

Notice of Opportunity for Public Input on the Coastal Zone Management rules, N.J.A.C. 7:7E and the Coastal Permit Program rules, N.J.A.C. 7:7

Public Meeting Agenda

Location: Monmouth University
Magill Commons, Rooms 107 -108
400 Cedar Avenue
West Long Branch, New Jersey 07764
Directions to Campus (below, page 9)

Date: Tuesday, May 11, 2010

Parking: Commuter Lots #13 & 15
Enter off Lockwood or Norwood Avenue

9:30 Set up and registration

10:00 - 12:30

- I. Introduction
- II. The Department receives suggestions from the public on Governor Christie's Executive Orders (EOs) as they relate to the Coastal Rules (see list of EO issues, page 2).
- III. The Department receives suggestions from the public on possible changes to the Coastal rules (see list of changes below, pages 3 through 8), and any comments the public would like to offer to the Department for consideration on the upcoming Coastal rulemaking.

12:30 - 1:30 Lunch Break

1:30 - 4:00

- I. If needed, the Department will continue to receive suggestions from the public on the above topics.

**Issues to be addressed in accordance with Governor Christie's
Executive Orders for rulemaking**

1. Economic Analysis

- a. Effect of the proposed rules on New Jersey's economy.
- b. Burdens on business and workers as compared with the intended benefits of the rules.
- c. Cost/benefit analysis performed by the Department as part of the proposal process, and scientific and economic research available from other jurisdictions relevant to the proposed rules.

2. Federal Standards Comparison

- a. Do the proposed rules exceed Federal standards and if so, why?

3. Process Improvement Evaluation

- a. How the proposed rules address processing time, extent of required submissions, and coordination with other programs and agency requirements.
- b. The public process used for the proposal as it relates to advance notice of rulemaking.
- c. The effect of the proposed rules on permits and applications for permits.
- d. The applicability of "waiver" provisions to the proposed rules.

4. Compliance and Enforcement Evaluation:

- a. The performance-based nature of the proposed rules.

Amendments Under Consideration for the Readoption
of the Coastal Zone Management Rules (N.J.A.C. 7:7E) April 2010

Citation (CZM rules)	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
3.2 Shellfish Habitat	Protects areas with current or historic shellfish production by restricting development in those areas.	Added protection and makes the State's permit consistent with the Federal ACOE permit. Require boatlifts in shellfish areas; require that bulkhead replacement in shellfish areas be in the same footprint with non-polluting materials.
3.6 Submerged Vegetation Habitat	Protects submerged vegetation habitat by restricting development in those areas.	Protect the resource while providing flexibility when appropriate. Consider requiring mitigation for SAV disturbance similar to shellfish disturbances. Require that that bulkhead replacement in SAV areas be in the same footprint with non-polluting materials.
3.23 Filled Water's Edge	Ensures that uses that require a waterfront location in order to function (that is, water dependent uses) and uses that serve the general public and derive economic benefits from a waterfront location (that is, water-oriented uses) are favored over non-water related uses such as housing and offices by specifying the type of development that is acceptable and/or restricting the area for future acceptable uses.	Clarify to allow for better consistency of application in decisions. Consider allowing applicants to reserve the 100 ft. waterfront strip for future water-dependent use; or require the permittee to provide an interim plan; or deed restrict the 100' against all development except water-dependent development.
3.28 Wetlands Buffers	Provides a wetland buffer to minimize impacts from adjacent development that may adversely affect the wetlands through increased runoff, sedimentation, and introduction of pollutants.	Establish criteria by which the buffer is determined. Establish minimum buffer widths for small projects such as SFH and duplexes. Currently the buffer to a tidal wetland can vary from 0 to 300 feet.
3.31 Coastal Bluffs	Protects coastal bluffs which function in storm damage prevention and flood control.	Determine whether man-made features would or should meet this definition. Consider limiting the clearing on a coastal bluff.
3.39 Critical Wildlife Habitat	Protects animal species and habitats that are not yet threatened or endangered.	Currently, the rule is applied on a case by case basis. Create specific, predictable requirements for potential impacts. Update mapping, institute a tiered system based on landscape mapping, and establish a mitigation requirement for acceptable impacts, similar to that of the FWW Protection Act Rules.
Subchapter 3A Standards for Beach & Dune Activities	This subchapter establishes standards for routine beach maintenance, emergency post-storm restoration, dune creation and maintenance, and construction of boardwalks.	<ol style="list-style-type: none"> 1. Provide protection for unique flora and fauna including the Black Skimmer (restrict timing of raking), and Seabeach Amaranth as present/documented by the USFWS (require use of temporary structures to avoid impacts.) 2. Ensure sand replacement. Consider requiring that sand removed from boardwalks and SFH be placed back on the beach instead of trucked away for disposal. 3. Protect dune and beach grasses. Limit the beach/dune maintenance areas to a certain # of feet around structures.

Citation	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
4.2 Aquaculture	Encourages aquaculture where it does not conflict with recreation or navigation, and in ways to avoid adverse environmental impacts.	Facilitate appropriate aquacultural activities. Establish general permits and permits-by- rule for specific aquacultural practices.
4.5 Recreational Docks and Piers	Establishes criteria for docks and piers including acceptable locations and construction techniques to minimize conflicts, and environmental impacts.	Update the rule to address new construction materials (eg., pre-fab poly decks) and add specific criteria for jet ski ramps. Consider establishing a GP or PBR for solid plastic docks. Establish a specific dock length limit instead of allowing any length to reach deep water.
4.6 Maintenance Dredging	Establishes criteria for the conduct of maintenance dredging.	Provide greater flexibility to allow maintenance dredging in the absence of a previous permit by allowing an applicant to provide documentation on natural occurring water depths and use by vessels requiring the proposed water depth. Protect wetlands adjacent to a dredge area by requiring that side slopes not be steeper than 3 vertical to 1 horizontal to prevent undermining/sloughing of wetlands.
4.7 New Dredging	Establishes criteria for the conduct of dredging that is not maintenance dredging.	Provide criteria for dredging other than for purposes of navigability Address non-navigational dredging such as dredging for flood control or remediation projects.
4.10 Filling	Rules discourage and/or prohibit filling in coastal waters including wetlands, lakes, ponds, reservoirs, open bay areas and lagoons for the purpose of raising water bottom elevations to create land areas.	In addition to addressing filling to create land area, the rule should address remediation projects, and filling of wetlands and water areas that result in raising the elevation of the filled area beyond the pre-fill condition. Also, consider allowing the use of dredged material, as fill material, provided it meets the acceptability conditions specified in the Dredged Material Disposal on Land Rule.
4.19 Breakwaters	Rules provide criteria for construction of breakwaters in order for the breakwater to function without adversely affecting the movement of sediment and marine organisms or adversely affecting water circulation patterns.	The current rule requires that breakwaters have a minimum of 3 in. spacing between planks or must comply with the Filling rule (4.10) and Structural Shore Protection rule (7.11). Update the rule to address wave attenuators or alternate designs of breakwaters that allow for a solid face with no spacing.
4.21 Artificial Reefs	Rules provide siting criteria and materials for constructing artificial reefs to increase the marine resource biomass and for the benefit of to the State's fishing industries, the sport diving community and the marine ecosystem as a whole.	Expand the rule to allow the placement of artificial reefs in the lower Delaware River and the Raritan Bay.
Citation	What does the rule do?	What is the objective of changing the rule? What change is anticipated?

5.3 Impervious Cover Requirements	Rules provide criteria for placing impervious cover based on general land areas and certain special areas in the CAFRA and upland Waterfront development area	Clarify the calculations when previous, existing development was not CAFRA regulated.
5.4 Vegetative Coverage Requirements	Rules provide criteria for vegetative cover based on general land areas and certain special areas in the CAFRA and upland Waterfront development area	Clarify the rule. Establish separate criteria for vegetative requirements for residential vs. commercial development.
5.5 Determining if a Site is Forested or Unforested	The rules provide a process for determining whether or not a site is forested for use in the vegetative cover requirements.	Correct and/or clarify the rule. The method for determining whether a site is forested is derived from a method used in Maine. It does not work consistently in New Jersey. Consider using the Highlands method which has been field tested and is more accurate in NJ.
7.2 Housing Use Rule	Housing use rules regulate based upon the type of housing and how that housing will use specific coastal resources. The rules currently allow a 750 sq. ft. addition within the shadow of a house existing prior to July 19, 1994.	Clarify that “infill” criteria apply to new construction and not reconstruction. Allow more development without impacting the effectiveness of dunes for shore protection.
7.3(d) Marinas 7.3A Marina Development	The rules establish standards for new marinas, and marina expansions and renovations.	<ol style="list-style-type: none"> 1. Use the criteria in 7.3(d) to address expansion or renovation of existing marinas. 2. Use the criteria in 7.3A to address new marinas only. 3. To provide more flexibility, allow for a leased off-site parking lot to comply with parking requirements (currently all parking must be addressed onsite). Also, address transient slips when establishing the amount of required parking spaces 4. Public access: should marinas be exempt? Only exempt from 24/7 access? 5. Should marinas be exempt from deed restriction requirements for future use of the waterfront? Can marinas have restaurants within the first 100 ft of the waterfront (rules restrict waterfront development to water-dependent and water oriented uses)? Should there be any restriction of what occurs in the first 100 feet of waterfront at a marina? 6. Should marinas be exempt from obtaining permits for maintenance of legally existing docks and piers?
7.11 Coastal Engineering	The rules regulate structures and non-structural measures for shoreline protection. The rules advocate the use of non-structural methods.	<ol style="list-style-type: none"> 1. Add criteria to the rules for non-structural methods. Although the rules advocate the use of non-structural methods, there are no specific requirements, hierarchy or analysis to evaluate different types of non-structural solutions in certain situations. 2. Ensure that special areas are protected. The rule currently allows replacement bulkheads to be placed 18-24” waterward of existing bulkheads but does not require that the bulkhead meet special areas rules.
Citation	What does the rule do?	What is the objective of changing the rule? What change is anticipated?

7.14 High Rise rules	The rules attempt to keep high rise structures in areas with other existing high rise structures, mainly to protect views of coastal resources.	Clarify how the height for a high rise is measured. Currently rule states the ground point to start measuring but not the top point.
8.5 Surface Water Use Rule & 8.6 Groundwater Use Rule	The rule (8.5) ensures that development will not exceed the anticipated capacity of the local potable water supply system. The rule (8.6) ensures that anticipated groundwater demand, will not cause salinity intrusions, degrade groundwater quality, significantly lower the water table, or exceed the aquifer's safe yield.	The rules need to be updated to reflect the role of the Bureau of Water Allocation. In addition, the rule should address how an applicant can demonstrate compliance with the requirements when water purveyors do not want to provide letters.
8.12 Scenic Resources and Design	The rule encourages development that preserves views of the water by requiring setbacks.	Make it easier to satisfy the rule requirements for single family homes/duplexes. Currently any SFH/duplex which is eligible for a GP is excluded from compliance with this rule while an IP for a SFH/duplex requires compliance. Exclude SFH/Duplexes from the setback requirements as long as it is one unit only.
8.14 Traffic	The rule contains the requirements for the movement of vehicles and pedestrians within the coastal zone.	Make it easier to satisfy the requirements. Provide at N.J.A.C. 7:7E-8.14, Traffic, for Level "D" or less, that a county approval or DOT access permit will satisfy the rule requirements. (This would be in addition to the mitigation provided in the rule.)
	COASTAL PERMIT PROGRAM RULES	
Citation	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
7:7	Contains the administrative requirements for the CZM rules, and GPs and PBRs	Create one, comprehensive set of coastal rules. Repeal Chapter 7:7 and add all provisions into Chapter 7:7E.
1.3 Definitions	Defines "amusement pier" and specifically excludes bars and restaurants	Redefine "amusement pier" to allow restaurants on piers.
Subchapter 2 Jurisdiction Twelve Mile circular jurisdiction	Establishes the State's jurisdiction under each of its statutes (CAFRA, Waterfront Development, Wetlands Act of 1970).	Based upon a court case, amend 7:7 and 7:7E (as appropriate) to reflect and codify NJ's exclusive State governing authority over the construction, maintenance and use of riparian improvements related to ordinary and usual riparian activities and uses within a 12-mile circle of the Delaware River.
2.1 CAFRA Jurisdiction	Defines CAFRA jurisdiction based upon the original and amended statutes (CAFRA and CAFRA II).	The rule currently looks at development existing prior to 1973. Based upon a court case and a subsequent decision by the Commissioner, clarify the rules to state that the "prior to" date should be July 19, 1994 not 1973 for things that were only regulated since 1994 (CAFRA II).
7.26 General Permit for tourism structures on beaches	The general permit requires that certain temporary structures are permitted so long as they are removed by October 31 st each year, when they are less likely to be needed and won't contribute to winter storm damage.	Amend the GP to allow allow certain categories of structures to remain on beaches on a year-round basis in Atlantic City (specifically certain portions of the beach bars).
Subchapter 10-Fees	This subchapter contains the fees for each type of application.	Possible addition of fees for review activities undertaken by the Department. Consider adding fees for jurisdiction determinations and pre-application meetings.

	OTHER SUGGESTED CHANGES	
Topic	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
Relaxation of Standards Rule	Ensures that all applications are treated consistently under the rules, by requiring an applicant to complete the permitting process and then claim a taking of property without just compensation in order to potentially get relief from a specific rule provision.	Create a “variance” type of procedure that would allow an applicant to ask for relief from permit standards prior to the decision on the permit.
CZM rules 4.4: Docks & Piers for Cargo and Commercial Fisheries	Establishes criteria for construction and location of docks and piers for cargo and commercial fisheries.	1. Protect water quality. Ban the use of Creosote lumber from dock construction in accordance with the existing state law. 2. Bring rules into compliance with Federal rule requirements. ACOE) is requiring mitigation for the expansion of existing piers which is different than DEP. Should we amend rule??
Green Design Ideas	No such requirements in place at this time.	1. Global warming concern. Require “Cool Roofs” for commercial projects. Require commercial projects to use roofing materials that have a desirable Solar Reflectance Index (SRI) or require a vegetative roof covering of at least 50%. 2. Reduce water consumption. Require use of native or adapted landscaping, use of captured rain-water and/or micro-irrigation.
Construction of decks on beaches/dunes.	Permits are not required for the construction of a patio, deck or similar structure at a residential development.	Protect beaches and dunes from “deck” construction. Consider size limits, requiring the deck to be attached to SFH, or establishing a limit on the distance from the home that a structure can be.
Notification	No such requirements in place at this time.	Ensure that all conditions of a permit have been satisfied or that future owner is aware of such requirements. Require notification to the Department when a change of ownership occurs.
Define and use the term “individual permit”	Current rules refer to GP or PRB but do not speak to “individual permits.”	Clarify the rule by describing and using the term “individual permit.”
Draft a GP for retaining walls on beach/dune areas.	Currently, retaining walls on beaches and dunes require an IP.	Consider drafting a GP for retaining walls on beach/dune areas.
Include vegetation removal as a regulated activity in coastal wetlands.	Currently, the rule does not address vegetation removal in coastal wetlands.	Protect coastal wetlands from vegetation removal by explicitly adding it as a regulated activity.
Add a permit by rule for the use of biologs.	There is no permit specifically addressing the use of bio-logs.	Encourage the use of bio-logs by adding a PBR. Reserve the GP for less environmentally-friendly options.
	SUGGESTED PERMITS-BY-RULE	
Topic	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need written approval from the Department to conduct the activities.	PBR for the construction of a swimming pool, spa, or hot tub at a single family home or duplex.

Topic	What does the rule do?	What is the objective of changing the rule? What change is anticipated?
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need “paper” from the Department to conduct the activities.	PBR for the construction of a single fixed dock and/or boatlift and associated pilings on a man-made lagoon.
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need “paper” from the Department to conduct the activities.	PBR for the construction of a new bulkhead on a lot on a man-made lagoon.
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need “paper” from the Department to conduct the activities.	PBR for the reconstruction of a legally existing, functioning bulkhead on a lot on a man-made lagoon.
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need “paper” from the Department to conduct the activities.	PBR for the placement of land-based upwellers for small-scale, non-commercial aquaculture activities.
PBR	Makes an activity easier to conduct—applicant must follow the requirements in the rules and does not need “paper” from the Department to conduct the activities.	PBR for the placement of floating upwellers, Taylor floats, and longlined bags for small-scale, non-commercial aquaculture activities.

Directions to MU Lots 13, 14, 15

Directions to Monmouth University

- 1. *From the Garden State Parkway:*** Take Exit 105. The Parkway off ramp leads directly onto Route 36 East. Continue on Route 36 East approximately three miles to Route 71 South. Go approximately one mile and Route 71 will fork left and become Cedar Avenue. Follow Route 71/Cedar Avenue for approximately one mile. Turn right onto Larchwood. Make first left into Monmouth University and proceed to the Greeter's Booth in Parking Lots 13, 14, 15 or visitor parking, as directed.
- 2. *From the NJ Turnpike:*** From the South, take Turnpike North to Exit 7A. After the toll plaza, take I-195 East to Shore Points. Approaching Belmar, I-195 becomes NJ Route 138. After crossing the Garden State Parkway, exit right to NJ Route 18 North, marked Eatontown. Take the Deal Road exit and drive east to the intersection at Monmouth Road. Turn left and proceed to the third traffic light, which is Cedar Avenue. Turn right onto Cedar (also labeled NJ Route 71 South). Follow Route 71/Cedar Avenue for approximately one mile. Turn right onto Larchwood Avenue. Make first right into Monmouth University and proceed to the Greeter's Booth in Parking Lots 13, 14, 15 which will be on your left.
- 3. *From the NJ Turnpike:*** From the North, take Turnpike South to Exit 11 (Garden State Parkway South). Take Exit 105 as outlined in #1 above.
- 4. *From Trenton and Points West:*** Take I-195 East, and follow directions outlined in #2 above.
- 5. *From the Freehold Area:*** Take US Route 9 South to I-195 East. Follow directions outlined in #2 above.