreline.

iii. In man-made lagoons only, the maximum width of the structure shall be eight feet over water and six feet over wetlands. The height of the structure over wetlands shall be a minimum of four feet.

7. In man-made lagoons only, the structure extends no more than 20 percent of the width of the lagoon from bank to bank; and

8. The proposed structure and associated mooring piles do not hinder navigation or access to adjacent water areas. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas and docks and piers.

(c) The construction of recreational docks and piers within areas designated by the Department as shellfish habitat must comply with the standards specified under the Shellfish Habitat rule, N.J.A.C. 7:7E-3.2.

(d) The construction of recreational docks and piers within submerged vegetation areas must comply the standards specified under the Submerged Vegetation rule, N.J.A.C. 7:7E-3.6.

(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.

(f) The construction of covered or enclosed structures such as gazebos or sheds located on or above the decking of recreational docks and piers is prohibited except on public piers owned and controlled by a public agency.

(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 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 photosynthesis by plants underneath the structure. Also, 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 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 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.

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 Maintenance dredging

(a) Maintenance dredging 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 a previously authorized water depth and width for safe navigation.

1. To be considered maintenance dredging:

i. The proposed dredge area must be limited to the same depth, length and width as the previous dredging operation; and

ii. For natural water areas, the area must have been either:

(1) Currently used for navigation or mooring of vessels requiring the proposed water depth; or

(2) Dredged within the last 10 years.

(b) Maintenance dredging is conditionally acceptable to the authorized depth, length and width within all 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 Dredged material disposal in water areas and N.J.A.C. 7:7E-7.12 Dredged material placement on land).

2. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate 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 shall meet 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, or if pre-dredging chemical analysis of dredged material or elutriate 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 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. 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.

6. For hydraulic dredges specific operational procedures designed to minimize water quality impacts, such as removal of 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:

i. Known spawning, wintering or nursery areas of shortnose sturgeon , winter flounder Atlantic sturgeon, alewife, blueback herring, striped bass, white perch or blue crab;

ii. Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5 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. Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches; or

iv. Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2;

8. Maintenance dredging side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Reprofiling, which is the movement of material from one area of a berth or channel to an adjacent, deeper location, is discouraged in all water areas except the New York-New Jersey Harbor Area as provided at (c)1 below.

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:

i. The applicant has demonstrated that there is no other available dredged material management alternative;

ii. The project involves the movement of less than 5,000 cubic yards of material;

iii. The depth of the material to be removed 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

v. The reprofiling is performed by dragging a steel beam or pipe across the berth and/or channel bottom, thereby leveling accumulated sediment to a uniform, specified depth. Alternative procedures will be considered only under special instances where the use of a drag bar is impractical due to limited space in the project area.

(d) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers, is prohibited.

(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 access to marinas, docks, ports, and other appropriate water dependent development, but it must be carried out in such a way that 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 i.e., 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 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 under the Coastal Zone Management rules 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 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 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 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.

(b) New dredging is conditionally acceptable in all General Water Areas for boat moorings, navigation channels or anchorages provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. The facilities served by the new dredging satisfy the location requirements for Special Water's Edge Areas;

3. The adjacent water areas are currently used for recreational boating, commercial fishing or marine commerce;

4. The dredge area causes no significant disturbance to Special Water or Water's Edge Areas;

5. The adverse environmental impacts are minimized to the maximum extent feasible;

6. The dredge area is reduced to the minimum practical;

7. The maximum depth of the newly dredged area shall not exceed that of the connecting access or navigation channel necessary for vessel passage to the bay or ocean;

8. Dredging will have no adverse impacts on groundwater resources;

9. No dredging shall occur within 10 feet of any wetlands. The proposed slope from this 10 foot buffer to the nearest edge of the dredged area shall not exceed three vertical to one horizontal; and

10. 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 Dredged material disposal in water areas and N.J.A.C. 7:7E-7.12 Dredged material placement on land).

ii. Pre-dredging chemical and physical analysis of the dredged material and/or its elutriate 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 shall meet 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.

iv. If predicted water quality parameters are likely to exceed State Surface Water Quality Standards, or if pre-dredging chemical analysis of dredged material or elutriate 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 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. 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.

vi. For hydraulic dredges, specific operational procedures designed to minimize water quality impacts, such as removal of 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:

(1) Known spawning, wintering or nursery areas of shortnose sturgeon , winter flounder, Atlantic sturgeon, alewife, blueback herring, striped bass or blue crab;

(2) Water bodies downstream of known anadromous fish spawning sites under N.J.A.C. 7:7E-3.5 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) Areas of contaminated sediments with high levels of fecal coliform and/or streptococcus bacteria, and/or hazardous substances adjacent to (upstream or downstream) State approved shellfishing waters and public or private bathing beaches; or

(4) Areas within 1,000 meters or less of oyster beds as defined in N.J.A.C. 7:7E-3.2;

viii. Side slopes shall not be steeper than 3:1 adjacent to wetlands to prevent undermining and/or sloughing of the wetlands.

(c) Propwash dredging, which is the movement of sediment by resuspending accumulated material by scouring the bottom with boat propellers or specially designed equipment with propellers is prohibited.

(d) New dredging or excavation to create new lagoons for residential development is prohibited in Wetlands, 7:7E-3.27, Wetlands Buffer, 7:7E-3.28, Endangered or Threatened Wildlife or Vegetation Species Habitats, 7:7E-3.38, and discouraged elsewhere.

(e) New dredging is conditionally acceptable to control siltation in lakes, ponds and reservoirs, provided that an acceptable sedimentation control plan is developed to address re-sedimentation of these water bodies.

(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 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) Rationale: New dredging is sometimes necessary if water dependent elements of New Jersey's economy are to expand, but as with maintenance dredging, 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 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. These ecological values will be weighed against loss of this habitat in comparison to the public value to be served by the new dredging.

7:7E-4.8 Dredged material disposal

(a) Dredged material disposal is the discharge of sediments removed during dredging operations.

(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, creeks and streams, and lakes, ponds and reservoirs. Dredged material disposal is discouraged in open bays, 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.

3. Dredged material disposal in water areas shall conform with applicable State Surface Water Quality Standards at N.J.A.C. 7:9B.

4. Overboard disposal (also known as aquatic, open water, side casting, subaqueous, or wet) of uncontaminated sediments into unconfined disposal sites in existing anoxic dredge holes, shall comply with the following:

i. Data on water quality, benthic productivity and seasonal finfish use demonstrate that the unconfined disposal site has limited biological value;

ii All subaqueous dredged material disposal shall utilize best management techniques such as submerged elbows or underwater diffusers and may be limited to a particular tidal cycle to further minimize impacts; and

iii. The hole shall not be filled higher than the depth of the surrounding waters.

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. Such disposal shall comply with the following:

i. Shellfish Habitats (as defined in N.J.A.C. 7:7E-3.2) are not within 1,000 meters;

ii. Disposal will not smother or cause condemnation or contamination of harvestable shellfish resources (as in N.J.A.C. 7:7E-3.2);

iii. Sediment characteristics of the dredged material and disposal site are similar.

6. Uncontaminated dredged sediments with 75 percent sand or greater are generally encouraged for beach nourishment.

(c) The standards for dredged material placement on land are found at N.J.A.C. 7:7E-7.12.

(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) Rationale: Dredged material disposal can have significant adverse effects, such as introduction of heavy metals, burial of benthic flora and fauna and increased turbidity. Therefore, dredged material disposal is prohibited or discouraged in smaller water bodies which have lesser assimilative capacities and is conditionally acceptable in larger water bodies if in conformance with the USEPA Guidelines and applicable State Surface Water Quality Standards at N.J.A.C. 7:9B. Unconfined overboard (or open water) disposal, particularly of hydraulically dredged fine grain sediments, frequently forms a "fluid mud" layer along the water body bottom. Fluid muds have been documented to cause acute mortality of aquatic benthic organisms due to low oxygen levels and slow rate of consolidation. Movement of fluid muds away from an unconfined dredged material disposal site can not be controlled with silt curtains. Due to these impacts, upland placement and beneficial uses of dredged material are preferred methods of dredged material management.

7:7E-4.9 Solid waste or sludge dumping

(a) The dumping of solid waste or sludge is the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area.

(b) The dumping of solid or semi-solid waste of any type in any General Water Area is prohibited.

(c) Rationale: Dumping of solid and semi-solid waste in coastal waters would have significant adverse environmental and aesthetic effects and would be harmful to the coastal recreational economy. The existence of land sites makes coastal dumping unnecessary.

7:7E-4.10 Filling

(a) Filling is the deposition of material including, but not limited to, sand, soil, earth, and dredged material, into water areas for the purpose of raising water bottom elevations to create land areas.

(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, 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, 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) 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 rule at N.J.A.C. 7:7E-1.6 shall not be required in such cases.

(d) Except as provided in (b) and (c) above, filling is discouraged in all other water areas. In cases where there is no alternative to filling, filling is conditionally acceptable provided:
1. The use that requires the fill is water dependent;
2. There is a demonstrated need that cannot be satisfied by existing facilities;
3. There is no feasible or practical alternative site on an existing Water's Edge;
4. The minimum practicable area is filled;
5. The adverse environmental impacts are minimized, e.g. by compensating for the loss of aquatic habitat by creation of an area of equivalent or greater environmental value elsewhere in the same estuary;
6. Minimal feasible interference is caused to Special Areas; and
7. Pilings and columnar support or floating structures are unsuitable for engineering or environmental reasons.

(e) 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. Standards for the filling of intertidal and subtidal shallows are found at N.J.A.C. 7:7E-3.15(g) and (h). Mitigation shall not be required for the following:

1. Filling in accordance with N.J.A.C. 7:7E-4.10(c);

2. Beach nourishment in accordance with N.J.A.C. 7:7E-7.11(d); and

3. Construction of a replacement bulkhead in accordance with N.J.A.C. 7:7E-7.11(e)2i or ii.

(f) Filling of wetlands must comply with the Wetlands rule, N.J.A.C. 7:7E-3.27.

(g) Filling using clean sediment of suitable particle size and composition is acceptable for beach nourishment projects provided it meets the standards of the Coastal Engineering rule, N.J.A.C. 7:7E-7.11(d)

(h) 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), 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 impacts.

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)) removal shall be required if the fill does not comply with the standards of (b), (c) or (d) above.

(i) Rationale: In general, filling is discouraged because it results in: loss of aquatic habitat including nursery areas for commercially or recreationally important species; loss of estuarine productivity since shallow estuarine water frequently has a higher biological value and is more important than deeper water; loss of habitat important for certain wading birds and waterfowl; and loss of dissolved oxygen in the water body since the shallows facilitate oxygen transfer from air to water.

Lagoons, as a result of limited freshwater inflow, multiple dead-end branches, and deeper bottoms than adjacent bay waters, have poor circulation which causes anoxic (devoid of oxygen) and stagnant bottoms. However, the shallow water edges of lagoons have been shown by the Department (1984) to support a wide variety of finfishes and shrimp. The above rules are intended to conserve this aquatic productivity found along shallow lagoon edges, while allowing use by the property owners.

7:7E-4.11 Mooring

(a) A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat.

(b) Temporary or permanent boat mooring areas are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. Adverse environmental impacts are minimized to the maximum extent practicable;

3. The mooring area is adequately marked and is located so as not to hinder navigation. A hazard to navigation will apply to all potential impediments to navigation, including access to adjacent moorings, water areas, docks and piers.

(c) Rationale: Moorings are conditionally acceptable in all General Water Areas provided impacts to Special Water Areas are minimized and they are not a hazard to navigation.

7:7E-4.12 Sand and gravel mining

(a) Sand and gravel mining is the removal of sand or gravel from the water bottom substrate, usually by suction dredge, for the purpose of using the sand or gravel at another location.

(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, 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 areas are minimized;

ii. Turbidity and resuspension of toxic materials is controlled throughout the mining operation consistent with the State's Surface Water Quality Standards (N.J.A.C. 7:9B-4);

iii. There is an acceptable disposal site for the waste from washing operations;

iv. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet below mean low water;

v. The mining will not increase shoreline erosion; and

vi. The mining will not create anoxic water conditions.

(c) Sand and gravel mining for the purposes of beach nourishment is conditionally acceptable provided:

1. Direct and indirect impacts to special areas and marine fish and fisheries are minimized;

2. In rivers, creeks, and streams, the depth of water at the mining site is at least six feet below mean low water;

3. The mining will not increase shoreline erosion;

4. The mining will not create anoxic water conditions; and

5. The beach nourishment project complies with the Coastal engineering rule, N.J.A.C. 7:7E-7.11(d)

(d) Rationale: The long-term demand for sand resources is not known, and may exceed the supply. Given the need for sand for beach nourishment projects, care must be taken to assure the mining is properly managed and will not adversely affect special areas or water quality.

7:7E-4.13 Bridges

(a) A bridge is any continuous structure spanning a water body, except for an overhead transmission line.

(b) Bridges are conditionally acceptable provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. Pedestrian and bicycle use is provided for unless it is demonstrated to be inappropriate; and

3. Fishing catwalks and platforms are provided to the maximum extent practicable. This shall be taken into consideration during the design phase of all proposed bridge projects.

(c) Rationale: Bridge crossings over bays, rivers, streams and other water areas are often necessary to provide continuity in the transportation system and, in the case of barrier islands, to link otherwise isolated land areas. The need to replace or upgrade bridges to safely maintain a transportation system is well recognized. However, the need for new bridges to accommodate additional traffic must be clearly demonstrated to justify potential adverse environmental effects on shellfish habitat, fish spawning grounds and migratory pathways, destruction of wetlands as well as aesthetic and air quality impacts. Bridges to barrier islands, in particular, must be reviewed in accordance with the General Location rule on Secondary Impacts.

7:7E-4.14 Submerged pipelines

(a) Submerged pipelines (pipelines) are underwater pipelines which transmit liquids or gas, including crude oil, natural gas, water petroleum products or sewerage.

(b) Submerged pipelines are conditionally acceptable provided:

1. The pipelines are not sited within Special Areas, unless no prudent and feasible alternate route exists;

2. Directional drilling is used unless it is demonstrated that the use of directional

drilling is not feasible;

3. The pipeline is buried to a sufficient depth to avoid exposure or hazard;

4. All trenches are backfilled to preconstruction depth with naturally occurring sediment; and

5. The proposed development has been designed to minimize impacts to the water area.

(c) Rationale: The installation of submerged pipelines has the potential to disrupt the ecosystem in which it is placed and so is discouraged in environmentally sensitive areas. Due to the potential for disrupting the ecosystem, directional drilling is the preferred method for installing submerged pipelines.

Burial and backfilling must be sufficient to minimize damage to pipelines by currents, storm waves, sea clam dredges, anchors and other marine equipment. If a pipeline is not buried deep enough to avoid uncovering by erosion, it will be susceptible to breakage when left uncovered. Pipeline damage or breakage may result in the release of the transport substances into the ocean water with potentially adverse effects to the marine environment. Bottom contours must be reestablished following trenching and backfilling to maintain a stable bottom for the marine life found there.

7:7E-4.15 Overhead transmission lines

(a) Overhead transmission lines are wires hung between supporting pylons for transmission from the site of origin to the site of consumption. Overhead transmission lines include electrical, telecommunication and cable television lines.

(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. Overhead transmission lines are discouraged over large rivers as defined at N.J.A.C. 7:7E-4.1.

(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, provided:

1. There is a demonstrated need that cannot be satisfied by existing facilities;

2. There is no feasible alternative route that avoids crossing water bodies;

3. The transmission line provides adequate vertical clearance for masts; and

4. Visual impacts are minimized to the maximum extent practicable.

(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 rule at N.J.A.C. 7:7E-8.12. 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 bodybecause the aesthetic impacts would not be as severe as the impacts of siting transmission lines over wider water bodies.

7:7E-4.16 Dams and impoundments

(a) Dams and impoundments are structures that obstruct natural water flow patterns for the purpose of forming a contained volume of water. Impoundments include dikes with sluice gates and other structures to control the flow of water.

(b) Except for medium rivers, creeks and stream as defined at N.J.A.C. 7:7E-4.1, 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, provided:

1. The structures are essential for water supply purposes or for the creation of special wildlife habitats;

2. Adverse impacts are minimized; and

3. The structures will not adversely affect navigation routes.

(c) Rationale: Dams can have an adverse environmental impact by reducing the amount of downstream flow and raising salinity levels. Impoundments can reduce

the flow of water reaching wetlands or intertidal and subtidal shallows. Therefore, dams and impoundments are prohibited unless essential for water supply or wildlife habitat purposes.

7:7E-4.17 Outfalls and intakes

(a) Outfalls and intakes are pipe openings that are located in water areas for the purpose of intake of water or discharge of effluent including sewage, stormwater and industrial effluents.

(b) Outfalls and intakes are conditionally acceptable provided that the use associated with the intake or outfall meets applicable Coastal Zone Management rules.

(c) Rationale: Outfalls can introduce contaminated runoff into a water body unless adequate measures are taken to encourage filtration and minimize discharge of pollutants.

7:7E-4.18 Realignment of water areas

(a) Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the rebulkheading of a previously bulkheaded water area or the bulkheading at or above the spring high water line.

(b) Realignment of naturally occurring water areas is discouraged. 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.

(c) Realignment of previously realigned water areas is conditionally acceptable, provided:

1. It is demonstrated that no adverse environmental impacts (that is, water quality, flood hazard, species diversity reduction/alteration) will result; and

2 A net recreational/ecological benefit will demonstrably accrue.

(d) Rationale: Realignment of water areas normally reduces shallow water habitat, decreases water's edge vegetation, and can increase water flow with consequent increases in flooding and erosion. However, a previously realigned water area can be further realigned to enhance its environmental productivity and flood carrying capacity.

7:7E-4.19 Breakwaters

(a) Breakwaters, including, but not limited to, those constructed of concrete, rubble mound and timber, are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. Typically, timber breakwaters are designed and utilized to protect boat moorings. In most cases concrete or rubble mound breakwaters are designed and utilized to protect shoreline areas which are subject to storm waves and associated erosion.

(b) Construction of breakwaters is conditionally acceptable provided:

1. Timber, vinyl or plastic breakwaters shall be at least 18 inches above the bottom of the waterway and shall provide a minimum of three inch spacing between planks except as provided at (b)3 below. The individual plank width shall not exceed six inches.

2. For detached breakwaters which are not fixed directly to a dock or pier structure, marking with photocell lights and/or reflectors is required.

3. The construction of breakwater structures other than those which comply with (b)1 above shall be consistent with the acceptability conditions for Filling, 7:7E-4.10 and Structural Shore Protection 7:7E-7.11.

(c) Rationale: Breakwaters are designed to protect boat moorings and may be suitable as shore protection structures. Breakwaters may be fixed or floating, attached or detached, depending on the water depth, tidal range and wave climate. The design of a breakwater structure must consider location, height, porosity and

purpose, in order for the breakwater to function without adversely affecting the movement of sediment and marine organisms or adversely affecting water circulation patterns.

7:7E-4.20 Submerged cables

(a) Submerged cables (cables) are underwater lines such as telecommunication cables or electrical transmission lines, and shall include all associated structures in the water such as repeaters.

(b) Submerged cables, or portions thereof, which are not located in the Atlantic Ocean shall meet the following conditions:

1. The cable shall not be sited within Special Areas, unless no prudent and feasible alternate route exists;

2. Directional drilling for the installation of cables is encouraged over the use of trenching;

3. The cable route minimizes areas where anchors are likely to foul the cable; and

4. The alignment of the cable route is marked at the landfall. This provision does not apply to cables that are directionally drilled.

(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, or sited within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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, Shipwreck and artificial reef habitats, N.J.A.C. 7:7E-3.13, or Historic and archaeological resources, N.J.A.C. 7:7E-3.36, 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, and in areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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 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, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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. The cable shall be buried to the depth of the existing cable or as close thereto as practicable at the crossing;

ii. The number of cable crossings shall be minimized;

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 in order to reduce the impact of cable crossings on commercial fishing, to the maximum extent practicable; and

iv. The permittee shall, to the maximum extent practicable, share information and otherwise cooperate with those responsible for any cables being crossed and with installers of subsequent cables crossing the subject cable so as to reduce the impacts of cable crossings on commercial fishing.

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, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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. Where the out-of-service cable is buried less than 0.6 meter, the out-of-service cable shall be cut, and recovered for proper disposal for a distance of at least 500

meters on each side of the selected cable crossing. For surface laid out-of-service cables, the ends of the remaining out-of-service cable shall be re-laid flat on the seabed to minimize problems for other seabed users. For buried out-of-service cables, the ends of the remaining out-of-service cable shall be re-buried to the original depth;

ii. Where the out-of-service cable is buried between 0.6 and 1.2 meters, the out-of-service cable shall, if practicable, be cut and recovered for proper disposal for a distance of at least 500 meters on each side of the selected cable crossing. The ends of the remaining out-of-service cable shall be re-buried as close as practicable to the original depth, and in no case to a depth of less that 0.6 meters. If the out-of-service cable can not be cut and recovered, the cable crossing shall comply with (c)3 above; and

iii. Where the out-of-service cable is buried more than 1.2 meters, the cable shall be laid over the out-of-service cable at the depth prescribed in (c)2 above.

5. Directional drilling for the submerged cable landing is encouraged over the use of trenching to minimize impacts to beaches, dunes, and shallow water areas .

6. The submerged cable route minimizes areas where anchors are likely to foul the submerged cable.

7. Prior to installation of the cable, the permittee shall obtain a financial assurance from a lender or insurer regulated and authorized by the New Jersey Department of Banking and Insurance to transact business in New Jersey. The financial assurance shall be in an amount sufficient for the Department to hire an independent contractor to remove the inactive cable should the permittee fail to do so. The financial assurance shall be released upon the permittee's removal of the cable or upon the Department's determination that the cable may remain in place in accordance with (c)11 below.

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, and within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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. An inspection immediately following cable installation;

ii. An inspection 2 years after cable installation;

iii. An inspection every 5 years after the inspection required at 8ii above;

iv. An investigation within six months after the Department reports to the permittee that it has received information suggesting that the cable has been uncovered. If appropriate, such investigation shall include an inspection of the cable. The Department may require an inspection after reviewing the report submitted pursuant to (c)9 below; and

v. Reburial of the cable within 90 days, if practicable, and in no case later than 6 months after the permittee discovers or is informed that the cable has been uncovered. Reburial shall be to the depth prescribed in (c)2 above to the maximum extent practicable.

9. A report containing the results of the initial inspection required in 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.

10. A report containing the results of inspection and maintenance of the submerged cable required in 8 above, if applicable in the reporting year, a discussion of storm events which could have affected the cable, and reported hits of the cable for the previous year shall be submitted by the permittee to the Department in January of each year. The report shall also indicate if and when the cable becomes out-of-service.

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, and from areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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 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.

12. If portions of the cable located either within Surf clam areas, N.J.A.C. 7:7E-3.3, or within areas where Marine fish, as defined at N.J.A.C. 7:7E-8.2, 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 per meter of cable which is buried to a depth of less than 0.6 meters. Moneys in the Shellfish Habitat Mitigation account 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 unless no prudent and feasible alternate route exists. In the ocean, cable routes may encounter the Surf Clam and Historic and Archaeological Resources Special Areas, as well as areas where marine fish are commercially harvested using 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 fish, as defined at N.J.A.C. 7:7E-8.2, are commercially

harvested using mobile bottom-tending gear and in 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 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 Artificial reefs

(a) Artificial Reefs are man-made structures intended to simulate the characteristics and functions of natural reefs created by placing hard structures on the sea-floor for the purpose of enhancing fish habitat and/or fisheries. 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, fish aggregating devices, and other structures not constructed for the sole purpose of fish habitat.

(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), Prime fishing areas (N.J.A.C. 7:7E-3.4), Navigation channels (N.J.A.C. 7:7E-3.7), Inlets (N.J.A.C. 7:7E-3.9), and Submerged infrastructure routes (N.J.A.C. 7:7E-3.12) and Historic and archaeological resources (N.J.A.C. 7:7E-3.36);

2. The reef site shall be located in the Atlantic Ocean;

3. The reef site shall be located in a manner that minimizes impacts on commercial fishing operations;

4. The reef site shall not be located within shipping lanes, and/or anchorages;

5. The natural seafloor at the reef site shall have a firm substrate to minimize sinking of reef materials;

6. The reef site shall not be located within an area environmentally influenced by dredge disposal sites, sewage outfalls, or other areas known to experience hypoxic events, contaminated waters or sediment that may impair the quality of fish habitat; and

7. The reef site shall not be located in an area with currents that have the potential to cause material instability, scouring, or sanding over.

(c) Construction of new or expanded artificial reefs is conditionally acceptable provided that at the time of deployment, and at all times after creation, the following conditions are met:

1. The reef materials are of sufficient density so that it will not move outside of the approved reef boundary;

2. The reef materials shall not float;

3. The reef materials shall not pose a hazard to navigation;

4. The reef materials shall not pose a threat to the marine environment;

5. The reef materials shall not be toxic;

6. The reef materials shall not be hazardous;

7. The reef materials shall not be explosive;

8. the reef materials shall not be radioactive;

9. The following reef materials are acceptable for deployment, provided that (c)1 through 8 above are met:

i. Ships;

ii. Armored military vehicles;

iii. Manufactured reef habitats;

iv. Dredge rock;

v. Concrete and steel rubble;

vi. Demolition material free of floating debris;

vii. Obsolete submarine telephone cable; and

viii. Miscellaneous reef materials that meet the conditions in (c)1 through 8 above;

10. The reef material shall be deployed in the following manner:

i. No materials shall be deposited until notification has been provided to the Department at least 72 hours in advance;

ii. Inspection by the Department prior to deployment, to ensure materials are not harmful to the marine environment, and will not pose a threat to human safety, and comply with the reef material conditions (c)1 through 8 above;

iii. Department personnel shall directly observe and oversee the deployment of any reef materials;

iv. To the extent practicable, deployment of reef materials shall not adversely impact the marine environment; and

v. The locations of artificial reef sites shall be recorded using a Global Positioning Satellite (GPS) system.

(d) An Artificial Reef Management Plan shall be submitted for each individual reef permit application and shall include the following:

1. A description of the proposed site;

2. A mechanism for recording materials used in constructing the reef; and

3. A monitoring schedule to measure the stability, durability and biological attributes of reef materials and impacts to the marine environment. The schedule shall include submission of monitoring reports, including a listing of materials deployed in the previous year, to the Department every year during reef construction, and every five years thereafter.

(e) It shall be the responsibility of the reef-builder to provide the location of the artificial reef to the US Department of Commerce, NOAA, National Ocean Survey, 1315 East-West Highway, Silver Spring, MD 20910-3282, for inclusion on nautical charts.

(f) Rationale: The construction of artificial reefs allows for both an increase in the marine resource biomass and the congregation of marine fish. Reefs in marine waters are public resources that are beneficial to the State's fishing industries, the sport diving community and to the marine ecosystem as a whole.

Proper siting of reef structures and use of appropriate construction materials is important to the success of the reef, while ensuring stability, safety and preventing degradation of the marine environment. In addition, proper siting of artificial reefs may reduce conflicts among competing users of ocean resources. For example, artificial reefs that are sited away from traditional commercial fish and shellfish areas may reduce conflicts between recreational and commercial fishers. Likewise, artificial reefs located outside of navigation areas and

submerged infrastructure routes have a high potential to reduce ocean resource user conflicts.

Reef management plans will allow for uniform evaluation of reef structures during the permitting process and ensure the reef performs as designed.

Coordination of the Artificial Reef Program is the responsibility of the Department's Division of Fish and Wildlife. Functions include review and approval of individual reef management plans, coordination and oversight of reef material preparation and placement, and coordination of Federal, State, regional, local and private activities associated with artificial reefs in New Jersey.

The Department may adopt management measures to address reef size limitations and cumulative impacts of reef structures, as needed.

7:7E-4.22 Miscellaneous uses

(a) Miscellaneous uses are uses of Water Areas not specifically defined in this section or addressed in the Use rules (N.J.A.C. 7:7E-7).

(b) Water dependent uses of 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.

(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.

SUBCHAPTER 5. REQUIREMENTS FOR IMPERVIOUS COVER AND VEGETATIVE COVER FOR GENERAL LAND AREAS AND CERTAIN SPECIAL AREAS

7:7E-5.1 Purpose and scope

(a) (No change.)

(b) General Land Areas are all land areas, as defined at N.J.A.C. 7:7E-**[**1.5**]** **1.8**, that are subject to this chapter and that are located outside of Special Water's Edge Areas. Special Water's Edge Areas are identified at N.J.A.C. 7:7E-3.16 through 3.32.

(c) (No change.)

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

1. (No change.)

2. A linear development, as defined in N.J.A.C. 7:7E-**[**1.5**]** **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. – 4. (No change.)

5. Aquaculture, as defined at N.J.S.A. 58:1A-3; **[**or**]**

6. Sanitary landfills**;**

7. Wastewater treatment plants; or

8. Water treatment plants.

(e) – (g) (No change.)

7:7E-5.2 Definitions

In addition to the terms defined at N.J.A.C. 7:7E-**[**1.5**]****1.8**, the following words and terms are defined for purposes of this subchapter and N.J.A.C. 7:7E-5A and 5B:

…

["CAFRA area" means the "coastal area" defined in the Coastal Area Facility Review Act at N.J.S.A. 13:9-4.**]**

…

7:7E-5.5 Determining if a site is forested or unforested

(a) (No change.)

(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-**[**1.5**]****1.8**, which is smaller than one acre; and

2. (No change.)

(c) To determine if a site or portion of a site is forested:

1. Select two 25-foot by 25-foot plots in each acre of the site as follows:

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-**[**1.5**]****1.8**, based on a visual inspection;

ii. – iii. (No change.)

2. – 7. (No change.)

SUBCHAPTER 5A. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE UPLAND WATERFRONT DEVELOPMENT AREA

7:7E-5A.5 Development potential for a residential or minor commercial development site

(a) (No change.)

(b) A site upon which a residential or minor commercial development is proposed is a high development potential site if it meets all of the requirements at (b)1 through 4 below:

1. – 2. (No change.)

3. A majority of the perimeter of the site, excluding wetlands or surface water areas or land areas abutting limited access transportation corridors, is adjacent to or across a public road or railroad from land that is developed, or a majority of the **[**land **]** **area, excluding wetlands or surface water areas** within 1,000 feet of the site is developed. For the purposes of this paragraph, developed land consists of that part of a property

where one of the developments listed below is located and does not include any undeveloped portions of the property that surround the developed portion:

i. – vii. (No change.)

4. (No change.)

(c) - (d) (No change.)

7:7E-5A.9 Impervious cover limits for a site in the upland waterfront development area

(a) (No change.)

(b) If a site or portion of a site is unforested, as determined under N.J.A.C. 7:7E-5.5, the impervious cover limit is the limit at (b)1, 2 or 3 below, which ever is higher:

1. (No change.)

2. For a site located in the northern waterfront region or urban area region, as determined under N.J.A.C. 7:7E-**[**5A.1**]** **5A.2**(d), the amount of existing impervious cover located on a site as determined under (c) below; or

3. (no change.)

(c) (No change.)

7:7E-5A.10 Vegetative cover percentages for a site in the upland waterfront development area

(a) – (b) (No change.)

(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.

1. The requirement for tree planting at (a)1 above can be satisfied by preserving equivalent forested areas in addition to that required under N.J.A.C. 7:7E-5A.10(a)1.

2. The requirement for planting of herb/shrub vegetation at (a)2 above can be

satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under N.J.A.C. 7:7E-5A.10(a)1.

TABLE F (No change.)

TABLE G (No change.)

SUBCHAPTER 5B. IMPERVIOUS COVER LIMITS AND VEGETATIVE COVER PERCENTAGES IN THE CAFRA AREA

7:7E-5B.4 Impervious cover limits for a site in the CAFRA area

(a) The impervious cover limit for a site in the CAFRA Area shall be determined as follows:

1. – 2. (No change)

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 cover limit is determined under (e) below **[**based on the Coastal Planning Area in which the site is located**]**; and

4. (No change)

(b) (No change)

(c) If a site is located in a CAFRA center, CAFRA core, or CAFRA node, the impervious cover limit is the limit at (c)1**, 2** or **[**2**]** **3** below, whichever is higher:

1. The acreage of the total land area on the site as determined under N.J.A.C. 7:7E-5.3(d)1, multiplied by the impervious cover percentage in Table H below for the type of CAFRA center, CAFRA core, or CAFRA node in which the site is located; **[**or**]**

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), multiplied by the impervious cover percentage in Table H below for the Coastal Metropolitan Planning Area; or

[2.**]** **3.** The amount of legal, existing impervious cover located on the site, as determined under (g) below.

(d) (No change)

(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 cover limit is the limit at (e)1**,** **[**or**]** 2**, or 3** below, whichever is higher:

1. (No change.)

2. The acreage covered by buildings and/or asphalt or concrete pavement legally existing on the site at the time the application is submitted to the Department **[**,**]**, **excluding any buildings, asphalt and/or concrete paving placed on a site in accordance with (3) below**

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 cover located on the site, as determined under (g) below, provided the marina support facility is placed on existing legal impervious 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) (No change.)

(g) For the purposes of determining impervious cover limits under (c)**[**2**]**3, (d)2**, (e)3,** and (f)2 above, the amount of existing impervious cover is the highest of the following, provided the impervious cover was legally placed on the site:

1.– 3. (No change.)

TABLE H (No change.)

7:7E-5B.5 Vegetative cover percentages for a site in the CAFRA area

(a) (No change.)

(b) If the sum of the acreage of tree planting required under (a)1 above plus the acreage of either the existing impervious cover on the site as determined under N.J.A.C. 7:7E-5B.4(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**, exceeds the net land area on the site, as determined under N.J.A.C. 7:7E-5.3(d), then trees shall be planted in area (in acres) remaining after the acreage of impervious 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.

1. The requirement for tree planting at (a)1 above, can be satisfied by preserving equivalent forested areas in addition to that required under N.J.A.C. 7:7E-5B.5(a)1.

2. The requirement for planting of herb/shrub vegetation at (a)2 above, can be satisfied by preserving equivalent wooded areas or planting an equivalent area of trees in addition to that required under N.J.A.C. 7:7E-5B.5(a)1.

TABLE I (No change.)

SUBCHAPTER 6. GENERAL LOCATION RULES

7:7E-6.1 Rule on location of linear development

(a) A linear development as defined at N.J.A.C. 7:7E-**[**1.5**]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, 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.**

2. – 4. (No change.)

7:7E-6.2 Basic location rule

(a) A location may be acceptable for development under **[**the specific location regulations in N.J.A.C. 7:7E-6.1**]** **N.J.A.C. 7:7E-3, 4, 5, 5A, 5B, and 6**, but the **[**DEP**]** **Department** may reject or conditionally approve the proposed development of the location as reasonably necessary to:

1. – 3. (No change.)

7:7E-6.3 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 **[**Rules on**]** Coastal Zone Management **rules**. **The Department may restrict coastal development from connecting to an approved infrastructure in order to prevent adverse impacts to special areas and to protect and preserve coastal resources.**

1. The level of detail and areas of emphasis of the secondary impact analysis are expected to vary depending upon the type of development. Minor projects may not even require such an analysis. Transportation and wastewater treatment systems are the principal types of development that require a secondary impact analysis, but major industrial, energy, commercial, residential, and other projects may also require a rigorous secondary impact analysis.

[1.**]****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 **[**Rules on**]**Coastal Zone Management **rules**.

Recodify 2. as 3. (No change in text.)

(c) (No change.)

SUBCHAPTER 7. USE RULES

7:7E-7.1 Purpose

Many types of development seek **[**locations**]** **to locate** in the coastal zone. The second stage in the screening process of the **[**Rules on**]** Coastal Zone Management **rules** **[**spells out a set of rules for particular**]** **involves analysis of appropriate** uses of coastal resources. Use rules are rules and conditions **[**addressed**]** **applicable** to particular kinds of development. Use rules do not preempt location rules which restrict development, unless specifically stated. In general, **[**they introduce conditions which**]** **conditions contained in the use rules** must be satisfied in addition to the Location rules (N.J.A.C. 7:7E-2 through 6), and the Resource rules described in the following subchapter (N.J.A.C. 7:7E-8).

7:7E-7.2 Housing use rules

(a) (No change.)

(b) Standards relevant to water area and water's edge housing are as follows:

1. – 3. (No change.)

4. New housing involving the stabilization of existing lagoons through revegetation, bulkheading or other means is conditionally acceptable provided that the conditions of the Existing Lagoon Edge rule (N.J.A.C. 7:7E-3.24) and the Filling rule (N.J.A.C. 7:7E-**[**4.2(j)**]** **4.10**) are satisfied.

(c) – (d) (No change.)

(e) Standards relevant to the development of a 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, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. (No change.)

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (e)2i or ii below.

i. Development that is located on the landward slope of a secondary or tertiary dune as described at (e)2i(2) below**, whichever is most landward,** need not comply with the dunes rule, N.J.A.C. 7:7E-3.16, if the site and the development meet all of the following criteria:

(1) – (4) (No change.)

ii. (No change.)

3. Development shall comply with N.J.A.C. 7:7E-3.31, 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).** If the site is not located on one of the**[**se**]** four water bodies **listed above**, the development shall comply with the setback requirements at (e)10i below, **unless the development meets either (e)3i or ii below:**

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (e)3i 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. – 12. (No change.)

(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, and provided the single family home or duplex and accessory development are located landward of the mean high water line are as follows:

1. (No change.)

2. Development shall comply with N.J.A.C. 7:7E-3.16, Dunes, except as provided under (f)2i through iv 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, if the site and the development meet all of the following criteria:

(1) – (4) (No change.)

ii. – iv. (No change.)

3. Development shall comply with N.J.A.C. 7:7E-3.31, 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)** If the site is not located on one of the**[**se**]** four water bodies **listed above**, the development shall comply with the setback requirements at **[**(e)**] (f)**10i below, **unless the development meets either (f)3i or ii below:**

i. The development is located in the "developed bluff area." For the purposes of this paragraph, a "developed bluff area" is an area delineated by the limit of existing buildings, in-ground pool or tennis court that existed on July 19, 1993; or

ii. The development on the coastal bluff is located landward of the developed bluff area as defined at (f)3i 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. – 12. (No change.)

(g) (No change.)

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

7:7E-7.3 Resort/Recreational Use

(a) **["]**Resort/recreation uses**["]** include the wide range of small and large developments attracted to and often dependent upon locations along the coast. These uses include hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging.

(b) – (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. – ii. (No change.)

iii. 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 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-**[**4.2(t)**]** **<u>8.21</u>**; or

(3) (No change.)

iv. (No change.)

3. – 10. (No change.)

(e) (No change.)

7:7E-7.3A Marina Development

(a) (No change.)

(b) The following pertains to marina construction:

1. – 5. (No change.)

6. Clean dredge**d** **[**spoil**]** **material** with adequate grain size shall be used for beach nourishment.

(c) The following pertains to marina operation:

1. (No change.)

2. Operators shall immediately notify **[**DEP**]** **the Department** and the Coast Guard of all significant hydrocarbon spills.

3. - 7. (No change.)

7:7E-7.4 Energy Facility Use rule

(a) **[**General definition of energy uses:**]** Energy **[**uses**]** **facilities** include**[**s**]** facilities, plants or operations **[**which produce, convert, distribute or store energy**]** **for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals.** **[**Under the Department of Energy Act, the Energy Act, the term energy facility does**]** **Energy facilities do** not include **[**an**]** operation**s** conducted by a retail dealer**, such as a gas station, which is considered a commercial development**.

[(b) Standards relevant to general energy facility siting procedure are as follows:

1. The acceptability of all proposed new or expanded coastal energy facilities shall be determined by the DEP Office of Energy (as part of the Reorganization Plan 002-1991, the Office of Energy was placed within the DEP, and responsibility for the State Energy Master Plan as well as commenting on energy policy was delegated to the Department and the Program).

2. DEP's Office of Energy will determine the need for future coastal energy facilities according to three basic standards. The Office of Energy will submit an Energy Report to the Program with its determination of the need for a coastal energy facility based on

three required findings:

i. The existing sources of supply will not be adequate to meet future levels of demand, including careful consideration of the potential effects of conservation;

ii. No better technological alternative exists to meet future levels of demand; and

iii. No better locational alternative to the proposed site exists.

3. The Program will determine the acceptability of coastal energy facilities using the Rules on Coastal Zone Management supported by appropriate, technically sound analyses of alternatives.

4. Rationale: BPU and the Department share the responsibility for carrying out the energy facility siting, planning and project review elements of the New Jersey Coastal Management Program. The State Energy Master Plan and its appendices, the Coastal Resource and Development Policies, and the Memorandum of Understanding between the Department and BPU provide a clear framework for decision-making by these two State agencies on the review of proposed facilities, as well as the basis for continued consultation and cooperative planning.**]**

(b) Standards relevant to siting of 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. Public access to and use of the waterfront and tidal waters shall be maintained and, where feasible, enhanced in the siting of energy facilities, pursuant to N.J.A.C. 7:7E-8.11; and

4. 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) 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 **[**facility**]** **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 **[**for**]** **through** facility construction and operation. However, energy facilities also can have an impact on the environment. Certain facility related environmental 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. **[**Coastal Resource and Development Policies**]** **The 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.

[Social and economic impacts of proposed coastal energy facility developments will be estimated by application of the Coastal Tourism Response Model (CTRM). CTRM is a linked series of computer programs. The model, maintained by the Division of Coastal Resources, is intended to assist in determination of whether the positive economic and social effects of facility construction and operation outweigh the losses that could result from environmental changes due to the proposed facility, and the consequent effects on tourism industry.**]**

(d) (No change)

(e) Standards relevant to onshore support bases are as follows:

1. New or expanded onshore support bases and marine terminals to support offshore oil and gas exploration, development, and production (including **but not limited to** facilities for work boats, crew boats and helicopeters, pipelaying barges, pipeline jet barges, ocean-going tugs, anchor handling vessels, and limited, short-term storage facilities) are encouraged at locations in **[**built-up urban coastal area**]** **the Urban Area, Delaware River and Northern Waterfront regions** and discouraged in **the CAFRA area [**less

developed areas of the coastal zone**]**.

i. (No change.)

ii. (No change.)

2. **Rationale:** Offshore exploratory activity began off New Jersey in the Baltimore Canyon on March 29, 1978**, but did not result in well production**. If **[**the**]** exploratory drilling is successful **in the future**, the offshore oil and gas industry is likely to seek onshore support bases **in New Jersey [**closer to the offshore tracts that the present temporary bases established by the major oil, gas, and offshore service and supply companies at Davisville, Rhode Island**]**. Because of shallow inlets in the **[**Bay and Ocean Shore Segment**] CAFRA area,** few locations in this part of New Jersey meet industry's siting requirements **or are suitable for such facilities**. This policy recognizes that the New Jersey coast is favored by proximity to **[**the**] potential** offshore tracts as a site for onshore staging bases, and carries out the basic policy to concentrate rather than disperse industrial development in the coastal zone.

(f) Standards relevant to platform fabrication yards and module construction are as follows:

1. Platform fabrication yards and module construction are encouraged in **[**built-up coastal areas of the coastal zone, along the Hudson, Raritan and**] the Urban Area,** Delaware River**[**s**] and Northern Waterfront regions,** which have the requisite acreage, adequate industrial infrastructure, ready access to the open sea, and adequate water depth, and where the operation of such a yard would not alter existing recreational uses of the ocean and waterways in the areas. They are discouraged elsewhere in the coastal zone.

2. (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 **[**Areas**] regions**. Repairs can be accommodated on an emergency basis in existing ship repair facilities in the **[**Atlantic Ocean and Delaware Bay area**] CAFRA area as defined at N.J.A.C. 7:7E-1.8,** but not on a continual, long-term basis.

2. Rationale: Ship repair yards presently exist in the developed coastal areas and

should be utilized by OCS vessels that will be based in the same portion of the coast. Small shipyards within the **[**Bay and Ocean Shore region**]** **CAFRA area** can serve valuable repair functions on an emergency basis because of their proximity to the offshore leased areas. Utilization of repair yards in this region on a continuing basis, however, is not encouraged because of the problems in meeting the OCS vessel draft requirements and because of possible conflicts with recreational vessels.

(h) Standards relevant to pipe coating yards are as follows:

1. Pipe coating yards are discouraged **[**along the Atlantic Ocean and Delaware Bay**]** **in the CAFRA area** and encouraged **in** **[**along the Delaware River and in the port area under the jurisdiction of**]** the Port **[**Authority**]** of New York and New Jersey **and the Port of Camden and Philadelphia**.

2. Rationale: Pipe coating yards constitute an industrial activity that is generally incompatible with the suburban and rural character of the **[**Delaware Bay and Atlantic Ocean shore region**]** **CAFRA area**. Further, pipe coating yards typically require 100-150 acres, and wharf space with a preferred depth at the wharf of 20 to 30 feet. These siting requirements suggest that highly industrial port areas are preferred locations.

(i) Standards relevant to pipelines and associated facilities are as follows:

1. Crude oil and natural gas pipelines to bring hydrocarbons from offshore **of the** New Jersey**[**'s**]** coast to existing refineries, **[**and**]** oil and gas transmission and distribution systems**,** and other new oil and natural gas pipelines are conditionally acceptable, **provided** **[**subject to the following conditions and restrictions**]**:

i. For safety and conservation of resources, the number of pipeline corridors, including trunk pipelines for natural gas and oil, shall be limited, to the maximum extent feasible, and designated following appropriate study and analysis by **[**the DEP Office of Energy and Land Use Regulation Program, and**]** interested Federal, State and local agencies, affected industries, and the general public;

ii. The pipeline corridors for landing oil or natural gas are to be located in or adjacent to existing already developed or disturbed road, railroad, pipeline, electrical transmission or other rights-of-way, to the maximum extent practicable;

[iii. Oil and gas pipelines are subject to the following restrictions, respectively, regarding the Central Pine Barrens and other particularly sensitive areas:

(1) Pipeline corridors for landing oil are prohibited in the Central Pine Barrens area of the Mullica River, Cedar Creek watersheds and portions of the Rancocas Creek and Toms River watersheds, defined as the 760 square mile region adopted by DEP as "critical area" for sewerage purposes and non-degradation surface and groundwater quality standards (see N.J.A.C. 7:9-4.6(i), (j), and N.J.A.C. 7:9-10.1(b) and Appendix, Figure 16 incorporated herein by reference), and discouraged in other undeveloped parts of the Pine Barrens; and

(2) Pipeline corridors for natural gas are discouraged in the Central Pine Barrens as defined above, unless the developer can demonstrate that the construction and operation of the proposed pipeline will meet the adopted non-degradation standards for water quality and cause no long-term adverse environmental impacts;**]**

[iv.**]** **iii** Proposals to construct offshore oil and gas pipelines, originating on the Outer Continental Shelf, and all of the contemplated ancillary facilities along the pipeline route such as, for example, gas separation and dehydration facilities, gas processing plants, oil storage terminals, and oil refineries**,** will be evaluated **[**by the Department's Office of Energy and Land Use Regulation Program**]** in terms of the entire pipeline corridor through the State of New Jersey and **[**the adjacent**]** **its coastal waters** **[**territorial sea**]**;

iv. Pipeline corridors through the State coastal waters shall, to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats;

v. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations;

[v.**]****2.** **[**To preserve the recreational and resort character of the coastal areas, the following conditions and prohibitions shall apply to oil and gas pipeline-related facilities:

(1)**]** New major pumping stations and other ancillary facilities associated with offshore oil and gas pipelines**, not specifically identified in this section,** **[**shall be**]** **are** discouraged **[**from locations in the Bay and Ocean Shore**]** **in the CAFRA** area **and coastal waters**;

[(2) Gas separation and dehydration plants and compressor stations and other facilities associated with natural gas pipelines which are approved shall be protected by adequate

visual, sound, and vegetative buffer areas; and**]**

3. Oil and gas pipeline related facilities shall provide adequate visual, sound, and vegetative buffers; and

[(3)**]4.** Offshore platforms for pumping or compressor stations are encouraged to be located out of sight of the shoreline.

[vi. Pipeline corridors through the State coastal waters shall, at a minimum and to the maximum extent feasible, avoid offshore munitions, chemical and waste disposal areas, heavily used waterways, geological faults, wetlands and significant fish or shellfish habitats.

vii. Pipelines shall be buried to a depth sufficient to minimize exposure by scouring, ship groundings, anchors, fishing and clamming and other potential obstacles on the sea floor. Trenching operations shall be conducted in accordance with applicable Federal regulations.**]**

[2.**] 5.** Rationale: New Jersey recognizes that pipelines, rather than other modes of surface transportation such as tankers and barges, are the preferred and more environmentally sound method of bringing crude oil and natural gas ashore from offshore wells. The impact**s** of pipelines are most evident during the construction phase. **[**However, these impacts used on the potential onshore effects of pipelines on the sensitive ecosystem of the coast and the Pine Barrens.**]** These effects and the visual, noise, and odor impacts which may be created by facilities associated with OCS pipelines, require that New Jersey proceed cautiously and prudently in selecting pipeline corridors, specific alignments, and locations for ancillary facilities.

[New Jersey, along with the numerous public and private interests at the local, state, and national levels involved in pipeline siting, is participating in the intergovernmental offshore oil and gas transportation planning process being coordinated by the U.S. Department of Interior, Minerals Management Service (MMS). MMS has promoted the concept of a common carrier pipeline in recent years by including a stipulation in all lease sales which requires pipelines constructed on the OCS to be placed in designated corridors. New Jersey, in conjunction with MMS (formerly Bureau of Land Management) prepared a study in 1981 on pipeline corridors in the Mid-Atlantic titled "Hudson Canyon Transportation Management Plan". The Federal Energy Regulatory Commission which has the overriding responsibility for siting natural gas Pipelines, has also endorsed the concept of designated utility corridors.**]**

(j) Standards relevant to gas separation and dehydration facilities are as follows:

1. **[**Definitions:**] For the purposes of this paragraph, the following terms have the following meanings:**

i. "Separation" **[**is defined as**] means** the removal of free liquids from a gas stream. **[**They**] Free liquids** may be either hydrocarbon liquids**[**,**] (**which may be processed into fuels such as ethane, butane **(**and propane**)[**,**]** or free water.

ii. "Dehydration" **[**is**] means** the removal of water vapor from the gas stream after separation of the liquid from the gas.

2. Separation and dehydration facilities are discouraged in the **[**Bay and Ocean Shore area**] CAFRA area and coastal waters**. **[**Such facilities that are approved shall meet all applicable air and water quality standards, and be protected by**]**

3. Separation and dehydration facilities shall:

i. Provide adequate visual, sound, and vegetative buffers**; and[**. Separation and dehydration facilities will be**]**

ii. Be reviewed as part of the overall proposed gas transportation system **[**by the Department**]**.

[3.**] 4.** (No change.)

(k) Standards relevant to gas compressor stations are as follows:

1. (No change.)

2. Compressor stations are encouraged to be located out of the sight of the shoreline on platforms in offshore waters. They are discouraged **[**from locations in the Bay and Ocean Shore area**] in the CAFRA area and coastal waters**.

3. (No change.)

(l) Standards relevant to gas pigging facility are as follows:

1. A "pig" is a scraping tool that is forced through a pipeline to clean out accumulations of wax, scale, gas liquids or any foreign materials from the inside walls of the pipe. The pig is inserted offshore and would be removed at an **[**offshore**] onshore** location called a "pigging facility."

2. A pigging facility, which may or may not be associated with a separation and dehydration facility, is discouraged in the **[**Bay and Ocean Shore area**] CAFRA area**.

The need for and location of the facility will be reviewed within the context of the entire natural gas pipeline system.

3. (No change.)

(m) Standards relevant to gas processing plants are as follows:

1. (No change.)

2. Gas processing plants proposed for locations between the offshore pipeline landfall and interstate natural gas transmission lines shall be prohibited from sites within the **[**Bay and Ocean Shore area**]** **CAFRA area** and shall be located the maximum distance from the shoreline. The siting of gas processing plants will be reviewed in terms of the total pipeline routing system **[**by the Department's Office of Energy and the Program**]**.

3. (No change.)

(n) Standards relevant to other gas-related facilities are as follows:

1. Additional facilities related to a natural gas pipeline such as metering and regulating stations, odorization plants, and block valves are conditionally acceptable in the **[**Bay and Ocean Shore area**]** **CAFRA area** **[**provided they are protected by**]** **if** adequate visual, sound, and vegetative buffer areas **are provided** **[**; are approved by the Office of Energy and Program; and are in compliance with United States Department of Transportation regulation**]**.

2. (No change.)

(o) Standards relevant to oil refineries and petrochemical facilities are as follows:

1. New oil refineries and petrochemical facilities are conditionally acceptable outside of the **[**Bay and Ocean Shore area**]** **CAFRA area** provided **[**that:**]** they are consistent with all applicable Location and Resource rules**[**; there is a need for the facility as determined by the Office of Energy; and an Environmental Impact Statement determines that the facility will have no unacceptable impacts.**]**

[i.**]****2.** New oil refineries and petrochemical facilities outside the **[**Bay and Ocean Shore area**]** **CAFRA area** are encouraged to locate in established industrial areas accessible to their potential labor force **and existing infrastructure**.

[ii.**]****3.** New oil refineries and petrochemical facilities are prohibited in the **[**Bay and Ocean Shore Segment**]** **CAFRA area**.

[iii.**]4.** Expansion in capacity of existing oil refineries and petrochemical facilities at existing sites, which are all located outside of the **[**Bay and Ocean Shore Region**]** **CAFRA area**, will be acceptable if such expansion does not violate applicable State air and water quality standards.

[2.**]5.** (No change.)

(p) Standards relevant to storage of crude oil, gases and other potentially hazardous liquid substances are as follows:

1. The storage of crude oil, gases and other potentially hazardous liquid substances as defined in N.J.A.C. 7:1E-1.1 under the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.) is prohibited on barrier islands and discouraged elsewhere in the **[**Delaware and Raritan Bay and Atlantic Ocean Shore region**]** **CAFRA area**.

[i.**]2. The storage of crude oil, gases and other potentially hazardous liquid substances is [**In**] conditionally acceptable in** the **Urban Area,** Northern Waterfront and Delaware River **[**areas**] regions[**, such facilities are conditionally acceptable if they meet air and water Resource Policies and are**] if it is** compatible with or adequately buffered from surrounding uses.

3. The storage of crude oil, gases and other potentially hazardous liquid substances is not acceptable where it would limit or conflict with a potential recreational use.

[ii.**]4. [**They are**] The storage of crude oil, gases and other potentially hazardous liquid substances is** not acceptable along the water's edge unless **[**they are**] the storage facility is** supplied by ship, in which case **[**they are**] it is** acceptable on the filled water's edge **[**subject to the above conditions**] provided the storage facility complies with (p)1, 2 and 3 above**.

[iii. They are not acceptable where they would limit or conflict with a potential recreational use.**]**

[2.**] 5.** (No change.)

(q) Standards relevant to tanker terminals are as follows:

1. New or expanded tanker facilities **[**will be**] are** acceptable only in existing ports and harbors where the required channel depths exist to accommodate tankers.

i. Multi-company use of existing and new tanker terminals **[**will be**]** **is** encouraged in the Port of New York and New Jersey and **[**in the area bounded by the Delaware River Port Authority,**]** **the Port of Camden and Philadelphia,** where adequate infrastructure exists to accommodate the secondary impacts which may be generated by such terminals, such as processing and storage facilities.

[ii.**]** **2.** New tanker terminals **[**will be**]** **are** discouraged in **[**other parts of the coast**]** **areas not identified in (q)1 above**.

[iii.**]** **3.** Offshore tanker terminals and deepwater ports are discouraged **[**from the Bay and Ocean Shore Region, pending a thorough evaluation of the implications of such a facility**]**.

[2.**]** **4.** Rationale: Onshore tanker facilities pose potential adverse environmental impacts and could encourage secondary development activity that is not necessarily coastal dependent. Also, even medium sized tankers require minimum channel depths of 30 feet, which excludes locations within the **[**Bay and Ocean Shore Region**]** **CAFRA area**. New or expanded tanker**[**s**]** terminals are therefore directed toward New Jersey's established port areas. Deepwater ports appear attractive to industry due to increasingly larger tankers, limitations on dredging and the scarcity of waterfront land. However, a deepwater port may, depending on its location, cause severe adverse primary and secondary impacts on the built, natural, and social environment.

(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 **[**subject to the conditions that follow. Conversion or modification of existing generating facilities for purposes of fuel efficiency, cost reduction, or national interest are conditionally acceptable provided they meet applicable State and Federal laws and standards.**]** **provided:**

[i. The construction and operation of the proposed facility shall comply with the Rules on Coastal Zone Management, with special reference to air and water quality standards and policies on marine resources and wildlife. **]**

[ii.**]** **i.** The **[**Office of Energy and the Program shall find the**]** proposed location and **site** design of the electric generating facility is the **[**most reasonable**]** alternative **which has the least practicable impacts to the coastal zone,** **[**for the production of electrical power that the Office of Energy has determined is needed. The finding shall be**]** based

on a comparative evaluation **[**by the applicant**]** of alternative sites within the coastal zone and inland**[**,**]**. **[**and of alternative technologies for the transportation and conversion of energy as well as the productive use of plant residuals, including thermal discharges.**]**

[iii.**]** **ii.** (No change in text.)

[iv.**]** **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, **[**NJDEP shall find that**]** the nuclear generating facility **[**is proposed for a location where the appropriate**]** **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.

[v.**]** **iv.** The construction and operation of a nuclear generating station shall not be approved unless **[**DEP finds that**]** 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.

[vi.**]****v.** (No change in text.)

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.

[2.**]****3.** (No change in text.)

(s) Standards relevant to liquefied natural gas (LNG) facilities are as follows:

1. New marine terminals and associated facilities that receive, store, and vaporize liquefied natural gas for transmission by pipeline **[**to a base-load electric generating station**]** are discouraged in the coastal zone unless a clear and precise justification for such facilities exists in the national interest; the proposed facility is located and constructed so as to neither unduly endanger human life and property, nor otherwise impair the public health, safety and welfare, as required by N.J.S.A. 13:19-10f; and such

facilities comply with the Coastal **[**Resource and Development Policies**]** **Zone Management rules**.

i. LNG facilities shall be sited **and operated** in accordance with the standards set forth in **the Natural Gas Act of 1938, 15 U.S.C. 717-717z, the Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432, the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 et seq, the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2776, October 24, 1992, and the National Environmental Policy Act, 42 U.S.C. 4321 et seq. which set forth standards for siting, design, installation, inspection, testing, construction, operation, transportation of gas, replacement, and maintenance of facilities.** **[**P.L. 96-129, Title I Subtitle B, Pipeline Safety Act of 1979, Section 6(a)(3), which states that no new LNG facility may be operated unless an accident contingency plan is found to be adequate by the Department of Transportation under the Natural Gas Act.**]**

ii. In determining the acceptability of proposed LNG facilities**[**, DEP**]** **the Department** will consider siting criteria **[**such as:**]** **including but not limited to:**

(1) **[**the**]** **The** risks inherent in tankering LNG along New Jersey's waterways;

(2) **[**the**]** **The** risks inherent in transferring LNG onshore; and

(3) **[**the**]** **The** compatibility of the facility with surrounding land uses, population densities, and concentrations of commercial or industrial activity.

iii. (No change.)

2. (No change.)

7:7E-7.5 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,** and shall be limited to situations where:

i. – vi. (No change.);

2. (No change.)

(b) – (d) (No change.)

7:7E-7.6 Public Facility Use rule

(a) (No change.)

[(b) Standards relevant to general public facilities are as follows:

1. Upgrading existing facilities to meet development and redevelopment needs in developed waterfront areas is encouraged. New or expanded public facility development (except wastewater treatment facilities) is conditionally acceptable provided that:

i. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

ii. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

iii. The public facility would not generate significant secondary impacts inconsistent with the Rules on Coastal Zone Management.

2. Rationale: Solid waste conservation techniques such as recycling, resource and energy recovery and volume reduction, must be explored and proved infeasible before a new or expanded sanitary landfill preferably at a regional scale, is deemed acceptable.

Sanitary landfills must demonstrate that the leachate will not adversely impact the ground or surface waters, by using an impervious liner and/or leachate collection, treatment and disposal system. Acceptable plans for restoring the site must be submitted with the original proposal.**]**

[(c) Standards relevant to solid waste facilities are as follows:**]** **(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. Solid waste conservation techniques such as recycling, resource and energy recovery, and volume reduction **[**must be**]** **are** explored and proved infeasible before a new or expanded sanitary landfill, preferably at a regional scale, is deemed acceptable**[**.**]**;

ii. The solid waste facility is not located in a coastal wetland as provided at N.J.A.C. 7:7-2.2(b); and

[2. Sanitary landfills that are located in the upland shall demonstrate that the leachate will not adversely impact the ground or surface waters by using an impervious liner and/or leachate collection, treatment and disposal system. Acceptable plans for restoring the site must be submitted with the original proposal.

3. Sanitary landfills are prohibited in Wetlands.**]**

iii. The solid waste facility complies with the Solid and hazardous waste rule at N.J.A.C. 7:7E-8.22.

2. Rationale: Solid Waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulation of the Department's Division of Solid and Hazardous Waste.

[(d) Standards relevant to wastewater treatment facilities are as follows:**] (c) Wastewater treatment facilities are conditionally acceptable provided:**

1. **The** **[**Wastewater**]** **wastewater** treatment **[**facilities**]** **facility,** **[**(**]**including sewer lines**[**) are conditionally acceptable provided they are**],is** consistent with **an approved** Water Quality Management (208) Plan **[**approved by the Office of Land and Water Planning, and comply with the following:**];**

[i. Wastewater treatment facilities shall not generate significant secondary**] 2. The secondary** impacts **associated with the facility are** **[**inconsistent**] consistent** with the **[**Rules on**]** Coastal Zone Management **rules[**.**]; and**

[ii. Wastewater treatment facilities**] 3. The facility** shall**[**, to the maximum extent feasible,**]** provide for multiple use of the site, including open space and recreation use**, to the maximum extent feasible**.

4. Rationale: Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plants, major interceptors, and ocean outfalls. In the past decades considerable wastewater treatment facility construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements to water quality. New

wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The Federal Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal Zone Management rules support and extend this federal policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.

(d) New or expanded public facilities other than those listed at (b) and (c) above are conditionally acceptable provided:

1. The public facility would serve a demonstrated need that cannot be met by an existing public facility at the site or region;

2. Alternate technologies, including conservation, are an impractical or infeasible approach to meeting all or part of the need for the public facility; and

3. The public facility would not generate significant secondary impacts inconsistent with the Coastal Zone Management rules.

[(e) Rationale: Public facilities provide all important public services, but can also adversely affect the coastal environment and economy if improperly located, designed, or constructed. In particular, the secondary impacts of new public facility construction and the need for the facility require scrutiny. In developed areas, some inadequate public facilities need to be upgraded and improved.

Solid Waste is a resource whose potential for recovery must be evaluated before locating new sanitary landfills. Further regional solutions to solid waste management are mandated under State law. In addition, the development of new landfills is subject to the regulation of the Department's Division of Solid Waste Management.

Wastewater treatment systems range in scale from on-site sewage disposal systems to regional treatment systems with centralized plans, major interceptors, and ocean outfalls. In the past decade considerable wastewater construction has taken place or been authorized in developing parts of the coastal zone with corresponding improvements to water quality. New wastewater treatment systems must be carefully evaluated in terms of water quality impacts and secondary impacts.

The Federal Clean Water Act encourages federally funded wastewater treatment facilities to provide for multiple use of the site. The Coastal rules support and extend this federal policy by requiring that all new wastewater treatment facilities in the coastal zone consider the feasibility of multiple use.**]**

7:7E-7.7 Industry Use rule

(a) Industry uses **[**include a wide variety of**]** **are uses that involve** industrial processing, manufacturing**,** storage **[**and**]** **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 processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products**. **[**Industry is defined by Standard Industrial Classification (SIC) categories 2011 to 3999, except for 2991 (petroleum refining), which is covered by Use rule N.J.A.C. 7:7E-7.4(i).**]** **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.**

(b) **[**Industry is**]** **Industrial uses are** encouraged in special water areas**. Elsewhere, industrial uses are** **[**and**]** conditionally acceptable **[**elsewhere**]** provided **[**it is compatible**]****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 and 7:7E-3.32; to **[**Resource**]** **the Buffers and compatibility of uses** rule N.J.A.C. 7:7E-8.13, which requires that the use be compatible with existing uses in the area or adequate buffering be provided; and **[**Resource**]** **the Public access to the waterfront** rule N.J.A.C. 7:7E-8.11 which places public access requirements upon the use.

(c) – (g) (No change.)

7:7E-7.9 Port Use rule

(a) **[**"**]**Port uses**[**"**]** are 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.

(b) (No change.)

(c) New port uses outside of existing ports **[**(see definition),**]** **as defined at** N.J.A.C. 7:7E-3.11**(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-7.11 Coastal Engineering

(a) Coastal engineering includes a variety of structural and non-structural measures to manage water areas and the shoreline for natural effects of erosion, storms, and sediment and sand movement. Beach nourishment, sand fences, pedestrian control on dunes, stabilization of dunes, dune restoration projects, dredged material disposal and the construction of retaining structures such as bulkheads, **gabions,** revetments and seawalls are all examples of coastal engineering.

1. **[**Coastal engineering standards are subject to the Location rules on General Water Areas and to the Special Area rules. These coastal engineering use rules**]** **the standards relevant to shore protection priorities in (b) below** do not apply to water dependent uses within existing ports.

(b) (No change.)

(c) Standards relevant to dune management are as follows:

1. Dune restoration, creation and maintenance projects as non-structural shore protection measures, including sand fencing, revegetation, additions of non-toxic appropriately sized material, control of pedestrian and vehicular traffic, are encouraged.

These projects **[**must be carried out in accordance**]** **shall comply** with N.J.A.C. 7:7E-3A, Standards for Beach and Dune Activities.

2. (No change.)

(d) (No change.)

(e) Standards relevant to structural shore protection are as follows:

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 it meets all of the following five conditions:

i. The structure is essential to protect water dependent uses or heavily used public recreation beach areas in danger from tidal waters or erosion, or the structure is essential to protect existing structures and infrastructure in developed shorefront areas in danger from erosion, or the structure is essential to mitigate, through, for example, the construction of a retained earthen berm, the projected erosion in an erosion hazard area along a headland and provide erosion protection for a development that is otherwise acceptable under the **[**Rules on**]** Coastal Zone Management **rules**;

ii. – v. (No change.)

vi. If the proposed project requires filling of a water area it must be consistent with the General Water Area rule for Filling (N.J.A.C. 7:7E-**[**4.2(j)**]** **4.10**) and all other relevant coastal rules.

[2. Maintenance or reconstruction of an existing bulkhead is conditionally acceptable, provided it does not result in the extension of the structure or the upland by more than 18 inches in any direction. Maintenance or reconstruction of an existing bulkhead which results in extension of the structure or upland by more than 18 inches shall be considered new construction, unless it can be demonstrated that the existing bulkhead can not physically accommodate an 18 inch replacement. In such cases, the Department may allow for bulkhead replacement at a location which is as close as physically possible to the existing bulkhead sheathing. All measurements shall be made from the waterward face of the existing bulkhead sheathing to the waterward face of the new bulkhead sheathing.**]**

2. Maintenance or construction of an existing bulkhead is conditionally acceptable provided that it meets (e)2i, ii or iii below. All measurements shall be made from the waterward face of the original bulkhead alignment of the existing bulkhead to the waterward face of the replacement bulkhead.

i. The replacement bulkhead is located within 18 inches outshore of the existing bulkhead, except in accordance with (e)2ii or iii below;

ii. The replacement bulkhead is located no more than 24 inches outshore of the existing bulkhead when the replacement bulkhead is constructed of a corrugated material, and the replacement bulkhead is located as close as possible to the face of the existing bulkhead; or

iii. Maintenance or reconstruction of an existing bulkhead which does not meet (e)2i or ii above shall be considered new construction, unless it can be demonstrated that the existing bulkhead cannot physically accommodate a replacement in accordance with (e)2i or ii above. In such case, the replacement bulkhead shall be as close as physically possible to the original bulkhead alignment.

3. Stone rip-rap and sloped concrete **and gabion** revetments which allow for growth of vegetation are the preferred form of retaining structures.

4. – 6. (No change.)

7:7E-7.12 Dredge**d** Material **[**Disposal**]** **Placement** on Land

(a) Dredged material **[**disposal**]** **placement** is the **[**discharge**]** **disposal or beneficial use** of sediments**[**,**]** removed during dredging operations. **Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate.** **[**The following rules govern Land and Water's Edge disposal only.**]** **This rule applies to the placement of dredged material landward of the spring high water line.** The **[**rule regulating**]** **standards for** dredged material disposal in Water Areas are found **[**in**]** **at** N.J.A.C. 7:7E-**[**4.2**]** **4.8**.

(b) Dredged material **[**disposal is conditionally acceptable under the following conditions: sediments are covered with appropriate clean material that is similar in texture to

surrounding soils, and the sediments will not pollute the groundwater table by seepage, degrade surface water quality, present an objectionable odor in the vicinity of the disposal area, or degrade the landscape.**]** **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.**

[1.**]** **(c)** Dredged material disposal is prohibited on wetlands unless the disposal satisfies the criteria found at N.J.A.C. 7:7E-3.27.

[2. The use of uncontaminated dredged material of appropriate quality and particle size for beach nourishment is encouraged. Creation of useful materials such as bricks and lightweight aggregate from the dredged material is encouraged.**]**

[3.**]** **(d)** The use of **[**uncontaminated**]** dredged material **of appropriate quality and particle size** for purposes such as restoring landscape, enhancing farming areas, **[**creating recreation-oriented landfill sites**]** **capping and remediating landfills and brownfields**, **[**including**]** beach protection **[**and general land reclamation**]**, creating marshes, capping contaminated dredged material disposal areas, and making new wildlife habitats is encouraged.

[4.**]** **(e)** (No change.)

[5.**]** **(f)** (No change.)

[6.**]** **(g)** (No change.)

[7.**]** **(h)** **[**Dewatering**]** **All potential** releases **of water** from confined (diked) disposal sites and rehandling basins shall meet existing State **Surface** Water Quality Standards (N.J.A.C. 7:9**B[**-4 through 6**]**) **and State Groundwater Quality Standards (N.J.A.C. 7:9)**.

(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.

[(c)**]** **(j)** Rationale: Dredged material disposal is an essential coastal land and water use that is linked inextricably to the coastal economy. Dredged material **[**disposal**]** **placement on land** could have serious impacts in the coastal environment. In the past decade, evolving state and federal policies for protection of the marine and estuarine coastal environment have sharply limited the **[**creation**]** **designation** of new **open** water **[**area**]** dredged material disposal areas. Yet maintenance dredging must continue if inlets and navigation channels are to be maintained. This rule recognizes the importance of this use of coastal resources and the need for **[**land disposal**]** sites **landward of the spring high water line where this material can be placed**.

[Use of inefficient or faulty equipment and methods in the movement of dredged material, may result in spillage of fuels, emission of toxic or noxious gases, loss of dredged materials, and noise and vibrations. These cause water pollution, air pollution and discomfort both for the crews and for the human population along the disposal route and nearby areas.**]**

Dredged material may contain pollutants and thus dredging and dredged material placement must be managed to minimize impacts on water, air and habitat. Further, every precaution should be taken to ensure that the placement of dredged material on land does not endanger the natural coastal resources, human health or the environment. Therefore, due investigation is required prior to approval of dredge**d** material **[**disposal**]** **placement** on land. **[**Further, every precaution should be taken to ensure that the placement of dredge material does not endanger the natural coastal resources.**]**

7:7E-7.13 National Defense Facilities Use rule

(a) A **["]**national defense facility**["]** is any building, group of buildings, marine terminal, or land area owned or operated by a defense agency (Army, Navy, Air Force, Marines, Coast Guard) and used for training, research, material support, or any other defense-related use.

(b) National Defense facilities are conditionally acceptable**[**, and will be approved if one

of two findings can be made:**]** **provided the development meets either (b)1 or 2 below:**

1. The proposed facility is consistent with all relevant **[**Coastal Resource and Development Policies**]** **Coastal Zone Management rules**; or

2. The proposed facility is coastally dependent, will be constructed and operated with maximum possible consistency with Coastal **[**Resource and Development Policies**]** **Zone Management rules**, and will result in minimal feasible degradation of the natural environment.

(c) - (d) (No change.)

7:7E-7.14 High Rise Structures

(a) **[**All high rise structures**]** **High-rise structures are structures which are** more than six stories or more than 60 feet **in height as measured** from existing preconstruction ground level **[**are encouraged to locate in an area of existing high density, high-rise and/or intense settlements. High-rise housing and structures which do not meet (b) below, shall comply with the following conditions:**]**

(b) The standards for high-rise structures are as follows:

1. High-rise structures are encouraged to locate in an urban area of existing high density, high-rise and/or intense settlements;

[1.**]** **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-**[**3.46**]** **3.48**;

[2.**]** **3.** The longest lateral dimension of any high-rise structure must be oriented perpendicular to the beach or coastal waters, except for 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-**[**7.5**]** **7.4**.

[3.**]** **4.** (No change.)

[4.**]** **5.** High-rise structures outside of the Hudson River **[**Waterfront Special**]** **waterfront special** area as defined by N.J.A.C. 7:7E-**[**3.46**]** **3.48** 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;

[5.**]** **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 **[**Resource and Development Policies**]** **Zone Management rules**;

[6.**]** **7.** The proposed structure must not have an adverse impact on air quality, traffic, and existing infrastructure; **and**

[7.**]** **8.** (No change.)

[(b)**]** **(c)** The High-rise **[**Structures**]** **structures** rule shall not apply to the following types of development:

1. (No change.)

[(c)**]** **(d)** (No change.)

SUBCHAPTER 8. RESOURCE RULES

7:7E-8.1 Purpose

(a) **[**The third step in the screening process of the Rules on Coastal Zone Management involves a review of a proposed development**]** **In addition to satisfying the location and use rules, a proposed development must satisfy the requirements of this Subchapter. This subchapter contains the standards the Department utilizes to analyze the 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. **[**These rules serve as standards to which proposed development must adhere.**]**

[(b) In addition to the standards addressed in this subchapter, proposed development must also adhere to applicable site development standards administered by other State and local agencies. These include, but are not limited to, standards adopted by local Soil Conservation Districts or municipalities pursuant to the Soil and Sediment Control Act (N.J.S.A. 4:24-39 et seq.); Barrier Free Design Requirements promulgated by the

New Jersey Department of Community Affairs pursuant to N.J.S.A. 52:32.1 et seq. and N.J.S.A. 52:27D-123 and N.J.A.C. 5:23-3.2 and 5:23-3.14, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. and its implementing regulations set forth at N.J.A.C. 7:7A.**]**

7:7E-8.2 Marine Fish and Fisheries

(a) **[**Coastal actions are conditionally acceptable to the extent that minimal feasible interference is caused to the natural functioning of marine fish and fisheries, including the reproductive and migratory patterns of estuarine and marine estuarine-dependent species of finfish and shellfish.**]** **Marine fish are marine and estuarine animals other than marine mammals and birds. Marine fisheries means:**

1. One or more stocks of marine fish which can be treated as a unit for the purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

2. The catching, taking or harvesting of marine fish.

(b) Any activity that would adversely impact on the natural functioning of marine fish, including the reproductive, spawning and migratory patterns or species abundance or diversity of marine fish, is discouraged. In addition, any activity that would adversely impact any New Jersey based marine fisheries or access thereto is discouraged, unless it complies with (c) below.

(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;

1. Construction of submerged cables and pipelines;

2. Sand and gravel mining to obtain material for beach nourishment, provided :

i. The beach nourishment project is in the public interest;

ii. There are no alternative borrow sites that would result in less impact to marine fish and fisheries;

iii. Any alteration of existing bathymetry within Prime Fishing areas, as defined at N.J.A.C. 7:7E-3.4, does not reduce the high fishery productivity of these areas;

and

iv. Measures are implemented to minimize and compensate for impacts to marine fish and fisheries; and

3. The establishment of Aquaculture Development Zones in accordance with N.J.S.A. 4:27-1 et seq. and any regulations developed and adopted pursuant thereto.

(d) Rationale: Finfish (freshwater, estuarine, and marine) and shellfish resources**, and the habitats that support these resources** provide significant recreation experiences for residents of New Jersey and interstate visitors. These resources also help the State's economy, by leading to expenditures of approximately $**[**375.8**]** **747** million per year **[**, with fishing yielding approximately $217.2 million and shellfishing yielding $158.6 million**]**. **(New Jersey Department of Agriculture, 1995, American Sportsfishing Association, 1996, and Southwick Associates, 1999)** **[**DEP **]** **The Department** also estimates that **[**1,868,000**]** **944,000** people participated in marine/estuarine recreational fishing in **[**1976**]** **1996** in New Jersey. **(US Department of Commerce, National Marine Fisheries Service, 1996)** **The value of and participation in recreational saltwater fishing is underestimated here as these figures only include finfish data and do not include recreational crabbing and clamming, which are important activities in New Jersey.** Commercial landings for all finfish and shellfish in New Jersey during **[**1978**]** **1996** were **[**163,603,000 lbs.**]** **182,859,637** **pounds**, valued at $**[**44.35**]** **94.8** million dockside **[**and an estimated $110.9 million retail value**]**, according to Department of Commerce statistics **(1996)**. **[**The 1956 landings of 540 million pounds of all finfish and shellfish indicate the true potential of this industry.**]** **The total ripple effect on the State economy is estimated at $2.1 billion, with recreational fishing yielding $1.5 billion and commercial fishing yielding $590.7 million. (Southwick Associates, 1999)**

[Interference with fish resources includes**]** **Activities which may interfere with marine fish and fisheries include** blockage of diadromous finfish spawning runs, reduction in the critical capacity of estuaries to function as finfish nursery **or spawning** areas, reduction of summer dissolved oxygen level below 4 pm stimulating anoxic phytoplankton blooms, introduction of heavy metals or other toxic agents into coastal water, rise in ambient water temperature regime especially during summer and fall

periods, unacceptable increase in turbidity levels, siltation, or resuspension of toxic agents, **excavation of marine substrate to obtain sand resources or to install submarine pipelines,** and introduction of **[**untreated**]** effluents from domestic and industrial sources.

Water presently condemned for shellfishing may not be directly or immediately important to human economics although these areas have been used as resource recovery programs, relay and depuration, source areas. These areas however serve for restocking fishable areas through production of motile larvae. Shellfish in condemned waters also are not lost to estuarine ecological food-webs, but serve as a food source to other species of wildlife.

Sand mining for the purpose of beach nourishment has the potential to impact marine fish and fisheries by altering the contours of the water bottom (bathymetry) within borrow areas or by covering fishery resources and/or habitat through the placement of sand, thereby reducing the productivity of these areas. In order to conduct mining activities in a manner that does not adversely affect marine fish and fisheries. Design measures may include, but are not limited to, modifying the location and dimensions of proposed borrow areas, creating and/or enhancing habitat at or near the borrow site, requiring timing restrictions on sand mining activities, limiting frequency of borrow activities, and reducing allowable sand mining volumes.

Fishery Management Plans are developed by the Regional Fisheries Management Councils, National Marine Fisheries Service and Atlantic States Marine Fisheries Commission in accordance with the Federal Fisheries Conservation and Management Act of 1976, P.L. 94-265, as amended or the Federal Atlantic Coastal Fisheries Cooperative Management Act, P.L. 103-206, as amended. Fishery Management Plans are also developed by the Department pursuant to the State's Marine Fisheries Management and Commercial Fisheries Act pursuant to N.J.S.A. 23:2B-1 et seq.. Fishery Management Plans are intended to prevent overfishing of marine fish and to achieve optimal yield from each fishery on a continuing basis. These Plans are adopted on a regional basis and provide for long-term viability of marine fish and fisheries. This rule provides the Department the ability to ensure that Fishery Management Plans, as well as

developmental and other activities, will not adversely affect New Jersey's recreational and commercial marine fisheries.

7:7E-8.5 Surface Water Use

(a) (No change.)

(b) Coastal development shall demonstrate that the anticipated surface water demand of the facility will not exceed the capacity, including phased planned increases, of the local potable water supply system or reserve capacity, and that construction of the facility will not cause unacceptable surface water disturbances, such as drawdown, bottom scour, or alteration of flow patterns.

1. Coastal development shall conform with all applicable **[**DEP**] Department** and, in the Delaware River Area, Delaware River Basin Commission requirements for surface water diversions.

(c) (No change.)

7:7E-8.8 Vegetation

(a) **["]**Vegetation**["]** is the plant life or total plant cover that is found on a specific area, whether indigenous or introduced by humans.

(b) Coastal development shall preserve, to the maximum extent practicable, existing vegetation within a development site. Coastal development shall plant new vegetation, particularly appropriate **[**native**]** coastal species**[**,**] native to New Jersey** to the maximum extent practicable.

(c) (No change.)

7:7E-8.10 Air Quality

(a) The protection of air resources refers to the protection from air contaminants that injure human health, welfare or property, and **[**to**]** **the** attainment and maintenance of State and Federal air quality goals and the prevention of degradation of current levels of air quality.

(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 transportational services, **[**as required under the Traffic Policy (N.J.A.C. 7:7E-8.14(b))**]** **in accordance with the Traffic rule, N.J.A.C. 7:7E-8.14**.

(d) (No change.)

7:7E-8.11 Public Access to the Waterfront

(a) (No change.)

(b) Coastal development adjacent to all coastal waters, including both natural and developed waterfront areas, shall provide permanent perpendicular and linear access to the waterfront to the maximum extent practicable, including both visual and physical access. Development that limits public access and the diversity of the waterfront experiences is discouraged.

1. – 5. (No change.)

6. Public access, including parking where appropriate, shall be provided to publicly funded shore protection structures**, beaches nourished with public funds** and to waterfronts created by public projects unless such access would create a safety hazard to the user. Physical barriers or local regulations which unreasonably interfere with access to, along or across a structure **or beach** are prohibited.

7. Development **located** within the Hudson River Waterfront Special Area shall **comply**

[conform**]** with the additional requirements of **the Hudson River Waterfront rule,** N.J.A.C. 7:7E-3.48.

8. (No change.)

9. Development within the Atlantic City Special Area shall **[**conform**]** **comply** with the additional requirements of the **Atlantic City rule at N.J.A.C. 7:7E-3.49**.

10. Development elsewhere in the coastal zone shall conform with any adopted municipal, county or regional waterfront access plan, provided the plan is consistent with the **[**Rules on**]** Coastal Zone Management **rules**.

11. – 14. (No change.)

(c) – (d) (No change.)

7:7E-8.13 Buffers and Compatibility of Uses

(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 **[**(N.J.A.C. 7:7E-3.1 through 3.48)**]** **N.J.A.C. 7:7E-3,** 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 **[**rule regarding**]** **standards for** wetland buffers **[**is**]** **are** found at N.J.A.C. 7:7E-3.28.

3. (No change.)

(c) (No change.)

7:7E-8.22 Solid and Hazardous Waste

(a) Solid waste means any garbage, refuse, sludge or other waste material, including solid, liquid, semi-solid or contained gaseous material. A material is a solid waste if it is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that such material or any constituent thereof may enter the environment or be emitted into the air or discharged into ground or surface waters. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in the Federal Regulations on Identification and Listing of Hazardous Waste (40 C.F.R. 261). The general characteristics of hazardous waste include, but are not limited to, characteristics of ignitibility, characteristics of corrosivity, characteristics of reactivity and characteristics of toxicity.

1. Solid waste shall not include the following:

i. Source separated food waste collected by livestock producers approved by the State's Department of Agriculture who collect, prepare and feed such wastes to livestock on their own farms, or recyclable materials that are exempt from regulation pursuant to N.J.A.C. 7:26A;

ii. Materials approved for beneficial use or categorically approved for beneficial use pursuant to N.J.A.C. 7:26;

iii. Spent sulfuric acid which is used to produce virgin sulfuric acid, provided at least 75 percent of the amount accumulated is recycled in one year;

(b) Coastal development shall conform with all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes, including the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., the Solid Waste Management rules, N.J.A.C. 7:26, the Recycling rules, N.J.A.C. 7:26A, and the Hazardous Waste rules, N.J.A.C. 7:26G.

(c) Rationale: The industrial growth that occurred after World War II left the State with numerous contaminated sites that have to be addressed to reduce the risks to current and future generations. While many sites have been cleaned up, many more are still in need of attention. To protect public health, preserve the environment, enhance the quality of life for the citizens of the State of New Jersey

Note: This is a courtesy copy of the proposal to readopt the Coastal Zone Management rules with amendments with amendments proposed to the Coastal Permit Program rules and Ninety-Day Construction Permits rules. The official version of this proposal can be found in the January 7, 2002 New Jersey Register. Should there be any discrepancies between this courtesy copy and the official version, the official version will govern.

and prevent the creation of new contaminated sites, environmentally sound management and disposal of solid and hazardous wastes is needed.