REGULATION GOVERNING BEACH PROTECTION
AND THE USE OF BEACHES
Revised and Effective

Beach Preservation Act of 1972
and subsequent Amendments
Department of Natural Resources
and Environmental Control
Division of Soil and Water Conservation
Shoreline and Waterway Management Section.

Document 40-07/03/06/----

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STATEMENT OF POLICY
I hereby certify that the attached Regulations Governing Beach Protection and the Use of Beaches and the Building Line maps prepared and maintained by the Division numbered 1-97 for the Atlantic Ocean shoreline from the Delaware-Maryland line at Fenwick Island to Cape Henlopen State Park and 1-135 for the Delaware Bay shoreline from Cape Henlopen State Park to, and including, Picking Beach are duly promulgated pursuant to Order of

____________________.

Approved:

DATE:_________________________                                              ________________________

John A. Hughes, Secretary
Department of Natural Resources                                       and Environmental

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The purpose of these Regulations is to enhance, protect, and preserve public and private beaches of the State, to mitigate beach erosion and to minimize storm damage through a Permit and Letter of Approval process. The beach provides the benefits of a unique recreational area, storm protection and a natural buffer between the water and upland areas. The guiding principle of these Regulations is that construction activities be limited within the beach to areas landward of the dune protection zone. These Regulations prohibit certain activities and require Permits or Letters of Approval for other activities within the beach area.

1.2 Sole Jurisdiction

Authority to enhance, preserve and protect public and private beaches within the State is vested solely in the Department.

1.3 Application of Current and Earlier Regulations

Activities currently authorized by a Permit or Letter of Approval will continue to be governed by the terms of the Permit or Letter of Approval.

2.0 Definitions

As used in these Regulations, the following terms shall have the meanings indicated below:

2.1 “Act” - means the Beach Preservation Act, 7 Del. C. Chapter 68 and amendments made thereto.

2.2 “Amenity” is a structure or man made element, including but not limited to swimming pools, tennis courts, patio furniture, that enhances the property's attractiveness or increases the occupant's or user's satisfaction although the feature is not essential to the property’s use.
2.3 **“Base Flood Elevation”** The elevation of the 1% annual chance “One Hundred Year” flood, as determined by the Federal Emergency Management Agency for use in the National Flood Insurance Program,

2.4 **“Beach”** means that area from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal immediately north of Pickering Beach, which extends from the mean high water line of the Atlantic Ocean and Delaware Bay landward 1,000 feet and seaward 2,500 feet, respectively, and along the perimeter of Rehoboth, Indian River, Little Assawoman and Assawoman Bays (excluding tributaries) which extend from the mean high water line landward 200 feet and bayward 300 feet, respectively.

2.5 **“Beach Enhancement”** means the process of improving or increasing the recreational and/or protection value of a beach.

2.6 **“Beach Erosion” or ‘Erosion’** is the wearing away of a beach by water or the elements.

2.7 **“Beach Nourishment”** - means the process of replenishing a beach with material (usually sand) obtained from another location by mechanical, hydraulic or other means.

2.8 **“Beach Preservation” or 'beach erosion control' or 'erosion control'** is the protection and control of the beach by the conduct and regulation of work and activities likely to affect the physical condition of the beach or shore, and includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation.

2.9 **“Beach Protection”** means the process of preventing the decrease of recreational and/or storm protection values of a beach.

2.10 **“Beach Zone”** means the area extending seaward from the seaward toe of the primary dune (vegetation line) or bulkhead line, as shown on the Department’s Coastal
Vulnerability Assessment Maps.

2.11 **“Building”** means any roofed and walled structure built for temporary or permanent use.

2.12 **“Building Line”** means a line generally paralleling the coast, seaward of which construction of any kind shall be prohibited without a Permit or Letter of Approval from the Department. The Building Line shall be set forth on maps prepared by the Department with reference to the National Geodetic Vertical Datum, the Delaware State Plane Coordinate System, and topographic surveys. Within the corporate limits of Rehoboth Beach and Bethany Beach, in commercial areas containing boardwalks and where no natural dune exists, the Building Line shall be along the westerly edge of the boardwalk.

2.13 **“Bulkhead”** means a vertical structure or partition built parallel or nearly parallel to the shoreline, with return walls, designed primarily to retain or prevent land from sliding and, secondarily, to protect upland areas from beach erosion and damage from wave action. A bulkhead is generally of lighter construction than a seawall.

2.14 **“Construction”** includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

2.15 **“Department”** means the Department of Natural Resources and Environmental Control.

2.16 **“Dune”** means a mound, hill or ridge of windblown sand, either bare or covered with vegetation, naturally or artificially accumulated.

2.17 **“Dune Crossover”** means any structure or improvement constructed or installed for the primary purpose of obtaining or facilitating pedestrian or vehicular access across the primary coastal dune.
2.18 "**Erosion/Wave Zone**" means the area extending landward from the seaward toe of the primary dune or bulkhead line to the landward limit of storm-induced erosion as shown on the Department’s Coastal Vulnerability Assessment Maps. This zone is characterized by dune erosion, significant profile lowering, damaging waves and high velocity flows.

2.19 "**Expansion**" means the enlargement of a structure, or portion thereof, (see Structure definition).

2.20 "**Flood Zone**" means the area extending to the landward limit of stillwater flooding or to the landward limit of wave overtopping, whichever is more landward as shown on the Department’s Coastal Vulnerability Assessment Maps.

2.21 "**Geology**" means the relationship of the earth and the materials of which it is composed, to the changes which it has undergone, is undergoing, or is likely to undergo.

2.22 "**Geomorphology**" means the form and general configuration of the earth's surface and the changes that take place in the evolution of land forms.

2.23 "**Groin**" means a shore protection structure constructed (usually perpendicular to the shoreline) to retard erosion of an existing beach by trapping littoral drift.

2.24 "**Lowest Living Floor**" means the lowest portion of the lowest horizontal support member of the lowest enclosed space used for living purposes, which includes working, sleeping, eating, cooking, or combination thereof. A floor used only for storage shall not be considered a living floor.

2.25 "**Maintenance**" means any work aimed at keeping a structure in operating and usable condition. Maintenance does not mean expansion or modification of a structure. Maintenance does not mean changing the general form or extension of the structure.

2.26 "**Material Physical Effect**" means, including but not limited to, any alteration to
the existing characteristics of the beach that could significantly increase the danger of erosion, storm damage or flooding and includes the moving, digging, or removal of beach material or the erection of any temporary or permanent structure.

2.27 “Modification” means a change in the form of a structure.


2.29 “Parcel of Real Property” means any land owned by one or more persons, the boundaries of which are set forth in a single deed, series of deeds, or similar document.

2.30 “Person” means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or duly established legal entity.

2.31 “Primary Dune” means that dune which roughly parallels the shoreline in a more or less continuous fashion and is generally the first and largest dune encountered moving landward from the shoreline.

2.32 “Private Beach” means any beach which is not a public beach as defined in the Act.

2.33 “Public Beach” means any beach owned in fee simple by the Federal or State government or any County, City, Town or municipality; or any beach for which the State has obtained an easement or agreement for public use.

2.34 “Regulations” unless stated otherwise, means the Regulations Governing Beach Protection and the Use of Beaches, promulgated pursuant to the Beach Preservation Act, 7 Del. C. Chapter 68 and amendments made thereto.

2.35 “Repair” means the act of restoring a structure to good condition after it has been damaged or deteriorated by any cause. Repair does not mean expansion or modification of a
structure.

2.36  **“Revetment”** means a non-vertical facing of stone, concrete, or similar material built to protect a shore, or shore structure against erosion by wave action or currents and having a specific engineered design.

2.37  **“Sand Fence”** means a barrier made of posts, wires and wood slats (1/2" thick or less by 1-1/2" wide or less) or synthetic materials including flexible plastic, nylon and polyester intended primarily to trap and collect wind-blown sand, but which may also be used to channel human and vehicular traffic.

2.38  **“Seawall”** means an upright structure separating land and water areas, primarily designed to prevent erosion and other damage to upland areas due to wave action. A seawall is generally of heavier or more massive construction than a bulkhead.

2.39  **“Secretary”** means the Secretary of the Department of Natural Resources and Environmental Control.

2.40  **“Shoreline”** means the line of intersection of a body of water with the land.

2.41  **“Smallest Subsets of Lots”** means smallest set of lots that exist within a subdivision or community separated by either dedicated public walkways, roads, or subdivision boundaries. If there are no roads or walkways separating sections within a subdivision, then the smallest set of lots shall be limited to 7 lots.

2.42  **“Structure”** means any building, deck, walkway, pipeline, dock, pier, wharf, boat ramp, groin, jetty, seawall, bulkhead, revetment, or any other piece of work artificially built or placed.

2.43  **“Substantial Amount”** means any amount of material, the moving, alteration, or removal of which could significantly increase danger of erosion, storm damage or flooding.
2.44 “Substantial Damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.45 “Substantial Improvement” means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement is started, or, if the structure is damaged and is being restored, before the damage occurred.

2.46 “Temporary Structure” means any portable and easily removable non-habitable building, shed, ramp, steps or walkway that can be easily removed from the site within a short time frame using minimal equipment and/or man power.

2.47 “Wave/Overwash Zone” means the area extending from the landward limit of the Erosion/Wave Zone to a point indicated by calculations and/or historic overwash penetration as shown on the Department’s Coastal Vulnerability Assessment Maps. This zone is characterized by one or more of the following: damaging waves, high velocity flows and deposition of overwash sediments.

3.0 Permit and Letter of Approval Application Procedures

3.1 General Rules

The Department shall consider and review all Permit and Letter of Approval applications and they shall be approved or denied in accordance with the Act and these Regulations. No Permit or Letter of Approval shall be issued for any activity prohibited by any provision of the Act or these Regulations.

3.2 Application Fees
Any person applying for a Permit or Letter of Approval pursuant to these Regulations must apply to the Department on an application form provided by the Department and shall, at the same time, submit the required application fee.

3.3 Mitigating Measures

Applications for Permits and Letters of Approval shall incorporate all reasonable means and methods to avoid or minimize any adverse impacts of the proposed activity. These measures shall be implemented at the applicant's expense and may include actions that will (1) avoid or minimize any adverse impacts of the proposal; (2) restore the affected environment; or (3) compensate for the adverse impacts by replacing or providing substitute resources.

In rendering its decision on requests for Permits and Letters of Approval pursuant to these Regulations, the Department shall make a determination regarding the potential adverse effects of the proposed structure or activity. If, in the opinion of the Department, the potential for damage to the beach is increased as a result of the proposed structure or activity, the Department may require the applicant to take measures (including, but not limited to beach nourishment, dune construction, and/or dune maintenance) to reduce such damage potential. When the Department requires such measures, the applicant shall be required to maintain these measures for the life of the structure or activity. Failure to comply with the measures required by the Department shall be cause for removal of the structure or termination of the activity and restoration of the beach.

3.4 Procedures for Processing Permit Applications

Upon receipt of a Permit application in proper form, the Department shall post a public notice stating: a) that the application has been received; b) a brief description of the nature of the application; and c) that Public comments will be received for fifteen (15) days by the Department
regarding the application.

The Department shall also mail notice to immediately adjacent property owners listed in the Permit application, and make the application available for public inspection. A decision shall not be rendered on any Permit application until at least twenty (20) calendar days after notice has been published and mailed to adjacent property owners, and the application has been made available for public inspection, in accordance with this section.

3.5 Specific Information to be Considered by the Department

Whenever the Department is deciding whether to issue a Permit or Letter of Approval or is determining if the Department shall require that the dimensions or location of a proposed structure, or portion thereof, or other design aspects are to be modified or redesigned pursuant to these Regulations, the Department may take into account the geology, geomorphology, meteorology, and hydraulics of the area in addition to any other relevant information including, but not limited, to the following:

3.5.1 Any comments received by the Department;

3.5.2 The Act and the Regulations;

3.5.3 The effect of the proposed construction on shoreline recession, beach erosion, flooding, and potential damage to the parcel of property that is the subject of the Permit application; and potential damage to any other parcel of real property, public lands, or personal property;

3.5.4 The feasibility of alternative protection from storm damage that may be available;

3.5.5 The historical average rate of shoreline change for the general area nearby and including the parcel of real property that is the subject of the Permit application;
3.5.6 Any design modifications which may mitigate the impact of the proposed construction;

3.5.7 The likelihood and amount of actual, or potential for, expenditures of federal and state revenues for maintaining, repairing or restoring the parcel of real property prior to construction, after construction, and after any natural disaster;

3.5.8 The protection of the state, the public and any adjacent landowners from actual and potential financial and property loss;

3.5.9 The feasibility of any modification or redesign required by the Department, keeping in mind any increased or decreased costs, in achieving the purpose and function of the structure or portion thereof as originally planned;

3.5.10 Any design alternatives or amendments to the original design submitted to the Department by the owner of the proposed structure or portion thereof; and

3.5.11 Any other factors or information that the Department determines to be relevant to the subject matter of the Permit.

3.6 Department Decision

Upon receipt of an application for a Permit or Letter of Approval, the Department shall consider the effect of the proposed activity on beach enhancement, preservation and protection. The Department may undertake any investigation or activity it deems necessary to carry out the purposes of the Act. If the Department determines a project may have a substantial effect on beach enhancement, preservation and protection, the applicant shall be directed to follow the procedures for obtaining a Permit applicable under Section 6.0. The Department may require modification of any proposed structure or activity in order to: prevent increased erosion damage to the property at issue, nearby parcels of property, or public lands; reduce public
The Department shall make a decision on the application that may include terms and conditions that it determines will best implement the purposes of the Act and these Regulations. The Department shall give written notice with reasons for the decision to the applicant.

3.7 Department Exemptions

The Department shall not be subject to the Permit or Letter of Approval requirements of the Act and these Regulations in the performance of its erosion control duties. The Department will, however, be guided by substantive standards generally applicable to the construction and placement of shore protection structures and facilities.

3.8 Savings Clause

If any provision of these Regulations, or the application of such provisions to any person or set of circumstances is held invalid, the remainder of these Regulations and the application of such provision to persons or circumstances other than those held invalid, shall not be affected.

3.9 Other Requirements and Approvals

A person who is issued a Permit or Letter of Approval by the Department pursuant to these Regulations is not exempted from obtaining any other Permit or approval required by Federal, State or local laws, rules, Regulations, and building and zoning ordinances.

4.0 Building Line

The Department's objective is to confine all construction to the area completely landward of the Building Line. The Building Line is intended to separate the area acceptable for construction and the area which is not.
4.1 Location of Building Line

The Building Line shall be shown on topographic maps prepared by the Department with reference to the North American Vertical Datum (NAVD), and the Delaware State Plane Coordinate System for all shoreline areas of Delaware Bay and the Atlantic Ocean coast of Delaware from and including, Pickering Beach to the Delaware-Maryland line at Fenwick Island. The Building Line shall be shown as a series of straight lines connected together at points whose locations are identified by reference to the Delaware State Plane Coordinate System. No point shall be located more than five hundred (500) feet from an adjoining point. The Building Line designated on the maps shall be conclusive for the purpose of the Act.

4.2 Building Line Re-Established

When, the Secretary determines that storms or other natural phenomena have caused a substantial permanent change in the seaward contour used to establish the Building Line, the Department may, re-establish the Building Line from information provided by topographic survey. That Building Line shall be established using the following formula:

4.2.1 Along beaches extending from the Delaware/Maryland line to the tip of Cape Henlopen - 100 feet landward of the adjusted seaward most 9-foot elevation contour above NAVD;

4.2.2 Along beaches extending from the tip of Cape Henlopen to Rosemary Street at the southern most limit of Primehook Beach - 100 feet landward of the adjusted seaward most 6-foot elevation contour above NAVD;

4.2.3 Along beaches extending from Rosemary Street at the southern most limit of Primehook Beach to the Old Marina Canal north of Pickering Beach - 75 feet landward of the adjusted seaward most 6-foot elevation contour above NAVD;
4.3 Mapped Areas without existing Building Line

When an applicant proposes to develop a parcel of real property which does not currently have a Building Line established, that line shall be established for the new development using the formula outlined in Section 4.2 above. All construction in these areas must be located landward of the Building Line.

5.0 Activities Entirely Landward of the Building Line

No person shall commence or conduct construction, modification, repair, expansion, reconstruction, relocation or maintenance of any structure entirely landward of the Building Line in the area defined as beach or conduct the alternation, digging, mining, moving, removal or deposition of any substantial amount of beach materials, or the significant removal of vegetation unless and until a Permit or Letter of Approval has been issued.

5.1 Letter of Approval Requirements for Construction Activities Entirely Landward of the Building Line

Before any Letter of Approval is issued by the Department for the construction of any structure, or portion thereof, in the area defined as beach and landward of the Building Line, the person applying for the Letter of Approval must provide the Department with written documentation and plans indicating that the proposed structure, or portion thereof, will be constructed in accordance with the Act and these Regulations.

5.2 Application Determination

Upon receipt of an application for a Letter of Approval proposing construction in the area defined as beach but entirely landward of the Building Line, the Department shall
consider the effect of the proposed activity on beach enhancement, preservation and protection. The Department may undertake any investigation or activity it deems necessary to carry out the purpose of the Act. If the Department determines the proposed activity may have a substantial effect on beach enhancement, preservation or protection, the applicant shall be directed to follow the procedures for obtaining a Permit in Section 6.0.

5.3 Maintenance, Repair and Relocation of Habitable Structures

Any person intending to commence any maintenance or repair work on a structure or planning to relocate a structure located landward of the Building Line in the area defined as beach, shall apply in writing to the Department for a Letter of Approval, except as specified in Section 5.4. No person shall commence maintenance or repair work until after being issued a Letter of Approval by the Department.

5.4 Maintenance and Repair Not Requiring a Permit or Letter of Approval

A Letter of Approval is not required when maintenance or repair work is undertaken on a lawfully constructed structure located landward of the Building Line in the area defined as beach and;

5.4.1 The location of the maintenance or repair work is at or above the lowest living floor and within the perimeter of the existing lawfully constructed structure and;

5.4.2 The maintenance or repair work consists solely of non-structural work such as repainting, replacement of shingles or siding or replacement of windows and doors and any cleaning necessary to maintain the structure.

6.0 Activities Entirely or Partially Seaward of the Building Line

No person shall commence or conduct construction, modification, repair, expansion,
reconstruction, relocation or maintenance of any structure seaward of the Building Line in the area defined as beach or conduct the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach materials, or the significant removal of vegetation unless and until a Permit or Letter of Approval has been issued.

6.1 Permit Requirements

6.1.1 Construction Seaward of the Building Line

Before any Permit is issued by the Department for the construction of any structure, or portion thereof, seaward of the Building Line, the person applying for the Permit must provide the Department with written documentation and plans indicating that the proposed structure, or portion thereof, will be constructed in accordance with the Act and these Regulations.

6.1.2 Construction of any structure or portion thereof, seaward of the Building Line on any parcel of real property is prohibited unless, the Department has made a determination during the permit application review process that:

6.1.2.1 A structure can be built on the proposed parcel without posing an unacceptable risk to human health or the environment, or the beach resource or the physical safety of the property owner or others, and

6.1.2.2 The size of the area of the parcel of real property located landward of the building line is inadequate for construction of proposed structure or portion thereof; and

6.1.2.3 The dimensions and location of the structure, or portion thereof, and other design aspects of the proposed construction project, including but not limited to, entrance ways, parking lots and landscaping, cannot be modified or redesigned in order to
have the final structure or portion thereof located either less seaward or completely landward of
the Building Line in accordance with the four-step process outlined in sections 6.1.2.3.1 through
6.1.2.3.4. A person is not required to follow the requirements of the four-step process if they
demonstrate through the submission of a sealed survey of the lot, that all construction will be
located entirely landward of the Building Line. In this case, the applicant must apply for a
Letter of Approval as required by Section 5.0.

6.1.2.3.1 All construction must begin at the setback line
established for the landward property boundary by the county or town in which the property is
located. Porches, decks and entrance ways are not permitted along this wall of the building,
except those which are recessed into the exterior wall of the structure or alongside the structure.
Steps may extend into setbacks as long as permissible by county and local regulations, and;

6.1.2.3.2 The structure must occupy all of the area
available between the side yard setbacks, and;

6.1.2.3.3 The square footage of the foot print of the
structure (living area only, not including open porches and decks) shall not exceed the average
square footage that exists among adjacent structures within the smallest subset of lots, and;

6.1.2.3.4 Seaward penetration over the Building Line
shall not exceed the average encroachment that exists among adjacent structures within the
smallest subset of lots. Any decks constructed along with the structure must meet the
requirements of Section 6.1.8.

6.1.3 Other Structures

Construction proposed seaward of the Building Line shall be free of non-essential
portions of the dwelling unless they are raised above Base Flood Elevation, are within the
perimeter of the building and supported by the building foundation. Non-essential portions of
the dwelling include, but are not limited to, showers, decks, patios, benches, garages, carports,
vehicle ramps, basement areas, retaining walls, landscaping structures, birdhouses, fences (other
than sand fence or lattice), steps, solid driveways and parking areas, swimming pools, propane
tanks, flag poles, and other non-living space portions of the dwelling.

6.1.4 Maintenance, Repair and Relocation of Structures

Any person intending to commence any maintenance or repair work on any
structure seaward of the Building Line in the area defined as beach, shall apply in writing to the
Department for a Permit or a Letter of Approval, except as specified in Section 6.1.6. No person
shall commence maintenance or repair work until after being issued a Permit or a Letter of
Approval by the Department.

6.1.4.1 If the proposed maintenance or repair is to an amenity located
seaward of the Building Line, below the first living floor and below Base Flood Elevation, the
Department shall require elevation of the amenity to a level at or above Base Flood Elevation
and
relocation of the structure as far landward as possible to facilitate growth of the dune and to
prevent loss of the amenity during storm events. A Permit or Letter of Approval from the
Department is required for this maintenance or repair work.

6.1.4.2 In the event the proposed maintenance or repair work involves
raising or removing a structure from its foundation and the structure is located seaward or
partially seaward of the Building Line, the Department shall require relocation of the structure
completely landward of the Building Line or as far landward on the lot as possible.

6.1.4.3 In the event the proposed maintenance or repair work involves a
substantial improvement and the structure is located seaward or partially seaward of the Building Line, the Department shall require relocation of the structure completely landward of the Building Line or as far landward on the lot as possible.

6.1.5. Restoration or Reconstruction after Substantial Damage or Removal, Siting Requirements

6.1.5.1 If a structure in the area defined as beach is substantially damaged or removed from its foundation, no person shall undertake any restoration or reconstruction of the substantially damaged or removed structure before the Department issues the person a Permit or Letter of Approval.

6.1.5.2 If a structure is to be either constructed or reconstructed following substantial damage or removal of the original structure, the structure must be located entirely landward of the Building Line or as far landward on the lot as possible. Siting requirements for reconstruction of the substantially damaged or removed structure will be determined based on the requirements of Sections 5.0 and 6.0.

6.1.6 Maintenance and Repair Not Requiring a Permit or Letter of Approval

A Permit or Letter of Approval is not required when maintenance or repair work is undertaken on a lawfully constructed structure located in the area defined as beach and,

6.1.6.1 The location of the maintenance or repair work is at or above the lowest living floor and is within the perimeter of the existing lawfully constructed structure and.

6.1.6.2 The maintenance or repair work includes consists solely of non-structural work such as repainting, replacement of shingles or siding or replacement of windows and doors and any cleaning necessary to maintain the structure.

6.1.7 Modification or Expansion of Structures
6.1.7.1  Modification or expansion of an existing structure, or portion thereof, seaward of the Building Line, including those structures or portions thereof, that were constructed prior to the Act and the Regulations is prohibited unless one or more of the following apply to the proposed modification or expansion and a Permit or Letter of Approval has been issued by the Department:

6.1.7.1.1  The modification or expansion consists of only a deck located at or above the lowest living floor of a building, or above the Base Flood Elevation, and the modification or expansion makes use of the foundation of the building, (e.g., by cantilevering or knee brace) that existed prior to the modification or expansion. However, any deck or portion thereof, that is modified or expanded pursuant to any provision of this Section shall not extend beyond a point that is the average distance seaward of the Building Line of existing lawfully constructed buildings or decks of a similar nature that already exist on the parcel of real property located within the smallest subset of lots, within the same subdivision. Excavation or alteration of the existing dune or vegetation is prohibited to accommodate the construction of the deck. The area underneath the deck shall remain open and free of obstruction.

6.1.7.1.2  The modification or expansion of an existing structure is limited to the area contained within the existing walls of the structure and is limited to the area at or above the lowest living floor.

6.1.8  Decks

Whenever a deck is proposed for construction along with a new building and the deck is proposed to be located at or above the lowest living floor of the building, or above Base Flood Elevation, and the deck is proposing to make use of the foundation of the structure (e.g. by cantilevering or knee brace) the deck shall not extend beyond a point that is the average distance
seaward of the Building Line of existing lawfully constructed buildings or decks that already exist on the parcels of real property located within the smallest subset of lots, within the same subdivision as the parcel of real property on which the building or deck is proposed. The area underneath the deck shall remain open and free of all obstructions.

6.1.9  Seasonal Structures

The placement of seasonal or otherwise temporary structures seaward of the building line and seaward of the dune on the dry beach may be allowed with a Letter of Approval from the Department. It must be demonstrated by the applicant that the design and deployment of the temporary structure can be done so that the structure can be easily removed or otherwise relocated landward of the building line in a short time frame. Temporary structures must be removed from the site during the off-season and in the case of the threat of a coastal storm.

6.1.10  Pedestrian Access Structures and Dune Maintenance

Before any person commences the construction or placement of a pedestrian dune crossover, or any portion thereof, the person must have a Letter of Approval.

6.1.10.1  A person is not required to obtain a Permit or Letter of Approval if they are conducting ordinary dune maintenance, as determined by the Department, including the installation of sand fence and the planting of and fertilization of stabilizing vegetation. Mechanical movement of sand requires a Permit or Letter of Approval from the Department.

6.1.11  Erosion Control or Shore Protection Structures

The use of walls to protect properties from ocean forces is discouraged. Maintenance of an adequately wide beach and dune system is preferred. Construction of any structure or facility having the primary function of beach erosion control, shore protection, or property protection
including, but not limited to groins, jetties, seawalls, revetments, dikes, bulkheads, or any pipeline, dock, pier, wharf, ramp or other harbor work may be permitted if it is demonstrated that all other means of beach erosion control, shoreline protection or beach enhancement will not be effective.

If a bulkhead, revetment or other protective structure is damaged during a storm a permit must be obtained from the Department to make repairs. If less than 50% of the original structure is sound and functional and suitable for incorporation into reconstruction of the structure, the alternatives to replacing the structure shall be considered in the permit review process.

6.1.12 Beach Nourishment

Beach nourishment requires the issuance of a Permit from the Department to assure proper design.

7.0 Prohibited Activities

7.1 No person shall:

7.1.1 Operate any type of motorized vehicle or machine on or across the primary dune on any beach except at locations approved or permitted by the Department;

7.1.2 Transport or store any type of boat across or on the primary dune on any beach except at locations approved or permitted by the Department;

7.1.3 Walk on or over or across the primary dune of any state-owned beach except at locations approved or permitted by the Department;

7.1.4 Alter, move or remove any structure, facility or improvement installed or maintained by the Department; or
7.1.5 Damage, destroy or remove any tree, shrubbery, beach grass or other vegetation growing on any State owned or maintained beach.

7.2 Construction of any structure or portion thereof, seaward of the Building Line in a subdivision created after the [effective date of these Regulations] is prohibited.

7.3 Construction of any structure, or portion thereof, on any lot or parcel of real property that is located entirely seaward of the Building Line that was not owned by the applicant on the [effective date of these Regulations] is prohibited.

7.4 Construction of any structure, or portion thereof, on any lot or parcel of real property that is located entirely seaward of the building line is prohibited when the lot or parcel in question was created by subdivision of a larger parcel into smaller parcels or lots after August 13, 1981.

8.0 Construction Standards

“Previous storms have repeatedly shown the vulnerability of certain types of construction, particularly older, at-grade or inadequately elevated buildings close to the shoreline... Recent coastal siting and construction standards, though improved, still leave coastal development vulnerable to damage or destruction during severe storms. The potential consequences of not further improving coastal siting and construction standards are great loss of residential and commercial property, business interruption and job loss, and of course, the threat to human life itself.”

Recognizing the above, the Department conducted a Coastal Hazard Vulnerability Study to 1) better define the nature and extent of the coastal hazards along Delaware's Atlantic Ocean and Delaware bay shorelines, 2) to map coastal hazard zones reflecting present day shoreline

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conditions, 3) to map future (30-year) hazard zone locations along the Atlantic Ocean and Delaware Bay shorelines, and 4) to supplement existing building codes and regulations with standards specifically tailored to the identified hazard zones. Hazard zones that reflect local coastal morphology and anticipated storm effects expected during northeasters and hurricanes, including the 100-yr flood event (1% annual chance of occurring) and a Category 3 hurricane, were identified and mapped using April 1997, digital aerial orthophotographs. These zones which include the Beach Zone, the Erosion/Wave Zone, the Wave/Overwash Zone, the Flood Zone, and the projection of those future hazard zones into the future, are shown on base maps. In order to minimize future storm damage along Delaware's coastline, the Department recommends and/or requires construction standards in each of these zones. Recommended standards will be published separately in a supplemental document titled Delaware's Recommended Coastal Construction Standards. At a minimum, the Department will require the following construction standards in the Beach, Erosion/Wave Zone and the Wave Overwash Zone. Determination of the zone a property is located in will be made by reviewing the Department’s Coastal Vulnerability Assessment Maps mentioned above. If any portion of the structure is located in the Beach Zone or Erosion Zone then the entire structure must meet the requirements for the applicable zone.

8.1 Construction in the Beach Zone and Erosion Zone and In Locations Seaward of the Building Line

8.1.1 Foundations

All new buildings shall be constructed on a piling foundation, designed (by a registered professional engineer or architect licensed in the State of Delaware) and constructed to prevent floating, collapse or lateral displacement of the building during design flood conditions. Foundation design shall consider the effects of all flood, wave, wind and other loads anticipated
during design flood conditions, and shall also consider the effects of the storm-induced erosion and long term erosion.

Pile tips shall be driven to a minimum depth of -10 ft. NAVD.

8.1.2 Floor Elevation Requirements

All new buildings and new construction shall be elevated such that the bottom of the lowest structural member is at or above the Base Flood Elevation.

8.1.3 Enclosures

The areas below Base Flood Elevation shall be unenclosed or enclosed only with light weight open wood lattice or screening. Storage areas and areas for building access with wood floors must be elevated above Base Flood Elevation and supported by the existing pile foundation.

8.1.4 Ground Level Surfaces

Seaward of the Building Line all constructed ground level surfaces (e.g. parking areas and driveways) shall be permeable materials consisting of fill, crushed shell, gravel or driveway stone (1/2" or smaller in circumference). Concrete, concrete pavers, asphalt or other solid surfaces are prohibited.

8.1.5 Utilities

Wiring, plumbing, duct work and other utility components shall be located above Base Flood Elevation. All utility connections servicing the elevated building must be attached to the landward side of foundation piles when possible

8.1.6 Decks

Decks constructed in a location seaward of the Building Line must make use of the foundation of the building (e.g. by cantilevering or knee brace), must meet the requirements of Section 6.1.8
of these Regulations and shall be designed by a professional engineer or architect.

8.1.7 Access stairs for buildings or decks

Stairs for accessing buildings or decks shall be supported by the existing foundation of the structure. Stairs for accessing decks shall be located within the footprint of the deck or shall be located landward of the deck. The steps shall descend in a landward direction. Access due to special medical needs will be addressed on a case by case basis.

8.1.8 Retaining Walls

Due to the potential for the redirection of floodwaters onto other properties or into structures as a result of wave reflection off of the vertical wall, the construction of retaining walls are not permitted in these zones or in areas located seaward of the Building Line.

8.1.9 Pedestrian Dune Crossovers

Crossover widths will be set in the application process and will vary depending upon the amount of pedestrian use. The breakdown will be as follows:

8.1.9.1 Crossovers serving one or two family residences
8.1.9.2 Crossovers serving 3-9 single family residences
8.1.9.3 Crossovers serving 10 or more single family residences

In new subdivisions, adjacent property owners are required to share crossovers in order to minimize damage to the dunes. Older subdivisions will be required to share crossovers whenever possible and practicable. Crossovers for persons with special needs will be evaluated on a case by case basis.

8.2 Construction in the Wave/Overwash Zone and Landward of the Building Line.

8.2.1 Foundations

All new buildings shall be constructed on a piling foundation, designed (by a
professional engineer or architect licensed in the State of Delaware) and constructed to prevent floatation, collapse or lateral displacement of the building during design flood conditions. Foundation design shall consider the effects of all flood, wave, wind and other loads anticipated during design conditions, and shall consider the effects of storm-induced erosion and long term erosion.

Foundation pilings for structures within this zone shall be at least 10.0 ft. below the lowest original grade at the building site, or deeper as dictated by design calculations.

8.2.2 Floor Elevation Requirements

All new buildings must be elevated such that the bottom of the lowest horizontal structural member is at or above Base Flood Elevation.

8.2.3 Enclosures

The area below Base Flood Elevation shall be unenclosed or enclosed only with light weight open wood lattice, screening or breakaway walls. Enclosed areas shall be used only for parking, building access or storage and shall not be used a habitable space. Breakaway walls shall include openings that allow the automatic entry and exit of flood waters.

8.2.4 Ground Level Surfaces

Landward of the Building Line all constructed ground level surfaces (e.g., parking areas and driveways) shall be designed to break free of the piling foundation under design flood and erosion conditions.

8.2.5 Utilities

Wiring, plumbing, duct work and other utility components shall be located at or above Base Flood Elevation. All utility connections servicing the elevated buildings must be attached to the landward side of foundation piles when possible.
8.2.6 Porches and Decks

Foundation for porches and decks constructed in a location landward of the Building Line shall meet the same foundation requirements as the elevated building.

9.0 Appeal from the Department’s Decision

9.1 Right of Appeal

Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of state, aggrieved by any decision of the Secretary, may appeal to the Superior Court as provided in 7 Del. C. § 6803(d).

10.0 Cease and Desist Orders and Penalties

10.1 Cease and Desist Orders

The Secretary shall have the power to issue a cease and desist order to any person who violates the Act or Regulations. Any such cease and desist order shall expire (1) after thirty (30) days from the date of its issuance, or (2) upon withdrawal of said Order by the Secretary, or (3) when the order is superseded by an injunction, whichever occurs first.

10.2 Penalties

Any person who violates any provision of the Act, or Regulations, or violates a cease and desist order of the Secretary, shall be liable for penalties pursuant to 7 Del. C. § 6807.