

A. INTRODUCTION**WATERFRONT REVITALIZATION PROGRAM POLICIES IN NEW JERSEY**

The federal Coastal Zone Management Act (CZMA) of 1972 was established to encourage coastal states to manage development within the states' designated coastal areas, reduce conflicts between coastal developments, and protect resources within the coastal zone. Requirements for federal approval of coastal zone management programs and grant application procedures for development of the state programs is included in 15 C.F.R. Part 923, Coastal Zone Management Program Development and Approval Regulations, National Oceanic and Atmospheric Administration (NOAA). The Coastal Zone Management Act requires that federal activities within a state's coastal zone be consistent with that state's coastal zone management plan. New Jersey has a federally approved coastal zone management program, which is administered by the New Jersey Department of Environmental Protection (NJDEP).

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NJDEP regulates coastal zone activities under N.J.A.C. Section 7:7E, Coastal Zone Management (CZM) Policies. Section 7:7E sets forth substantive rules of the NJDEP regarding the use and development of coastal resources, to be used primarily by the Department's Land Use Regulation Program in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:9A-1 *et seq* (as amended to July 19, 1993), Wetlands Act of 1970, N.J.S.A. 13:9A-1 *et seq*, Waterfront Development Law, N.J.S.A. 12:5-3, Water Quality Certification (401 of the Federal Clean Water Act), and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act). Because the Portal Bridge Capacity Enhancement Project is outside the CAFRA Zone, consistency with CAFRA is not addressed in this assessment.

PROJECT STUDY AREA WITHIN THE COASTAL ZONE

N.J.A.C. 7:7E-1.2 defines coastal waters as 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 (MHW) 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, Delaware, and the Commonwealth of Pennsylvania. The definition includes all lands outside of the coastal area as defined by CAFRA, extending from the MHW 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 MHW line. The definition also includes all areas containing tidal wetlands and the Hackensack Meadowlands District as defined by N.J.S.A. 13:17-4.

The Portal Bridge Capacity Enhancement Project is within the coastal zone, because the project is within the Hackensack Meadowlands District. As such, consistency with applicable Coastal Zone Management Policies must be evaluated.

B. NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION COASTAL ZONE MANAGEMENT POLICIES

This section presents the NJDEP CZM Policies with respect to Special Areas identified in the coastal zone—as described in New Jersey Administration Code (N.J.A.C. Subchapter 3: Special Areas, Section 7:7E)—and states whether the project alternatives are consistent with these policies. The 48 Special Areas are coastal areas identified by the State that merit focused attention and special management rules. They are categorized as Special Water Areas (N.J.A.C. 7:7E-3.2 through 3.15), Special Water's Edge Areas (N.J.A.C. 7:7E-3.16 through 3.32), Special Land Areas (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). Only the policies that are relevant to the project alternatives are discussed below. The complete set of policies presented in N.J.A.C. 7:7E (which have been paraphrased below) can be viewed at: www.state.nj.us/dep/landuse/njac/7-7e.pdf.

POLICY 7:7E-3.2: SHELLFISH HABITAT

Development which would result in the destruction, condemnation (downgrading of the shellfish growing water classification) or contamination of shellfish habitat, as defined by the rule, is prohibited.

This policy is not applicable to the Portal Bridge Capacity Enhancement Project because the project area is not in a shellfish area as defined by the rule.

POLICY 7:7E-3.3: SURF CLAM AREAS

Development which would result in the destruction, condemnation, or contamination of surf clam areas is prohibited except under specific conditions defined by the rule.

This policy is not applicable to the Portal Bridge Capacity Enhancement Project because oceanic surf clams (*Spisula solidissima*) are not present in the Hackensack River.

POLICY 7:7E-3.4 PRIME FISHING AREAS

Use of prime fishing areas, as defined and identified by the rule, is prohibited. This includes sand or gravel submarine mining, which would alter existing bathymetry to a significant degree so as to reduce the high fishery productivity of these areas. Disposal of domestic or industrial wastes must meet applicable State and Federal effluent limitations and water quality standards.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project fall within the redline delineated prime fishing areas, as defined by the documents referenced in the rule (Freeman and Walford 1974).

POLICY 7:7E-3.5: FINFISH MIGRATORY PATHWAYS

Development that obstructs fish passageways, lowers water quality to an extent that interferes with fish movement, or violates standards is prohibited in waterways that serve as migratory pathways unless mitigation is provided.

Construction of in-water elements of the Portal Bridge Capacity Enhancement Project has the potential to temporarily affect certain diadromous fish species that may use the Hackensack River as a conduit to spawning grounds. These species include the anadromous American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), alewife (*Alosa pseudoharengus*), striped bass (*Morone americana*), and the catadromous American eel (*Anguilla rostrata*). Potential construction impacts include resuspension of sediments and anthropogenic noise associated with construction activities. No operational effects are expected, because in-water elements of the build alternatives would not obstruct fish passage.

POLICY 7:7E-3.6: SUBMERGED VEGETATION HABITAT

Development in submerged vegetation habitat, as defined by the rule, is prohibited except for specific exceptions provided by the rule.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project fall within submerged aquatic vegetation (SAV) habitat. The Hackensack River at the project location is an area of high turbidity and current velocities that are not supportive of SAV.

POLICY 7:7E-3.7: NAVIGATION CHANNELS

The navigability of existing navigation channels must not be impacted by dredging or development, or by siltation as a result of said dredging or development.

Construction of in-water elements of the Portal Bridge Capacity Enhancement Project has the potential to temporarily impact the Hackensack River navigational channel. Impacts could include the temporary mooring of construction barges in the channel to deploy project components. Impacts from sediment resuspension are expected to be minor, with no impacts to the navigational channel. Operational impacts of the project to navigation are not anticipated, because the build alternatives are being designed to accommodate present and anticipated navigational needs and would include the expansion of the navigation channel from its existing width.

POLICY 7:7E-3.8: CANALS

In canals presently used for navigation, any use that would interfere with existing or proposed canal boat traffic is prohibited.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project fall within man-made canals created by cutting or dredging, as defined by the rule.

POLICY 7:7E-3.9: INLETS

Development in inlets, as defined by the rule, shall comply with the following:

1. Filling is prohibited; and
2. Submerged infrastructure is discouraged.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project fall within areas defined as inlets by the rule.

POLICY 7:7E-3.10: MARINA MOORINGS

Non-water dependent development in a marina mooring area is prohibited. Any use that would detract from existing or proposed recreational boating use in marina mooring areas is discouraged.

This policy is not applicable because no elements of the Portal Bridge Capacity Enhancement Project fall within a marina or marina mooring area.

POLICY 7:7E-3.11: PORTS

Any use that will preempt or interfere with port uses (i.e., marine terminal) is prohibited; docks and piers for cargo movement are encouraged.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project affect port operations, excepting temporary impacts discussed under policy 7:7E-3.9 Navigation Channels above.

POLICY 7:7E-3.12: SUBMERGED INFRASTRUCTURE ROUTES

A “submerged infrastructure route” is the corridor in which a pipe or cable runs on or below a submerged land surface. Any activity that will increase the likelihood of damage to a submerged pipe or cable, or interfere with maintenance operations, is prohibited.

There is an existing underwater cable that is used to power the existing moveable bridge. With all four build alternatives, the existing cable would be severed at each end and abandoned in place.

POLICY 7:7E-3.13: SHIPWRECKS AND ARTIFICIAL REEFS

Acceptable uses of these submerged 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 nontoxic material, is conditionally acceptable provided that:

- It can be demonstrated that the material will not wash ashore and interfere with either navigation as regulated by U.S. Coast Guard (USCG) or commercial fishing operations; and
- Placement of the material and ultimate management of the habitat is coordinated with the NJDEP Division of Fish, Game, and Wildlife.

Any use, except archaeological research, that will significantly adversely affect the usefulness of this special area as a fisheries resource is prohibited. Persons conducting archaeological research that significantly affects the usefulness of a shipwreck for fisheries purpose must compensate for this loss by the creation of an artificial reef of equal habitat value.

This policy is not applicable, because no artificial reefs or shipwrecks serving as submerged habitat exist within the project area. Underwater structures associated with the existing bridge may serve as fish habitat, however, the new bridges’ underwater structures would replace this habitat.

POLICY 7:7E-3.14: WET BORROW PITS

Disposal of dredged material is discouraged in wet borrow pits, which 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, though this disposal may be acceptable in limited cases. Overall, the discharge of liquid or solid waste, other than clean dredge fill of acceptable particle size, is prohibited in wet borrow pits. Wet borrow pits also require a water quality buffer area around the perimeter.

This policy is not applicable because wet borrow pits are not part of the proposed project. Any dredged/excavated materials generated by the project would be treated and disposed of in accordance with the necessary approvals and permits.

POLICY 7:7E-3.15: INTERTIDAL AND SUBTIDAL SHALLOWS

Development, filling, and new dredging are generally discouraged in intertidal and subtidal shallows, but may be permitted in accordance with the Use Policy for the applicable water body type (in this case, large rivers). Submerged infrastructure is conditionally acceptable, provided that there is no feasible alternative route that will not disturb intertidal and subtidal shallows, the infrastructure is buried deeply enough to avoid exposure or hazard, and all trenches are backfilled with naturally occurring sediment.

This policy is applicable because some project structure must be constructed in intertidal and subtidal shallows. Because the project spans the Hackensack River and must intersect with existing rail infrastructure, there is no feasible alternative route that would not disturb intertidal and subtidal shallows.

POLICY 7:7E-3.16: DUNES

Dunes are defined by the rule as wind or wave deposited or man-made formations of sand in a mound or ridge formation that are generally parallel to the beach system. Development is prohibited on dunes except for development that has no practicable or feasible alternative in an area other than a dune and will not cause adverse long-term impacts on the natural functioning of the beach dune system. Accepted development activities are further defined in the rule.

This policy is not applicable because dune areas do not occur in the Hackensack Meadowlands. In New Jersey, dunes are typically associated with beach areas.

POLICY 7:7E-3.17: OVERWASH AREAS

An overwash area is defined as an area subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of a berm, dune or structure. Development is generally 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. Accepted development activities are further defined in the rule.

This policy is not applicable because overwash areas do not occur in the Hackensack Meadowlands. In New Jersey, dunes are typically associated with beach areas.

POLICY 7:7E-3.18: COASTAL HIGH HAZARD AREAS

Coastal high hazard areas (V zones), as delineated on the Flood Insurance Rate Maps (FIRM) prepared by the Federal Emergency Management Agency (FEMA), are flood prone areas subject to high velocity waters and areas within 25 feet of oceanfront shore protection structures, which are subject to wave run-up and overtopping. Residential development is prohibited in coastal

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high hazard areas except for single family and duplex infill developments. In general, commercial development is discouraged in coastal high hazard areas except for some beach use related commercial development already in densely developed areas.

This policy is not applicable because the proposed project is not located within a coastal high hazard area.

POLICY 7:7E-3.19: EROSION HAZARD AREAS

Erosion hazard areas are defined in the rule as shoreline areas that are eroding and/or have a history of erosion, causing them to be highly susceptible to further erosion, and damage from storms. Some examples of characteristics of these areas are: lack of beaches, narrow beaches, high beach mobility, low dunes or no dunes, steep beach slopes, high long-term erosion rate, and/or pronounced downdrift effects or groins (full list of characteristic examples in rules). Development is prohibited in erosion hazard areas except for linear development which meets the Rule on Location of Linear Development; shore protection activities which meet the appropriate Coastal Engineering Use rule; single story, beach/tourism oriented commercial development located within a commercial boardwalk area existing on July 19, 1993; single family and duplex developments; and dune creation and beach maintenance.

This policy is not applicable because the proposed project is not located within an erosion hazard area.

POLICY 7:7E-3.20: BARRIER ISLAND CORRIDOR

Barrier island corridors are the interior portions of oceanfront barrier islands, spits, and peninsulas. Headlands are located between Monmouth Beach, Monmouth County and Point Pleasant Beach, Ocean County along the New Jersey Coast. Development (new or expanded) within the oceanfront barrier island corridor is conditionally acceptable provided that the development complies with the requirements for impervious cover and vegetative cover that apply to the site under N.J.A.C. 7:7E-5 and 5B.

This policy is not applicable because the proposed project is not located on or near a coastal barrier island.

POLICY 7:7E-3.21: BAY ISLANDS

Bay islands are defined by the rules as islands or filled areas surrounded by tidal waters, wetlands, beaches or dunes, lying between the mainland and barrier island. On bay islands which abut a paved public road and abut the conveyance component of an offsite treatment, conveyance, and disposal system with capacity to convey, treat, and dispose of the sewage generated from the proposed development, development is conditionally acceptable (conditions defined in rule). However, in both of these cases as well as with bay islands that abut neither of these things, non-water dependent development is prohibited unless it meets certain standards and water dependent development is discouraged. Redevelopment and modification within an existing development on a bay island is conditionally acceptable following certain provisions, which are explained in the rules.

This policy is not applicable because the proposed project is not located in a coastal barrier island back bay.

POLICY 7:7E-3.22: BEACHES

Beaches are defined as gently sloping areas of sand or other unconsolidated material, found on all tidal shorelines, including oceans, bays, and rivers and that extend landward from the MHW line to either a man-made feature or the seaward or bayward foot of dunes. Overall, development is prohibited on beaches. An exception is development that has no prudent or feasible alternative in an area other than a beach, and that will not cause significant adverse long-term impacts to the natural systems. Some acceptable activities in a beach area include: demolition and removal of pavement and structures; dune creation; the reconstruction of amusement parks, fishing piers, and boardwalks; temporary recreation structures for public safety; shore protection structures; and linear development which meets the Rule on Location of Linear Development (more examples listed in rule).

This policy is not applicable since the shoreline of the Hackensack River in the project area does not meet the criterion for “gently sloping.” The Hackensack River shoreline near the proposed project is either developed/armored or comprises steeply-sloped and partially vegetated banks typical of muddy, tidal marshes.

POLICY 7:7E-3.23: FILLED WATER’S EDGE

On filled water’s edge sites with direct water access, this policy generally encourages that the waterfront portion of the site be developed with a water dependent use or left undeveloped for future water dependent uses. In addition, on the remaining non-waterfront portion of the site, provision of additional area devoted to water dependent or water-oriented uses may be required. Moreover, for sites with an existing or pre-existing water dependent use other than a marina, development that would reduce or adversely affect the area currently or recently devoted to the water dependent use is discouraged.

This policy is not applicable, because the proposed project does not involve the filled water’s edge with direct water access. Spans over the tidal Hackensack River and other waterbodies are elevated on structure to minimize impacts to wetlands, and do not involve the filled water’s edge.

POLICY 7:7E-3.24: EXISTING LAGOON EDGES

Existing lagoons 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. Development of existing lagoon edges is acceptable provided that the proposed development is compatible with existing adjacent land and water uses; existing retaining structures are adequate to protect the proposed development; new or reconstructed retaining structures are consistent with the filling rule and structural shore protection rule; and the development complies with the requirements for impervious cover and vegetative cover that apply to the site.

This policy is not applicable because the proposed project does not affect any 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.

POLICY 7:7E-3.25: FLOOD HAZARD AREAS

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. Development is conditionally acceptable at greater distances provided the development would not prevent potential water-dependent uses adjacent to the water body.

This policy is applicable because some project elements occur within a floodplain and within 100 feet of a navigable water body. Although a bridge is not specifically identified as a “water depended use” at N.J.A.C. 7.7E-1.8, the rule provides a test for water dependency. 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. In this case, because the proposed project includes a segment of the existing Northeast Corridor and must cross the Hackensack River, water dependency is affirmed. Furthermore, the water body can absorb the proposed use because the project area includes an existing rail bridge. Regardless, impacts to flood hazard areas would be mitigated in accordance with applicable regulations and in consultation with the NJDEP.

POLICY 7:7E-3.26 (RESERVED)

POLICY 7:7E-3.27: WETLANDS

Development in wetlands defined under the Freshwater Wetlands Protection Act of 1987 is prohibited unless the development is found to be acceptable under the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A). Development of all kinds in all other wetlands not defined is prohibited unless the Department can find that the proposed development meets the following conditions:

- Requires water access or is water oriented as a central purpose of the basic function of the activity;
- Has no prudent or feasible alternative on a non-wetland site;
- Will result in minimum feasible alteration or impairment of natural tidal circulation (or natural circulation in the case of non-tidal wetlands); and
- Will result in minimum feasible alteration or impairment of natural contour or the natural vegetation of the wetlands.

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. All mitigation proposals submitted to the Department shall be prepared in accordance with N.J.A.C. 7:7E-3B.

As discussed in detail in Chapter 5.6, “Ecology,” this policy is applicable because the proposed project will affect tidal and non-tidal wetlands. The proposed project is water-oriented (river crossing via a bridge). Prudent and feasible alternatives for crossing the Hackensack River do not exist. The proposed project design was developed, to the extent practical, to minimize impacts from fill and shading in wetlands and tidal circulation within them. Lastly, wetland

mitigation as appropriate ratios (and as agreed upon by project stakeholders) is planned to offset these impacts.

POLICY 7:7E-3.28: WETLANDS BUFFERS

Wetland buffers, or “transition areas,” associated with wetlands subject to the Freshwater Wetlands Protection Act are regulated by the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. Development is prohibited in a wetlands buffer around all other wetlands, unless it can be demonstrated that the proposed development will not have a significant adverse impact and will cause minimum feasible adverse impact, through the use of mitigation where appropriate on the wetlands, and on the natural ecotone (transition area) between the wetlands and surrounding upland.

This policy is applicable because the proposed project will likely affect wetland buffers. Based on the fact that the study area is highly developed with a number of linear features—such as railroads, paved access roads, utility rights-of-way, and man-made earthworks—the value of these areas as wetland buffers is low. Regardless, in cases where more valuable and/or desirable wetland buffers may be impacted, these impacts will be addressed through mitigation measures as agreed upon with project stakeholders.

POLICY 7:7E-3.29 (RESERVED)

POLICY 7:7E-3.30 (RESERVED)

POLICY 7:7E-3.31: COASTAL BLUFFS

The rule defines coastal bluffs as a steep slope (greater than 15 percent) of consolidated (rock) or unconsolidated (sand, gravel) sediment which is adjacent to the shoreline or which is demonstrably associated with shoreline processes. Generally, development is prohibited on coastal bluffs, exceptions include: linear development which meets the rule on the Location of Linear Development; shore protection activities which meet the appropriate Coastal Engineering Use rules; and single family homes and duplexes which are not located along the shorelines of the Atlantic Ocean, Delaware Bay, Raritan Bay, or Sandy Hook Bay. The stabilization of coastal bluffs with vegetation is encouraged.

This rule is not applicable because the proposed project is not located on or near coastal bluffs.

POLICY 7:7E-3.32: INTERMITTENT STREAM CORRIDORS

Intermittent stream corridors are defined in the rule as areas including and surrounding surface water drainage channels in which there is not a permanent flow of water and which contain an area or areas with a seasonal high water table equal to or less than one foot. The Wetlands rule will apply where an intermittent stream corridor is also a wetland. Likewise, intermittent streams not subject to tidal influences shall also comply with the Freshwater Wetlands Protection Act Rules. Cutting, filling, damming, detention basins for runoff recharge, paving, structures or any other activities that would directly degrade the function of intermittent stream corridors, except for linear infrastructure for which there is no feasible alternate route, is prohibited. Promoting undisturbed growth of native vegetation and wildlife habitat value are encouraged.

This policy is not applicable because the proposed project does not affect intermittent stream corridors. Wetland impacts were discussed above under rule E-3.27.

POLICY 7:7E-3.33: FARMLAND CONSERVATION AREAS

Farmland conservation areas are contiguous tracts of land of 20 acres or more (in single or multiple tracts of single or multiple ownership) with soils in the Capability Classes I, II, and III or special soils for blueberries and cranberries as mapped by the United States Department of Agriculture, Soil Conservation Service, in National Cooperative Soil Surveys. These areas must be actively farmed, or suitable for farming, unless it can be demonstrated by the applicant that new or continued use of the site for farming or farm dependent purposes is not economically feasible. A few examples of farming and farm-dependent purposes include nurseries, orchards, vegetable or fruit farming, raising grains and seed crops, silviculture, and floriculture. Development in farmland conservation areas is not permitted but maintained and protected for open space or farming purposes. Housing is permitted only if it is an accessory use to farming and mining is permitted only in accordance with a reclamation plan which meets the requirements of the Mining Use rule.

This rule is not applicable because the proposed project does not affect farmland.

POLICY 7:7E-3.34: STEEP SLOPES

Steep slopes are defined by the rule as land areas with slopes greater than 15 percent, which are not adjacent to the shoreline. Development is conditionally permitted in these areas provided that:

- 1) The steep slope is vegetated with native woody vegetation to the maximum extent practicable; and
- 2) Stabilization measures are used, if necessary, such as terracing and paving, which are consistent with the natural or predevelopment character of the entire site, to the maximum extent practicable.

Development on steep slopes is discouraged 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.

This policy is not applicable, because the proposed project does not involve areas defined as steep slopes.

POLICY 7:7E-3.35: DRY BORROW PITS

Dry borrows pits are pits that have been created for the purpose of extracting coastal minerals which have not extended below the groundwater level. Acceptable activities in these areas include: surface mining, provided that the Mining Use rule is followed; channeling clean surface runoff or discharge of clean effluent from liquid waste treatment facilities; storing water; dredge material disposal, provided that it doesn't degrade groundwater and is compatible with neighboring uses; solid waste disposal if compatible with neighboring uses, landfill does not exceed original surface elevations, and the waste complies with the soil and hazardous waste rule; and filling or grading for construction, provided the fill is clean and of a texture that will not disturb local groundwater flow.

This policy is not applicable since the proposed project does not affect dry borrow pits as defined in the rule.

POLICY 7:7E-3.36: HISTORIC AND ARCHAEOLOGICAL RESOURCES

Development that detracts from, encroaches upon, damages, or destroys the value of historic and archaeological resources is discouraged, while adaptive reuse is encouraged. Mitigation measures must take place if the proposed development will irreversibly and/or adversely affect historic and archaeological resources.

As detailed in Chapter 5.2, “Historic Resources,” this policy is applicable because the proposed project has the potential to affect historic and archaeological resources. In cases where this impact is unavoidable, mitigative measures would be implemented in accordance with the process discussed in Chapter 5.2. Also, as discussed in Chapter 8, “Section 4(f) Evaluation,” there is no prudent and feasible alternative to the “use” of the historic and archaeological resources.

POLICY 7:7E-3.37: SPECIMEN TREES

Specimen trees are defined by the rule as the largest known individual trees of each species in New Jersey, a list of these trees is maintained by the Department’s Division of Parks and Forestry. Development is prohibited that would significantly reduce the amount of light reaching the crown of the tree, alter drainage patterns within the site, adversely affect the quality of water reaching the site, cause erosion or deposition of material in or directly adjacent to the site, or otherwise injure the tree.

This policy is not applicable because no specimen trees (as identified by NJDEP State Forestry Service’s reference *Big Trees of New Jersey*) are present in the proposed project area.

POLICY 7:7E-3.38: ENDANGERED OR THREATENED WILDLIFE OR VEGETATION SPECIES HABITATS

Development in these areas or their buffers is prohibited unless it can be demonstrated that endangered or threatened wildlife or vegetation species habitat would not directly or through secondary impacts on the relevant site or in the surrounding area be adversely affected.

The New Jersey Landscape Project dataset does not identify threatened or endangered species within the project area. The northern edge of an area listed by the NJDEP’s Landscape Project – Urban Peregrine Falcon (2002) as suitable foraging habitat for the State-endangered peregrine falcon is identified approximately 1,500 feet south of the project area (http://njgin.nj.gov/dep/DEP_iMapNJDEP/viewer.htm). The identified area is centered on PSEG’s Kearny Generating Station (apparent nesting site), and includes a foraging area with a radius of approximately 3,280 feet (1,000 meters). It is not known if this site (which is outside of the Portal Bridge’s study area) is in current or continuous use by peregrine falcons; however, these raptors are common in urban areas, and nesting in New Jersey has been generally successful (NJDEP 2006). Additionally, in the summer of 2007, the first successful nesting of ospreys in the Hackensack Meadowlands in over 50 years was observed. Two juveniles fledged from a nest in Jersey City’s Penhorn Creek area near the Hackensack River. Because ospreys are exclusively piscivorous (i.e., fish-eating) the nesting success has been hailed as a sign of improving water quality in the region (Hudson County 2007, personal communication).

In addition, the following agencies were consulted regarding the presence or absence of threatened or endangered species or other species of particular concern within the project study area: National Oceanographic and Atmospheric Administration’s (NOAA) National Marine

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Fisheries Service (NMFS), United States Fish and Wildlife Service (USFWS), and NJDEP Natural Heritage Program (see Appendix C).

In light of the available data on threatened or endangered species in the project area, this policy is not applicable at present. If the status or distribution of threatened or endangered species changes prior to or during project implementation, then compliance with this policy will be maintained in consultation with NJDEP or other appropriate agencies.

POLICY 7:7E-3.39: CRITICAL WILDLIFE HABITATS

Development that would directly or through secondary impacts on the relevant site or in the surrounding region adversely affect critical wildlife habitats is discouraged, unless:

- Minimal feasible interference with the habitat can be demonstrated;
- There is no prudent or feasible alternative location for the development; and
- The proposal includes appropriate mitigation measures.

At present, 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 and Wildlife). Until additional maps are available, sites will be considered on a case-by-case basis by the Division of Fish Wildlife. As such, this policy may be applicable pending NJDEP review. Regardless, the proposed project will minimize disturbance to habitat to the extent feasible, and will include appropriate mitigation measures.

POLICY 7:7E-3.40: PUBLIC OPEN SPACE

Public open space is described as land areas owned or maintained by State, Federal, county and municipal agencies or private groups and are used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. Overall, development that adversely affects existing public open space is discouraged. Some development is conditionally acceptable if it is consistent with the character and purpose of public open space, as described by the park master plan when such a plan exists. All new development adjacent to public open space will be required to provide an adequate buffer area. Development in Atlantic City is acceptable within existing public open space provided the area is a street right-of-way or the Boardwalk, and the development meets certain standards.

This policy is applicable because the proposed project involves traversing several areas owned or maintained by state, federal, county and municipal agencies or private groups that are used for or dedicated to conservation of natural resources, public recreation, visual or physical public access or, wildlife protection or management. These areas include, but are not limited to, the Riverbend Wetland Preserve and Hudson County Park at Laurel Hill. Furthermore, as described in Chapter 5.1, "Land Use and Social Conditions," the build alternatives would require the acquisition of a portion of the preserve and the park. Measures to mitigate these impacts are described in Chapter 5.1, as well as measures to minimize harm to the public park space in Chapter 8, "Section 4(f) Evaluation."

POLICY 7:7E-3.41: SPECIAL HAZARD AREAS

Coastal development, especially residential and labor-intensive economic development, within special hazard areas is discouraged. All development within special hazard areas must include

appropriate mitigating measures to protect the public health and safety. NJDEP's Division of Hazardous Waste Management handles approvals for hazardous substance investigations or clean-up activities at contaminated sites.

This policy is applicable because the project involves disturbing soils and sediments known to be contaminated. All development within special hazard areas will include appropriate mitigating measures to protect the public health and safety.

POLICY 7:7E-3.42: EXCLUDED FEDERAL LANDS

Excluded Federal lands are those areas that 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. Federal actions on excluded Federal lands shall be consistent with the Coastal Zone Management rules to the maximum extent practicable.

This policy is not applicable because the subject properties are not excluded Federal lands.

POLICY 7:7E-3.43: SPECIAL URBAN AREAS

Development that will help to restore the economic and social viability of special urban areas is encouraged. Development that would adversely affect the economic well being of these areas is discouraged when an alternative which is more beneficial to the special urban areas is feasible.

This policy may be applicable. It is expected that one of the long term consequences of the proposed project will be enhanced connectivity with Manhattan for New Jersey urban areas including Newark, Secaucus, Kearny, and other municipalities.

POLICY 7:7E-3.44: PINELANDS NATIONAL RESERVE AND PINELANDS PROTECTION AREA

The Pinelands National Reserve is an approximately 1,000,000 acre area ranging from Monmouth County in the north, south to Cape May County, from Gloucester and Camden County on the west, to the barrier islands of Island Beach State Park and Brigantine Island along the Atlantic Ocean on the east. The Pinelands Protection Area is a slightly smaller area within the Pinelands National Reserve. Coastal development in these areas shall be consistent with the intent, policies, and objectives of the National Parks and Recreation Act of 1978, Section 502, creating the Pinelands National Reserve, and the State Pinelands Protection Act of 1979. Except for the discharge of dredged and fill materials in freshwater wetlands, coastal activities in areas under the jurisdiction of the Pinelands Commission shall not require a freshwater wetlands permit.

This policy is not applicable, because the project area is not within the Pinelands Protection Area or the Pinelands National Preserve.

POLICY 7:7E-3.45: HACKENSACK MEADOWLANDS DISTRICT

The Hackensack Meadowlands Reclamation and Development Act of 1968 created the New Jersey Meadowlands Commission (NJMC), which manages the 19,730 acre area of water, coastal wetlands, and associated uplands of the Hackensack Meadowlands District. The NJMC acts as the lead coastal planning and management agency within this Special Area. The NJMC Master Plan Zoning Rules are adopted as part of the Coastal Management Program and the Hackensack Meadowlands District is designated a Geographic Area of Particular Concern. The

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department periodically reviews the Commissions actions. Coastal activities under the jurisdiction of the NJMC shall not require a Freshwater Wetlands permit, or be subject to transition area requirements of the Freshwater Wetlands Protection Act, except the discharge of dredged or fill materials which may require a permit.

This policy is applicable, because the Portal Bridge Capacity Enhancement Project falls within the Hackensack Meadowlands District. As such, the build alternatives would require review by the NJMC, and all activities must comply with pertinent regulations as defined by the rule.

POLICY 7:7E-3.46: WILD AND SCENIC RIVER CORRIDORS

Wild and scenic river corridors are defined in the rule as all rivers designated into the National Wild and Scenic Rivers System as well as any rivers or segments thereof being studied for possible designation into the system pursuant to the National Wild and Scenic River Act. All development in these corridors 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.

This policy is not applicable, because the Hackensack River in the project area is not designated as a Wild and Scenic River.

POLICY 7:7E-3.47: GEODETIC CONTROL REFERENCE MARKS

Geodetic control reference marks (monuments, points, and rivets) are traverse stations and benchmarks established or used by the New Jersey Geodetic Control Survey. Overall, the disturbance of a geodetic control reference mark is discouraged. If these marks must be moved due to development, the New Jersey Geodetic Control Survey shall be contacted at least 60 days prior to disturbance.

This policy may be applicable depending upon the location of New Jersey Geodetic Control Survey monuments and project alignments. These markers will be identified during additional survey efforts under preliminary engineering, and full compliance with this policy would be maintained, if applicable.

POLICY 7:7E-3.48: HUDSON RIVER WATERFRONT AREA

The Hudson River Waterfront Area extends from the George Washington Bridge in Fort Lee to the Bayonne Bridge in Bayonne, and includes all land within Jersey City that is subject to the Waterfront Development Law. Non-industrial development within the Hudson River Waterfront Area must conform to allowable building height, massing, and public access.

This policy is not applicable, because no elements of the Portal Bridge Capacity Enhancement Project occur on the Hudson River Waterfront.

POLICY 7:7E-3.49: ATLANTIC CITY

The area of Atlantic City is those lands within the municipal boundary of the City of Atlantic City. Atlantic City has many development rules associated with these types of development: casino hotel development, development proposed on existing ocean piers, construction of new commercial piers or expansion of existing commercial piers, development proposed in the Boardwalk right-of-way, and development in the street rights-or-way (for further explanation, see rule).

This policy is not applicable.

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