



**US Army Corps  
of Engineers®**  
New York District

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# **NEW YORK AND NEW JERSEY HARBOR DEEPENING CHANNEL IMPROVEMENTS**

## **NAVIGATION STUDY**

### **INTEGRATED FEASIBILITY REPORT & ENVIRONMENTAL ASSESSMENT**

## **APPENDIX B: Coastal Zone Management Act**

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**APPENDIX B 1:**  
**NEW YORK STATE COASTAL ZONE MANAGEMENT POLICIES**

# 1. New York State Coastal Zone Management Policies

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) was enacted by Congress to balance the competing demands of growth and development with the need to protect coastal resources. Its stated purpose is to “. . . preserve, protect, develop, and, where possible to restore or enhance, the resources of the nation’s coastal zone . . .”. The primary means of achieving this balance is through coastal zone management programs adopted by the states and designed to regulate land use activities that could affect coastal waters. The Act offers incentives to encourage the coastal states and territories to exercise their full authority over coastal areas through development of coastal zone management programs, consistent with the minimum Federal standards. The Coastal Zone Act Reauthorization Amendments of 1990 strengthened the Act by requiring the state programs to focus on controlling land use activities, and on the cumulative effect of activities in coastal zones.

The State of New York currently administers its Federally approved coastal zone program (N.Y. Executive Law §910 *et seq.* [Consol. 1996]) through the New York State Department of State (NYS DOS). Pursuant to the Federal Coastal Zone Management Act, New York State has defined its coastal zone boundaries and the policies to be utilized to evaluate projects occurring within the designated zones. In 1981, New York State adopted the Waterfront Revitalization and Coastal Resources Act, creating the New York State Coastal Management Program (CMP). The CMP embodies 44 policy statements supportive of the Act’s intent to promote a balance between economic development and coastal resource preservation and optimization. In addition, the City of New York has established a coastal zone under the Local Waterfront Revitalization Program (LWRP). The LWRP includes 10 policy statements applicable to the City’s Coastal Zone.

This coastal zone consistency evaluation considers the potential impacts associated with implementation of the Harbor Deepening Channel Improvement (HDCI) Recommended Plan, as documented in the Integrated Feasibility Report and Environmental Assessment (EA). The short-term impacts associated with The HDCI proposed project are similar to those identified in the EA, primarily the short-term disturbance of bottom sediment and localized change in channel depth associated with dredging and blasting activities under The HDCI proposed project.

This consistency evaluation is being provided in order to: (1) support the USACE consistency determination, pursuant to 15 CFR Part 930 Subpart C, regarding the consistency of the activity with the NYS CMP; (2) enable New York State to consider the effects of the proposed project on the land and water uses and natural resources of its coastal area; and (3) to provide information permitting New York State to agree or disagree with the USACE Consistency Determination pursuant to 15 CFR Part 930 Subpart C.

## 1.1. New York State Coastal Zone Management Policies

### 1.1.1. Development Policies

- (1) Restore, revitalize, and redevelop deteriorated and underutilized waterfront areas for

commercial, industrial, cultural, recreational, and other compatible uses.

The HDCI proposed project is consistent with this policy, as it will improve the channels within the Harbor and maintain commercial uses compatible with the character of the area.

- (2) Facilitate the siting of water-dependent uses and facilities on or adjacent to coastal waters.

The HDCI proposed project is consistent with this policy, as it will provide access to shoreline facilities by fully loaded vessels during any period of the tide cycle. A primary objective of the policy is to create a process by which water dependent uses can be accommodated well into the future.

- (3) Further develop the State's major ports of Albany, Buffalo, New York, Ogdensburg, and Oswego as centers of commerce and industry, and encourage the siting, in these port areas, including those under the jurisdiction of State public authorities, of land use and development which is essential to, or in support of, the waterborne transportation of cargo and people.

The HDCI proposed project is consistent with this policy as it supports existing port needs in New York, including the maintenance and enhancement of port activity.

- (4) Strengthen the economic base of smaller harbor areas by encouraging the development and enhancement of those traditional uses and activities that have provided such areas with their unique maritime identity.

This policy is not applicable to the proposed action.

- (5) Encourage the location of development in areas where public services and facilities essential to such development are adequate.

The HDCI proposed project is consistent with this policy, as development in the coastal area is encouraged within existing areas of concentrated development where infrastructure and public services are adequate, and where topography, geology, and other environmental conditions are suitable for and able to accommodate development.

- (6) Expedite permit procedures in order to facilitate the siting of development activities at suitable locations.

The proposed project is consistent with this policy, as the primary goal is to improve already authorized channel improvements thereby encouraging navigation improvements in New York and New Jersey Harbor.

### **1.1.2. Fish and Wildlife Policies**

- (7) Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored to maintain their viability as habitats.

Where practical, potential impacts to fish and wildlife habitats were avoided and minimized to the extent possible to maintain their viability as habitats. Mitigation planning for long-term, unavoidable impacts was developed and is presented in the EA, and the District is in the process

of finalizing mitigation measures, to fully compensate for the loss of less than 2 acres of regulated habitat under New Jersey's jurisdiction, with cooperating agencies as part of our obligations under NEPA, the CWA and CZMA. No long-term significant impacts are associated with the HDCI project. Therefore, the HDCI project is consistent with this policy.

- (8) Protect fish and wildlife resources in the coastal area from the introduction of hazardous wastes and other pollutants which bio-accumulate in the food chain or which cause significant sublethal or lethal effect on those resources.

The HDCI proposed project is consistent with this policy since improving channels so as to permit safe and efficient navigation will minimize the re-suspension of sediments resulting from scouring by vessels. As described in the EA, potential impacts will be minimized by employing Best Management Practices (BMPs) during dredging operations in areas where there are fine-grained sediments. Potential measures to mitigate this impact include utilization of closed clamshell buckets and hoist speed restrictions, as well as implementing seasonal restrictions designed to be protective of aquatic resources (e.g., winter flounder and migratory finfish) as justified and where applicable.

- (9) Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources.

This policy is not applicable to the HDCI proposed project. As stated above, fish and wildlife populations and habitats will be protected to the most practicable extent possible. The beneficial use of dredged material from the navigation improvement project will be utilized as coordinated with the resource and regulatory agencies and as applicable.

- (10) Further develop commercial finfish, shellfish, and crustacean resources in the coastal area by encouraging the construction of new, or improvement of existing on-shore commercial fishing facilities, increasing marketing of the State's seafood products, maintaining adequate stocks, and expanding aquaculture facilities.

This policy is not applicable as there are no commercial fishery development activities associated with the HDCI proposed project.

### **1.1.3. Flooding and Erosion Hazards Policies**

- (11) Buildings and other structures will be sited in the coastal area to minimize damage to property and the endangering of human lives caused by flooding and erosion.

This policy is not applicable as there are no new buildings or other structures involved in implementing the HDCI proposed project.

- (12) Activities or development in the coastal area will be undertaken to minimize damage to natural resources and property from flooding and erosion by protecting natural protective features including beaches, dunes, barrier islands and bluffs.

This policy is not applicable as implementation of the HDCI proposed project does not affect natural protective features or property in the project area.

- (13) The construction or reconstruction of erosion protection structures shall be undertaken only if they have a reasonable probability of controlling erosion for at least thirty years as demonstrated in design and construction standards and/or assured maintenance or replacement programs.

This policy is not applicable to the HDCI proposed project since there are no erosion control or protection controls required in the project area, as based on decades of historical dredging of Federal channels in the area, and based upon analyses presented in the EA.

- (14) Activities and development, including the construction or reconstruction of erosion protection structures, shall be undertaken so that there will be no measurable increase in erosion or flooding at the site of such activities or development, or at other locations.

This policy is not applicable to the HDCI proposed project since there are no erosion control or protection controls required in the project area, as based on decades of historical dredging of Federal channels in the area, and based upon analyses presented in the EA.

- (15) Mining, excavation or dredging in coastal waters shall not significantly interfere with the natural coastal processes which supply beach materials to land adjacent to such waters and shall be undertaken in a manner which will not cause an increase in erosion of such land.

The HDCI proposed project is consistent with this policy, as it has been clearly demonstrated that channel improvements (i.e. deepening and widening) will not substantially change the supply and net flow of beach materials or their natural regenerative powers. Proposed improvements will be accomplished in a manner similar to that described in the *Integrated Feasibility Report* so as not to cause a reduction of supply, and thus an increase of erosion, to such shore lands.

- (16) Public funds shall only be used for erosion protective structures where necessary to protect human life, and new development which requires a location within or adjacent to an erosion hazard area to be able to function, or existing development; and only where the public benefits outweigh the long term monetary and other costs including the potential for increasing erosion and adverse effects on natural protective features.

This policy is not applicable to the HDCI proposed project, as it is not involved with development of erosion protective features.

- (17) Non-structural measures to minimize damage to natural resources and property from flooding and erosion shall be used whenever possible.

This policy is not applicable to the HDCI proposed project, as it is not anticipated to induce flooding or erosion and therefore will not incorporate structural measures.

- (18) To safeguard the vital economic, social and environmental interests of the State and of its citizens, proposed major actions in the coastal area must give full consideration to those interests, and to the safeguards which the State has established to protect valuable coastal resource areas.

The HDCI proposed project is consistent with this policy, as it has demonstrated (via its NEPA analyses) that channel improvements will not significantly impair valuable coastal waters and resources. The Integrated Feasibility Report/EA has considered the social, cultural, economic and environmental interests of the State and their citizens and the proposed project will not adversely affect the valuable coastal resource areas and will be increasing the economic benefits of the State due to expediting improved access to the Port.

#### **1.1.4. Public Access Policies**

- (19) Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.

This policy is not directly applicable to the HDCI proposed project since it is not involved with development of water-related recreation. The proposed project aims to maintain, protect and improve access to Port facilities, enabling fully loaded vessels to enter the port, safely and efficiently, and independent of tide levels. The HDCI proposed project would not interfere with the level and types of access to public water-related recreation resources and facilities.

- (20) Access to the publicly-owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly-owned shall be provided and it shall be provided in a manner compatible with adjoining uses.

This policy is not applicable to the HDCI proposed project, as the proposed project is not involved with development of the water's edge or public access.

#### **1.1.5. Recreation Policies**

- (21) Water-dependent and water-enhanced recreation will be encouraged and facilitated and will be given priority over non-water-related use along the coast.

This policy is not applicable to the HDCI proposed project, as the proposed project is not involved with development of water-related recreation.

- (22) Development, when located adjacent to the shore, will provide for water-related recreation, whenever such use is compatible with reasonably anticipated demand for such activities, and is compatible with the primary purpose of the development.

This policy is not applicable to this proposed project as there will be no development adjacent to the shore as part of the HDCI proposed project.

#### **1.1.6. Historic and Scenic Resources Policies**

- (23) Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the State, its communities, or the nation.

The HDCI proposed project is consistent with this policy because proposed design modifications that may result in significant cultural resource impacts will be addressed through a Programmatic Agreement (PA) among the District, the New Jersey State Historic Preservation Officer



(NJSHPO) and the New York State Historic Preservation Officer (NYSHPO), as described below.

Cultural resources information, which focused on potential in-water resources, was addressed in the *Draft Integrated Feasibility Report & Environmental Assessment*. A PA among the District, NJSHPO, NYSHPO, and potentially other interested parties is being negotiated to address future prehistoric and historic investigations, national register of historic places evaluations, and mitigation measures during the Project's execution. This PA will specify the stipulations and actions to be taken by the District during project execution to satisfy the District's responsibilities under Section 106 of the National Historic Preservation Act of 1996, as amended. Once the PA is executed, The HDCI proposed project will be consistent with this policy.

(24) Prevent impairment of scenic resources of statewide significance.

The HDCI proposed project is consistent with this policy, as the activities involved will not result in impairment of scenic resources of statewide significance.

(25) Protect, restore or enhance natural and man-made resources which are not identified as being of statewide significance, but which contribute to the overall scenic quality of the coastal area.

Although several natural and man-made resources were identified in the project area, the EA concluded that construction of the proposed project should not impair these scenic resources nor adversely impact the overall scenic quality of the coastal area.

(26) Conserve and protect agricultural lands in the State's coastal area.

This policy is not applicable to the HDCI proposed project as it does not involve unpermitted upland activities and will not influence agricultural lands.

#### **1.1.7. Energy and Ice Management Policies**

(27) Decisions on the siting and construction of major energy facilities in the coastal area will be based on public energy needs, compatibility of such facilities with the environment, and the facility's need for a shorefront location.

This policy is not applicable, as the HDCI proposed project does not involve the siting and construction of energy facilities.

(28) Ice management practices shall not interfere with the production of hydroelectric power, damage significant fish and wildlife and their habitats, or increase shoreline erosion or flooding.

This policy is not applicable, as the HDCI proposed project does not involve ice management.

(29) Encourage the development of energy resources on the outer continental shelf, in Lake Erie and in other water bodies, and ensure the environmental safety of such activities.

This policy is not applicable, as The HDCI proposed project does not involve energy development in the Outer Continental Shelf (OCS) or in Lake Erie.

### **1.1.8. Water and Air Resources Policies**

- (30) Municipal, industrial, and commercial discharge of pollutants, including but not limited to, toxic and hazardous substances, into coastal waters will conform to state and national water quality standards.

This policy is not applicable as the HDCI proposed project does not involve municipal, industrial and commercial discharges.

- (31) State coastal area policies and management objectives of approved local waterfront revitalization programs will be considered while reviewing coastal water classifications and while modifying water quality standards; however, those waters already overburdened with contaminants will be recognized as being a development constraint.

The HDCI proposed project would not affect the water classification or water quality standards in the project area, as determined by the previous 401(b)(1) evaluations performed for similarly authorized projects, as well as the current 404(b)(1) evaluation for this proposed project; therefore, it is consistent with this policy.

- (32) Encourage the use of alternative or innovative sanitary waste systems in small communities where the costs of conventional facilities are unreasonably high, given the size of the existing tax base of these communities.

This policy is not applicable, as the HDCI proposed project does not involve sanitary waste systems in small communities.

- (33) Best management practices will be used to ensure the control of stormwater runoff and combined sewer overflows draining into coastal waters.

This policy is not applicable as the HDCI proposed project does not involve the control of stormwater runoff and combined sewage overflows.

- (34) Discharge of waste materials into coastal waters from vessels subject to State jurisdiction will be limited so as to protect significant fish and wildlife habitats, recreational areas and water supply areas. The HDCI proposed project is consistent with this policy, as the dredging and support vessels will not be discharging any waste material into coastal waters. Dredging contractors will be required to adhere to all applicable state and Federal regulations regarding the discharge of waste materials.

- (35) Dredging and dredge material placement in coastal waters, as applicable and permitted, will be undertaken in a manner that meets existing state dredging permit requirements, and protects significant fish and wildlife habitats, scenic resources, natural protective features, important agricultural lands, and wetlands

The HDCI proposed project is consistent with this policy, as the proposed project does not involve discharging any unregulated dredge spoils into coastal waters. Potential short-term impacts to significant fish and wildlife habitats associated with the HDCI proposed project are similar to those identified in the EA, primarily the short-term disturbance of bottom sediment and localized change in channel depth associated with construction activities.

In addition, potential impacts from release of contaminants from sediments during dredging or placement operations will be minimized by employing Best Management Practices (BMPs), as previously identified, during dredging and dredged material placement operations, as required by Water Quality Certification/Authorization to Proceed and Federal Consistency permits and Determinations. Based upon testing prior to dredging, material suitable for placement at the Historic Area Remediation Site (HARS) will be designated for placement at that site in accordance with procedures established by USEPA. Material not suitable for the HARS will be designated for beneficial use according to the guidelines of the Dredged Material Management Plan (DMMP) and guidelines from the states of New York and New Jersey. The HDCI proposed project would therefore be consistent with this policy.

- (36) Activities related to the shipment and storage of petroleum and other hazardous materials will be conducted in a manner that will prevent or at least minimize spills into coastal waters; all practicable efforts will be undertaken to expedite the cleanup of such discharges; and restitution for damages will be required when these spills occur.

This policy is not applicable as the HDCI proposed project does not directly involve shipment and storage of petroleum or other hazardous materials.

- (37) Best management practices will be utilized to minimize the non-point discharge of excess nutrients, organics and eroded soils into coastal waters.

This policy is not applicable to the HDCI proposed project, as it does not involve non-point discharges of excess nutrients, organics and eroded soil into coastal waters.

- (38) The quality and quantity of surface water and groundwater supplies, will be conserved and protected, particularly where such waters constitute the primary or sole source of water supply.

This policy is not applicable to The HDCI proposed project as it does not involve surface and groundwater supplies.

- (39) The transport, storage, treatment and disposal of solid wastes, particularly hazardous wastes, within coastal areas will be conducted in such a manner so as to protect groundwater and surface water supplies, significant fish and wildlife habitats, recreation areas, important agricultural land, and scenic resources.

This policy is not applicable to the HDCI proposed project, as it does not involve the transport, storage, treatment and disposal of solid waste. Based upon testing prior to dredging, sediment suitable for placement at the HARS will be designated for placement at that site in accordance with procedures established by USEPA. Material not suitable for the HARS will be designated for beneficial use according to the guidelines of the Dredged Material Management Plan (DMMP) and guidelines from the states of New York and New Jersey. Dredging contractors will be required to dispose of any contractor-generated solid waste (i.e., daily refuse) according to all applicable state and local requirements.

- (40) Effluent discharged from major steam electric generating and industrial facilities into coastal waters will not be unduly injurious to fish and wildlife and shall conform to state

water quality standards.

This policy is not applicable, as the HDCI proposed project does not involve effluent discharges from steam electric generating or industrial facilities.

- (41) Land use or development in the coastal area will not cause national or State air quality standards to be violated.

The General Conformity Rule (GCR) of the Clean Air Act Amendment (CAA) of 1990 (40 CFR 193) went into effect as of January 31, 1994. The GCR requires Federal Actions, including providing funds or issuing permits, not interfere with states' efforts to attain or maintain ambient air quality standards in accordance with EPA-approved State Implementation Plans (SIPs). All Federal Actions must comply with the GCR unless otherwise exempt. GCR only applies to actions that emit one or more criteria pollutants in areas that do not meet CAA standards for one or more pollutant (nonattainment area) or have just recently come within the standard (maintenance area).

The study area is located within the New York Northern New Jersey Connecticut Long Island (NYNJCTLI) nonattainment area (NAA) and thus falls within the jurisdiction of both state's SIPs.

The region is currently designated as moderate nonattainment area for ozone and a maintenance area for carbon monoxide (CO). The GCR is triggered when, in severe ozone nonattainment areas, emissions exceed 50 tons per year. This quantity also applies to amounts of ozone precursors, oxides of nitrogen (NO<sub>x</sub>) and volatile organic carbons (VOCs). The GCR applies to The HDCI proposed project because the project area is within the NYNJCTNA and the HDCI proposed project is not exempt.

Current HDCI emission estimates suggest that project NO<sub>x</sub> emissions would exceed the GCR trigger level for severe ozone nonattainment areas during each year of construction. The mitigation plan for achieving General Conformity with the CAA for the HDCI proposed project is presented in the Harbor Air Management Plan (HAMP). The HAMP is a combination of actions, as outlined in the original Harbor Deepening Project (HDP) Statement of Conformity (SOC) that was finalized and agreed to by the affected States and EPA Region 2 in April 2002. The result of implementing the HAMP will be no net emission increase during any year of construction and an overall decrease in NO<sub>x</sub> levels both during and after construction, providing long-term air quality benefits. Therefore, the HDCI proposed project is consistent with this policy.

- (42) Coastal management policies will be considered if the State reclassifies land areas pursuant to the prevention of significant deterioration regulations of the federal clean air act.

This policy is not applicable as the HDCI proposed project does not involve land classifications in coastal regions or adjacent areas.

- (43) Land use or development in the coastal area must not cause the generation of significant amounts of acid rain precursors: nitrates and sulfates.

As described under Policy 41, the HDCI proposed project--related emission estimates predict project NO<sub>x</sub> emissions would exceed the GCR trigger level for severe ozone nonattainment areas during each year of construction. However, proposed project reduces the number of years that emissions are generated. The HDCI proposed project affects the timing and magnitude of when peak year estimated emissions occur, as well as the years leading up to and after the peak year. There will be no net increase of acid rain precursor emissions from the proposed project due the mitigation that will be implemented under the GCR.

- (44) Preserve and protect tidal and freshwater wetlands and preserve the benefits derived from these areas.

Long-term, unavoidable impacts associated with the HDCI proposed project includes compensatory mitigation for less than 2 acres of shallow water (littoral) habitat under New Jersey's jurisdiction, as required under the CWA and CZMA. The HDCI proposed project would therefore be consistent with this policy.

## **1.2. New York City LWRP**

- (1) Support and facilitate commercial and residential redevelopment in areas well- suited to such development.

The HDCI proposed project is consistent with this policy in that it will improve existing channels within the Harbor and maintain commercial uses compatible with the character of areas within New York City previously designated for upgrading and redevelopment for waterborne commerce.

- (2) Support water-dependent and industrial uses in New York City coastal areas that are well- suited to their continued operation.

The HDCI proposed project supports this policy by maintaining and promoting economic growth for the Port of New York and New Jersey.

- (3) Promote use of New York City's waterways for commercial and recreational boating and water-dependent transportation centers.

See response to Policies 1 and 2 above. The navigation channel improvements in the Harbor will enhance navigational safety for all components of waterborne traffic. This is particularly important given increases in recreational boating and ferry service in the Harbor. The HDCI proposed project is therefore consistent with this policy.

- (4) Protect and restore the quality and function of ecological systems within the New York City coastal area.

As described in the EA, the harbor channel improvement project was developed to minimize adverse impacts while providing enhanced navigational facilities. Long-term, unavoidable impacts associated with HDCI proposed project implementation concludes with the expectation of a Finding of No Significant Impact (FONSI). Mitigation for long-term, unavoidable impacts to regulated and/or protected aquatic habitat is included in the EA and will be coordinated with and approved by the appropriate state and Federal agencies, as applicable. The HDCI proposed

project would therefore be consistent with this policy.

- (5) Protect and improve water quality in the New York City coastal area.

Implementation of the proposed HDCI project will have no adverse impacts on water quality in the Harbor, nor will it inhibit future improvements to water quality in areas where water quality may be degraded. The proposed project will contribute to the control of regulated dredged material through its removal during dredging, and the beneficial reuse of dredged material as part of aquatic remediation or upland remediation at brownfield sites. HDCI proposed project implementation is therefore consistent with this policy.

- (6) Minimize loss of life, structures and natural resources caused by flooding and erosion.

Construction of the proposed HDCI project will not contribute to existing flooding or coastal erosion. In those areas of the channels where rock will be removed for deepening, beneficial use of dredged material is proposed (i.e. the rock would be available for use in shoreline protection projects for areas currently experiencing erosion and clean sand excavated for deepening will be used in beach nourishment or habitat enhancement projects as it has in the past). The HDCI proposed project of the authorized deepening project is therefore consistent with this policy.

- (7) Minimize environmental degradation from solid waste and hazardous substances.

The HDCI proposed project will have no effect on solid waste and hazardous substances, thus this policy is not applicable.

- (8) Provide public access to and along New York City's coastal waters.

The HDCI proposed project does not involve any shoreline areas where public access may be an issue, thus this policy is not applicable.

- (9) Protect scenic resources that contribute to the visual quality of the New York City coastal area.

The HDCI proposed project will have no effect on visual quality because all actions are within the channels, thus this policy is not applicable.

- (10) Protect, preserve and enhance resources significant to the historical, archaeological, and cultural legacy of the New York City coastal area.

The HDCI proposed project is consistent with this policy because proposed design modifications that may result in significant cultural resource impacts will be addressed through a Programmatic Agreement (PA) among the District, the New Jersey State Historic Preservation Officer (NJSHPO) and the New York State Historic Preservation Officer (NYSHPO), as described below.

Cultural resources information, which focused on potential in-water resources, was addressed in the *Draft Integrated Feasibility Report & Environmental Assessment*. A PA among the District, NJSHPO, NYSHPO, and potentially other interested parties is being negotiated to address future prehistoric and historic investigations, national register of historic places evaluations, and mitigation measures during the Project's execution. This PA will specify the stipulations and

actions to be taken by the District during project execution to satisfy the District's responsibilities under Section 106 of the National Historic Preservation Act of 1996, as amended. Once the PA is executed, The HDCI proposed project will be consistent with this policy.

### **1.3. Findings of the Coastal Zone Consistency Evaluation**

A completed NYCLWRP Form is also appended to this Appendix for thoroughness. This coastal zone consistency evaluation considered the HDCI proposed project in the New York and New Jersey Harbor and evaluated the project's consistency with the applicable New York State Coastal Zone Management Policies, as well as those policies delegated by the State of New York to the City of New York. Based on this evaluation, the HDCI proposed project is consistent with all applicable policies.

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**APPENDIX B 3:**  
**NEW JERSEY COASTAL ZONE MANAGEMENT RULES**

## **2. New Jersey Coastal Zone Management Rules**

The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*) was enacted by Congress to balance the competing demands of growth and development with the need to protect coastal resources. Its stated purpose is to “. . . preserve, protect, develop, and, where possible to restore or enhance, the resources of the nation’s coastal zone . . .”. The primary means of achieving this balance is through coastal zone management programs adopted by the states and designed to regulate land use activities that could affect coastal waters. The Act offers incentives to encourage the coastal states and territories to exercise their full authority over coastal areas through development of coastal zone management programs, consistent with the minimum Federal standards. The Coastal Zone Act Reauthorization Amendments of 1990 strengthened the Act by requiring the state programs to focus on controlling land use activities, and on the cumulative effect of activities in coastal zones.

The State of New Jersey administers its coastal zone program through the New Jersey Department of Environmental Protection (NJDEP) Land Use Regulation Program. The Coastal Zone Management Rules (N.J.A.C. 7:7E, as amended through 2/3/2003) regulate the use and development of coastal resources, and are used by NJDEP in reviewing permit applications under the Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 *et seq.* (as amended to July 19, 1993) and Federal Consistency Determinations (307 of the Federal Coastal Zone Management Act) among others. The Coastal Zone Management Rules were first adopted following Federal approval in September 1978, and were most recently amended in February 2003. The Coastal Zone Management rules constitute the substantive core of the program.

This coastal zone consistency evaluation considers the implementation of the HDCI proposed project. The impacts to aquatic habitat associated with The HDCI proposed project have been identified and mitigation is proposed, as required, and will be coordinated with the affected state, as well as mandated under the CWA and CZMA authorization and permitting authorities, as delegated to the affected state, and undertaking by the District, as required.

The short-term impacts associated with The HDCI proposed project are similar to those identified in the EA, primarily the short-term disturbance of bottom sediment and localized change in channel depth associated with dredging and blasting activities.

The proposed project is within the coastal zone boundaries of New Jersey. The following describes the state’s coastal zone policies and evaluates the project’s consistency with applicable policies. This consistency evaluation is provided to enable New Jersey environmental authorities to consider the effect of the proposed project on the state’s coastal zone resources.

### **2.1. Coastal Zone Management Rules**

#### **2.1.1. Subchapter 3. Special Areas**

Special Areas are areas that are so naturally valuable, important for human use, hazardous,

sensitive to impact, or particular in their planning requirements, as to merit focused attention and special management rules. This subchapter divides Special Areas into four categories. Category 1 (7:7E-3.2 through 3.15) includes Special Water Areas, which extend landward to the spring high water line or the level of normal flow in non-tidal waters. Category 2 (7:7E-3.16 through 3.32) includes Special Water's Edge Areas. Category 3 (7:7E-3.33 through 3.35) includes Special Land Areas, which generally are landward of the Special Water's Edge Areas. Category 4 (7:7E-3.36 through 3.49) includes Coastwide Special Areas, and may include Special Water Areas, Special Water's Edge Areas or Special Land Areas.

#### 7:7E-3.2 Shellfish Habitat

This policy generally limits disturbance of shellfish habitat. Because the HDCI proposed project will not affect shellfish habitat (there are no shellfish beds in the project area), adverse effects are not associated with proposed project. The HDCI proposed project is therefore consistent with this policy.

#### 7:7E-3.3 Surf Clam Areas

This policy prohibits development that would destroy or contaminate surf clam areas. Because the HDCI proposed project will not affect surf clam habitat (there is no surf clam areas in the project area), adverse effects are not associated with the proposed project. The HDCI proposed project is therefore consistent with this policy.

#### 7:7E-3.4 Prime Fishing Areas

This policy prohibits submarine mining of sand or gravel in prime fishing areas. Since the HDCI proposed project does not involve submarine mining, this policy is not applicable.

#### 7:7E-3.5 Finfish Migratory Pathways

5.1 This policy prohibits developments, such as dams or dikes that would create permanent physical barriers to migratory fish. Developments that would lower water quality, so as to interfere with fish movement patterns, are also prohibited. Dredging and deepening operations are not projected to have long term adverse impact on fish migration in the study area, as evidenced by past navigation projects. Best Management Practices employed during construction, and other protective measures such as seasonal restrictions, have been in place in the project area, and are also envisioned to be implemented for the HDCI proposed project. Therefore, the HDCI proposed project is consistent with this policy.

#### 7:7E-3.6 Submerged Vegetation Habitat.

This policy prohibits development in submerged vegetation habitat, except for utility trenching or dredging, provided that there is no practicable or feasible alternative to avoid the vegetation, and that impacts to the habitat area are minimized to the maximum extent practicable. Dredging allowances include new and maintenance dredging of navigation channels maintained by the State or Federal government, new and maintenance dredging of previously authorized operating marinas, and maintenance dredging to regain access to existing private docks, piers, boat ramps and mooring piles not associated with marinas. Since the HDCI proposed project will not be implemented in a submerged vegetation habitat area, this policy is not applicable.

#### 7:7E-3.7 Navigation Channels

This policy prohibits construction that would extend into a navigation channel and restrict dredging in navigation channels. The HDCI navigation improvement project would deepen, widen and realign navigation channels in the project area to facilitate safe and efficient navigation access to the Ports to increase commercial benefits. Dredging standards (e.g., channel side-slopes and stability) would meet all applicable conditions for new dredging in navigation channels and therefore would be consistent with this policy.

#### 7:7E-3.8 Canals

This policy prohibits actions that would interfere with boat traffic in canals used for navigation. The HDCI proposed project does not occur near a canal as defined by NJDEP, and therefore this policy is not applicable.

#### 7:7E-3.9 Inlets

This policy prohibits filling and discourages submerged infrastructure in coastal inlets. The proposed project is not an inlet as defined by NJDEP, and therefore this policy is not applicable.

#### 7:7E-3.10 Marina Moorings

This policy prohibits non-water-dependent development in marina mooring areas. The HDCI proposed project would not involve development in any marina mooring areas, and therefore this policy is not applicable.

#### 7:7E-3.11 Ports

This policy prohibits uses within a port that preempt or interfere with typical port uses and encourages docks and piers for cargo movements. The HDCI proposed project is consistent with this policy, as it minimizes the interference with typical port uses, and will benefit port facilities.

#### 7:7E-3.12 Submerged Infrastructure Routes

This policy prohibits any activity that would increase the likelihood of damaging submerged infrastructure (pipelines, cables) or interfering with maintenance operations. Buried cables and transmission lines currently in use will either be exposed or effectively moved nearer the substrate surface as a result of channel deepening. Those buried utility lines left with insufficient cover will be re-lain or re-drilled. Abandoned subsurface cables or pipelines encountered during dredging will be removed. The HDCI proposed project is therefore consistent with this policy.

#### 7:7E-3.13 Shipwrecks and Artificial Reefs

This policy restricts the use of special areas with shipwrecks and artificial reefs that would adversely affect the usefulness of this special area as a fisheries resource. The HDCI proposed project will not result in any direct impacts to identified shipwrecks or artificial reefs. There is a potential that shipwrecks in New Jersey waters will be within the 500-foot vibration zone from blasting bedrock to construct the project. A Programmatic Agreement (PA) is being negotiated with the New Jersey State Historic Preservation Office, New York Historic Preservation Office and other interested parties to address potential impacts due to vibrations from bed rock blasting.

In areas where shipwrecks are located, the New York District will adapt the blasting plan in the Pre-Construction, Engineering, and Design (PED) phase to avoid impacting National Register Eligible or Listed resources.

#### 7:7E -3.14 Wet Borrow Pits

This policy restricts the use and filling of underwater borrow pits. The project area does not include wet borrow pits. Disposal of dredged material will occur according to the Dredged Material Management Plan (DMMP) and in compliance with all Federal, state and local permitting authorities.

#### 7:7E-3.15 Intertidal and Subtidal Shallows

This policy discourages disturbance of shallow-water areas (i.e., permanently or twice daily submerged areas from the spring high tide to a depth of up to -6 ft MLLW). As described in the *Integrated Feasibility Report*, the harbor navigation improvement project was developed to minimize adverse impacts while providing enhanced navigational facilities. Mitigation planning for long-term, unavoidable impacts to less than 2 acres of the regulated habitat (i.e. subtidal shallows) under New Jersey's jurisdiction, was developed and is presented in the *Integrated Report*.

#### 7:7E-3.16 Dunes

This policy protects and preserves ocean and bayfront dunes. Since the project area contains no dunes, the policy is not applicable.

#### 7:7E-3.17 Overwash Areas

Overwash areas are areas subject to accumulation of sediment, usually sand, that is deposited landward of the beach or dune by the rush of water over the crest of the beach berm, a dune or a structure. An overwash area may, through stabilization and vegetation, become a dune. This policy restricts development in overwash areas, due to their sensitive nature. Since the project area contains no overwash areas, the policy is not applicable.

#### 7:7E-3.18 Coastal High-Hazard Areas

This policy restricts development in coastal high-hazard (i.e., flood-prone) areas. Since the project area is not a coastal high-hazard area, the policy is not applicable.

#### 7:7E-3.19 Erosion Hazard Areas

This policy prohibits development under most circumstances in erosion-prone areas except to protect public safety. Most of the shoreline in the project area has been filled or bulkheaded. The project area is not an erosion hazard area, and therefore this policy is not applicable. The HDCI proposed project is consistent with this policy.

#### 7:7E-3.20 Barrier Island Corridor

This policy restricts new development on barrier island corridors. The project area is not a barrier island corridor, and therefore this policy is not applicable.

#### 7:7E-3.21 Bay Islands

This policy restricts development on bay islands. The project area does not contain any bay islands, and therefore this policy is not applicable.

#### 7:7E-3.22 Beaches

This policy restricts development on beaches. No impacts to beaches are anticipated and no reduction in use of presently accessible public areas will occur. The project is therefore consistent with this policy.

#### 7:7E-3.23 Filled Water's Edge

This policy seeks to promote water-dependent uses at waterfront areas that have been previously filled or modified for commercial activity. The HDCI proposed project will provide safe and efficient navigation to port facilities, therefore, it is consistent with this policy.

#### 7:7E-3.24 Existing Lagoon Edges

This policy restricts development at lagoon edges because of potential water quality problems. Since the project area contains no lagoon edges, this policy is not applicable.

#### 7:7E-3.25 Flood Hazard Areas

This policy is designed to restrict development in flood hazard areas and to ensure that the waterfront is not pre-empted by uses that could function equally well at inland locations. The HDCI proposed project of the proposed project involves no development of areas subject to tidal or fluvial flooding, and therefore this policy is not applicable.

#### 7:7E-3.26 (Reserved) NOT APPLICABLE

#### 7:7E-3.27 Wetlands

This policy restricts disturbance in wetland areas and requires mitigation if wetlands are destroyed or disturbed. As described in the Integrated Feasibility Report, the HDCI proposed project was developed to minimize adverse impacts while providing safe and efficient navigation. Long-term, unavoidable impacts to wetlands associated with the HDCI proposed project are identified for regulated (-6' MLLW) unvegetated subtidal habitat, and mitigation for long-term, unavoidable impacts to the ecological habitat has been developed. The District will adopt all acceptable mitigation measures and continue coordination with the affected state and resource agencies, as appropriate, and as is required under the CWA and CZMA, as delegated to the authorization and permitting jurisdictions of the affected state, and ensure implementation of the mitigation plan concurrent with construction of the project. The HDCI proposed project would therefore be consistent with this policy.

#### 7:7E-3.28 Wetland Buffers

This policy restricts development in wetland buffer areas in order to protect wetlands. The HDCI proposed project will not adversely affect upland buffers or areas adjacent to wetlands. Therefore, the HDCI proposed project is consistent with this policy.

#### 7:7E-3.29 (Reserved) NOT APPLICABLE

#### 7:7E-3.30 (Reserved) NOT APPLICABLE

#### 7:7E-3.31 Coastal Bluffs

This policy restricts development on coastal bluffs, defined as steep slopes (greater than 15 percent) of rock or sand, gravel sediment which are adjacent to the shoreline or which are demonstrably associated with shoreline processes. Since the project area does not contain coastal bluffs, this policy is not applicable.

#### 7:7E-3.32 Intermittent Stream Corridors

This policy restricts action in intermittent stream corridors. Intermittent streams in not the project area and will not be impacted. Therefore, the HDCI proposed project is consistent with this policy.

#### 7:7E-3.33 Farmland Conservation Areas

This policy seeks to preserve large parcels of land used for farming. The project area does not contain farmland conservation areas, and therefore this policy is not applicable.

#### 7:7E-3.34 Steep Slopes

This policy seeks to preserve steep slopes by restricting development in such areas. Steep slopes are land areas with slopes greater than 15 percent, which are not adjacent to the shoreline. Since there are no steep slopes in the project area, this policy is not applicable.

#### 7:7E -3.35 Dry Borrow Pits

This policy restricts the excavation and filling of upland or dry borrow pits. The project area does not contain nor is it proposed to contain dry borrow pits. All applicable agency guidelines and permit requirements will be met if dry borrow pits are used for dredge material placement. Therefore, the HDCI proposed project of the proposed project is consistent with this policy.

#### 7:7E-3.36 Historic and Archeological Resources

The HDCI proposed project is consistent with this policy because proposed design modifications that may result in significant cultural resource impacts will be addressed through a Programmatic Agreement (PA) among the District, the New Jersey State Historic Preservation Officer (NJSHPO) and the New York State Historic Preservation Officer (NYSHPO), as described below.

Cultural resources information, which focused on potential in-water resources, was addressed in the *Draft Integrated Feasibility Report & Environmental Assessment*. A PA among the District, NJSHPO, NYSHPO, and potentially other interested parties is being negotiated to address future prehistoric and historic investigations, national register of historic places evaluations, and mitigation measures during the Project's execution. This PA will specify the stipulations and actions to be taken by the District during project execution to satisfy the District's responsibilities under Section 106 of the National Historic Preservation Act of 1996, as amended. Once the PA is executed, The HDCI proposed project will be consistent with this policy.

#### 7:7E-3.37 Specimen Trees

This policy seeks to protect specimen trees as defined by NJDEP. The project area does not contain specimen trees, and therefore this policy is not applicable.

#### 7:7E-3.38 Endangered and Threatened Wildlife or Vegetation Habitats

This policy restricts development in areas known to harbor endangered or threatened wildlife or vegetation species. The HDCI proposed project could potentially incur adverse effects to these resources that would be short term, localized and temporary (during construction). Best Management Practices, such as utilizing protective equipment (i.e. Turtle Exclusion Devices) and implementing protective seasonal restrictions (eg. winter flounder and migratory finfish) in areas determined to be appropriate (migratory corridors, spawning habitat, feeding grounds, etc.) would be coordinated with the affected states, regulators and resource agencies, and integrated into construction plans and specifications, as appropriate. A Biological Assessment addressing NMFS jurisdiction per Endangered Species Act Section 7 requirements, is appended to the Integrated Feasibility Report.

#### 7:7E-3.39 Critical Wildlife Habitats

Critical wildlife habitats are specific areas known to serve an essential role in maintaining wildlife, particularly in wintering, breeding, and migrating. Such habitats include rookeries and stopovers for birds, natural corridors for wildlife movement, and ecotones (edges between two types of habitats). This policy discourages development that would impact critical wildlife habitat. The HDCI proposed project will not impact critical wildlife habitats and is therefore consistent with this policy.

#### 7:7E-3.40 Public Open Space

This policy encourages the development of new public open spaces and discourages development that might adversely affect existing public open space. The HDCI proposed project will not affect any public open space; the policy is therefore not applicable.

#### 7:7E-3.41 Special Hazard Areas

This policy discourages development in Special Hazard Areas. Since the project area does not include any Special Hazard Areas, the policy is not applicable.

#### 7:7E-3.42 Excluded Federal Lands

Federal lands are beyond the jurisdiction of the New Jersey Coastal Zone. New Jersey has the authority to review activities on Federal lands if there may be spillover impacts on New Jersey's Coastal Zone. There are, however, no excluded Federal lands in the project area, and this policy is therefore not applicable.

#### 7:7E-3.43 Special Urban Areas

This policy seeks to encourage waterfront development that would benefit certain municipalities that receive state aid. Special urban areas located within the project area include Bayonne, Elizabeth, Jersey City, and Newark. The HDCI proposed project would provide indirect economic benefits to these areas as a result of improved shipping efficiencies and therefore is consistent with this policy.

#### 7:7E-3.44 Pinelands National Reserve and Pinelands Protection Area

This policy allows the Pinelands Commission to serve as the reviewing agency for actions within the Pinelands National Reserve. Since the project area is not located within the Pinelands, this policy is



not applicable.

7:7E-3.45 Hackensack Meadowlands District

This policy allows the Hackensack Meadowlands District Commission to serve as the reviewing agency for actions within the Hackensack Meadowlands District. The project area is not located within the Hackensack Meadowlands District, and therefore this policy is not applicable.

7:7E-3.46 Wild and Scenic River Corridors

This policy recognizes the outstanding value of certain rivers in New Jersey by restricting development to compatible uses. The project area is not located within a New Jersey wild and scenic river corridor, and therefore this policy is not applicable.

7:7E-3.47 Geodetic Control Reference Marks

This policy discourages disturbance of geodetic control reference marks. No geodetic control reference marks will be disturbed as a result of the HDCI proposed project; therefore, the proposed project will be consistent with this policy.

7:7E-3.48 Hudson River Waterfront Area

This policy sets forth non- industrial and industrial development standards for public access and open space along the Hudson River Waterfront Area, and requires development, maintenance, and management of a section of the Hudson Waterfront Walkway coincident with the shoreline of the development property. Although the project area is included in the boundaries of the Hudson River Waterfront Area, the HDCI proposed project is not a waterfront development action, and therefore this policy is not applicable.

7:7E-3.49 Atlantic City

This policy establishes restrictions and prohibitions within the municipal boundary of the City of Atlantic City. No portion of the project area is within this boundary, and therefore the policy is not applicable.

*2.1.1.1. Subchapter 3A - Standards for Beach and Dune Activities*

These standards apply to routine beach maintenance, emergency post-storm beach restoration, dune creation and maintenance, and construction of boardwalks. The project area is not located within a beach or dune area, and therefore these standards are not applicable.

*2.1.1.2. Subchapter 3B - Wetland Mitigation Proposals*

This subchapter details the requirements of a wetland mitigation proposal. The HDCI proposed project, including potential construction of any wetland mitigation areas, will meet all applicable agency guidelines or permit requirements. Therefore, the HDCI proposed project is consistent with this subchapter.

### *2.1.1.3. Subchapter 3C - Standards for Conducting and Reporting the Results of an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and/or Endangered or Threatened Wildlife Species Habitat Evaluation*

This subchapter sets standards for conducting an Endangered or Threatened Wildlife or Plant Species Habitat Impact Assessment and for conducting an Endangered or Threatened Wildlife Species Habitat Evaluation. One or both must be employed to demonstrate compliance with or inapplicability of 7:7E-3.38 (Endangered and Threatened Wildlife or Vegetation Habitats) when the site contains or abuts areas mapped as endangered or threatened wildlife species habitat on the Landscape Maps. The Integrated Report identifies potential adverse impacts for threatened or endangered species in the project area in a manner that is consistent with the standards provided within this subchapter. A Biological Assessment, per Section 7 of the Endangered Species Act has been prepared for the HDCI proposed project as is appended to the Report. There is no designated habitat in the project area.

### **2.1.2. Subchapter 4 - General Water Areas**

General Water Areas are all water areas which are located below either the spring high water line or the normal water level of non-tidal water that are subject to this subchapter and to Special Area rules. General water areas within the project area are as follows: Large tidal river – Hudson River; Open bay – Raritan Bay, Sandy Hook Bay, and Upper New York Bay; Tidal gut – the Kill Van Kull.

#### 7:7E-4.2 Aquaculture

Aquaculture is the use of permanently inundated water areas, whether saline or fresh, for the purposes of growing and harvesting plants or animals in a way to promote more rapid growth, reduce predation, and increase harvest rate. The HDCI proposed project does not involve aquaculture, and therefore the policy is not applicable

#### 7:7E-4.3 Boatramps

Boat ramps are inclined planes, extending from the land into a water body for the purpose of launching a boat into the water until the water depth is sufficient to allow the boat to float. Boat ramps will not be constructed as a result of HDCI proposed project, and therefore the policy is not applicable.

#### 7:7E-4.4 Docks and piers for cargo and commercial fisheries

Docks and piers for cargo and passenger movement and commercial fisheries are structures supported on pilings driven into the bottom substrate or floating on the water surface, used for loading and unloading passengers or cargo, including fluids, connected to or associated with, a single industrial or manufacturing facility or to commercial fishing facilities. No additional docks or piers will be constructed as part of the HDCI proposed project. This policy is not applicable.

#### 7:7E-4.5 Recreational docks and piers

Recreational and fishing docks and piers are structures supported on pilings driven into the bottom substrate, or floating on the water surface or cantilevered over the water, which are used

for recreational fishing or for the mooring of boats or jet skis used for recreation or fishing, except for commercial fishing, and house boats. No additional docks or piers will be constructed as part of The HDCI proposed project. Therefore, the policy is not applicable.

#### 7:7E-4.6 Maintenance dredging

Maintenance dredging is the removal of accumulated sediment from previously authorized and legally dredged navigation and access channels, marinas, lagoons, canals or boat moorings for the purpose of maintaining a previously authorized water depth and width for safe navigation. To be considered maintenance dredging, the proposed dredge area must be limited to the same depth, length and width as the previous dredging operation. This policy also restricts reprofiling, the movement of material from one area of a berth or channel to an adjacent, deeper location. As the HDCI proposed project (study) is considered, as authorized, new dredging, this policy is not applicable.

#### 7:7E-4.7 New dredging

New dredging is the removal of sediment that does not meet the definition of maintenance dredging as defined in 7:7E-4.6. Removal of the existing sediment layer will be followed by dredging to deepen the channels to the authorized depth to - 55 ft. All dredge activities will occur in existing channels. Deepening and widening is needed to ensure that adequate depth and width is available for safe navigation of newer larger ships with deeper drafts. Dredging of underlying materials previously unexposed will occur. Most of these materials are expected to be uncontaminated and will be available for beneficial uses. Those deemed unsuitable for HARS remediation will be treated or amended, as required, and also used beneficially. Adverse environmental impacts will be minimized to the maximum extent feasible through compliance with Best Management Practices (BMP's), such as closed clamshell mechanical dredge buckets, and slow hoist speeds. There will be no barge overflow, unless approved through state water quality conditions, overboard disposal, dumping or filling with any materials related to the dredging operations. Mitigation activities will occur as necessary. All conditions specified under this policy will be met, and the HDCI proposed project is therefore consistent with this policy.

#### 7:7E-4.8 Dredged material disposal

This policy sets the standards relevant to dredged material disposal in water areas. As stated, all dredged material will be tested and coordinated with appropriate regulatory authorities before its scheduled removal to determine disposal methods. Dredged materials will be beneficially used to the extent possible (e.g., habitat enhancement, abandoned landfill and brownfield remediation, etc.). Soft material will be classified as either HARS-suitable or HARS-unsuitable. HARS-unsuitable material will be treated/amended and used beneficially as well, when practical. Rock will be used to establish new or enhance existing reefs, according to state guidelines. Dredging and dredged material disposal would meet the acceptability conditions for both of these applicable standards in accordance with the DMMP. The HDCI proposed project would utilize the same options as has been previously used in regional Navigation projects and are therefore consistent with this policy.

#### 7:7E-4.9 Solid waste or sludge dumping

This policy prohibits the discharge of solid or semi-solid waste material from industrial or domestic sources or sewage treatment operations into a water area. The HDCI proposed project does not involve solid waste or sludge dumping, and therefore this policy is not applicable to this project.

#### 7:7E-4.10 Filling

This policy restricts the deposition of material including sand, soil, earth, and dredged material into water areas for the purpose of raising water bottom elevations to create land areas. No filling will occur as a result of the HDCI proposed project implementation, and therefore this policy is not applicable to this project.

#### 7:7E-4.11 Mooring

A boat mooring is a temporary or permanently fixed or floating anchored facility in a water body for the purpose of attaching a boat. No boat moorings will be constructed as a result of the HDCI proposed project. Therefore, the policy is not applicable.

#### 7:7E-4.12 Sand and gravel mining

The HDCI proposed project does not involve sand or gravel mining. Therefore, the policy is not applicable.

#### 7:7E-4.13 Bridges

The HDCI proposed project does not involve the construction of new bridges, or the alteration of existing bridges. Therefore, the policy is not applicable.

#### 7:7E-4.14 Submerged pipelines

The HDCI proposed project does not involve the installation of submerged pipelines. Therefore, the policy is not applicable.

#### 7:7E-4.15 Overhead transmission lines

The HDCI proposed project does not involve the installation of overhead transmission lines. Therefore, the policy is not applicable.

#### 7:7E-4.16 Dams and impoundments

The HDCI proposed project does not involve the construction of dams or impoundments. Therefore, the policy is not applicable.

#### 7:7E-4.17 Outfalls and intakes

The HDCI proposed project does not involve the siting or construction of any facility requiring intake of water or discharge of sewage, stormwater, or industrial effluents. Therefore, the policy is not applicable.

#### 7:7E-4.18 Realignment of water areas

Realignment of water areas means the physical alteration or relocation of the surface configuration of any water area. This does not include the re-bulkheading of a previously bulkheaded water area or

the bulkheading at or above the spring high water line. The HDCI proposed project will not realign any water area. Therefore, the policy is not applicable.

#### 7:7E-4.19 Breakwaters

Breakwaters, including, but not limited to, those constructed of concrete, rubble mound and timber, are structures designed to protect shoreline areas or boat moorings by intercepting waves and reducing the wave energy which would normally impact the adjacent shoreline areas or boat mooring areas. The HDCI proposed project does not include the construction or renovation of any breakwaters. Therefore, the policy is not applicable.

#### 7:7E-4.20 Submerged cables

This policy establishes conditions that must be met by submerged cables, defined as underwater lines such as telecommunication cables or electrical transmission lines. The HDCI proposed project does not involve the installation of submerged cables. Therefore, the policy is not applicable.

#### 7:7E-4.21 Artificial reefs

Artificial Reefs are man-made structures intended to simulate the characteristics and functions of natural reefs created by placing hard structures on the sea floor for the purpose of enhancing fish habitat and/or fisheries. In time, an artificial reef will attain many of the biological and ecological attributes of a natural reef. Artificial reefs do not include shore protection structures, pipelines, fish aggregating devices, and other structures not constructed for the sole purpose of fish habitat. As described in the Integrated Report, artificial reef construction for selected material (rock) is an option proposed for beneficial use and would be similarly utilized for the HDCI proposed project, and in accordance with the affected states regulations. Therefore, this action is consistent with this policy.

#### 7:7E-4.22 Miscellaneous uses

Miscellaneous uses are uses of Water Areas not specifically defined in this section or addressed in the Use rules (7:7E-7). The HDCI proposed project involves new and maintenance dredging, which are uses that are specifically defined in this section. Therefore, this policy is not applicable.

### **2.1.3. Subchapter 5. Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas**

This subchapter, along with Subchapters 5A and 5B, sets forth requirements for impervious cover and vegetative cover on sites in the upland waterfront development area and in the CAFRA area. The upland waterfront area includes the area extending upland from the mean high water line of a tidal water body to the first paved public road, railroad, or property line, and its impervious cover limits and vegetative cover percentages are determined under Subchapter 5A. “CAFRA area” means the “coastal area” defined in the Coastal Area Facility Review Act at N.J.S.A. 13:19-4. The “coastal area” extends from New Jersey’s seaward territorial jurisdiction to an upland boundary specified in the code. The applicable impervious cover limits and vegetative cover percentages are determined under Subchapter 5B.

Although within the CAFRA area, the HDCI proposed project is contained under water, and will not add or alter impervious or vegetative cover. Therefore, this subchapter is not applicable.

#### *2.1.3.1. Subchapter 5A. Impervious Cover Limits and Vegetative Cover Percentages in the Upland Waterfront Development Area*

This subchapter sets the impervious cover limits and vegetative cover percentages for sites in the upland waterfront development area. Because the proposed project within the CAFRA area will not be within the upland waterfront development area, this subchapter is not applicable.

#### *2.1.3.2. Subchapter 5B. Impervious Cover Limits and Vegetative Cover Percentages in the CAFRA Area*

This subchapter sets impervious cover limits and vegetative cover percentages for sites in the CAFRA area. Although within the CAFRA area, the HDCI proposed project is contained under water, and will not add or alter impervious or vegetative cover. Therefore, this subchapter is not applicable.

### **2.1.4. Subchapter 6 - General Location Rules**

#### 7:7E-6.1 Rule on location of linear development

"Linear development" means a development with the basic function of connecting two points, such as a road, drive, public walkway, railroad, sewerage pipe, stormwater management pipe, gas pipeline, water pipeline, or electric, telephone or other transmission line. This rule sets conditions for acceptability of linear development. The proposed HDCI project does not include linear development, and therefore this policy is not applicable.

#### 7:7E-6.2 Basic location rule

This rule states that NJDEP may reject or conditionally approve a project as reasonably necessary to: promote the public health, safety, and welfare; protect public and private property, wildlife and marine fisheries; and preserve, protect and enhance the natural environment. The proposed HDCI project is consistent with the location rule.

#### 7:7E-6.3 Secondary impacts

This rule sets the requirements for secondary impact analysis. In accordance with NEPA, both long term and short-term impacts were evaluated for significance in the Integrated Report. Regardless of whether a direct, secondary or cumulative impact has occurred, it's the significance determination of all potential adverse effects that determines the projects adverse effects conclusion as documented in the Action Agency's Decision Document, such as Record of Decision (ROD) or a Finding of No Significant Impact (FONSI). It is anticipated, as analyzed and presented in the Integrated Report, that there are no short- or long-term significant impacts resulting from the implementation of the proposed HDCI project. Therefore, the HDCI proposed project is consistent with the requirements for secondary impact analysis, as required under NEPA.

### **2.1.5. Subchapter 7 - Use Rules**

#### 7:7E-7.2 Housing use rules

These rules set standards for housing construction in the coastal area. The HDCI proposed project does not involve housing construction, and therefore this policy is not applicable.

#### 7:7E-7.3 Resort/recreational use

This rule sets standards for resort and recreational uses in the coastal area, which includes hotels, motels, marinas, boating facilities, campgrounds, amusement piers, parks and recreational structures such as bathhouses, natural areas, open space for active and passive recreation, and linear paths for bicycling and jogging. The proposed HDCI project does not involve resort or recreational uses, and therefore this policy is not applicable.

#### 7:7E-7.3A Marina development

This rule sets standards for marina development in the coastal area. The proposed HDCI project does not involve marina development, and therefore this policy is not applicable.

#### 7:7E-7.4 Energy facility use rule

This rule sets standards for energy facilities in the coastal area. Energy facilities include facilities, plants or operations for the production, conversion, exploration, development, distribution, extraction, processing, or storage of energy or fossil fuels. Energy facilities also include onshore support bases and marine terminals. Energy facilities do not include operations conducted by a retail dealer, such as a gas station, which is considered a commercial development. The proposed HDCI project does not involve the construction or alteration of any energy facility. Therefore, this policy is not applicable.

#### 7:7E-7.5 Transportation use rule

This rule sets standards for roads, public transportation, footpaths, and parking facilities in the coastal area. The proposed HDCI project does not involve construction of offsite roads, public transportation, footpaths, or parking facilities, and therefore this policy is not applicable.

#### 7:7E-7.6 Public facility use rule

This rule sets standards for public facilities (e.g., solid waste and wastewater treatment facilities) in the coastal area. The proposed HDCI project does not involve construction of a public facility, and therefore this policy is not applicable.

#### 7:7E-7.7 Industry use rule

This rule sets standards for industrial uses in the coastal area, including (but not limited to) electric power production, food and food by-product processing, paper production, agri-chemical production, chemical processes, storage facilities, metallurgical processes, mining and excavation processes, and processes using mineral products. Because the proposed HDCI project would benefit appropriately cited industrial uses, it is consistent with this policy.

#### 7:7E-7.8 Mining use rule

This rule sets standards for mining in the coastal area. The HDCI proposed project does not involve mining, and therefore this policy is not applicable.

#### 7:7E-7.9 Port use rule

This rule sets standards for port uses and port-related development. The standards are designed to ensure that port facilities retain their economic vitality. Since the proposed HDCI project will ensure the vitality of the port, it directly supports this policy.

#### 7:7E-7.10 Commercial facility use rule

This rule sets standards for commercial facilities such as hotels, casinos, retail trade, and convention centers in the coastal zone. The proposed HDCI project does not involve construction of these types of commercial facilities, and therefore this policy is not applicable.

#### 7:7E-7.11 Coastal engineering

This rule sets standards for the protection of shoreline and the maintenance of dunes and provides for beach nourishment. Standards applicable to structural shore protection are included. The DMMP, used for past navigation projects, will be used to direct beneficial use of all dredged material, including any material that may be authorized by the state to the coastal area for such use, such as sand or rock. The proposed HDCI project is consistent with this policy.

#### 7:7E-7.12 Dredged material placement on land

This rule sets standards for the placement of dredged materials, defined as the disposal or beneficial use of sediments removed during dredging operations. Beneficial uses of dredged material include, but are not limited to, fill, topsoil, bricks and lightweight aggregate. This rule applies to the placement of dredged material landward of the spring high water line; disposal in water areas is covered in N.J.A.C. 7:7E- 4.8.

Dredging operations and disposal of dredged materials would be done in accordance with the DMMP (as contained in the Integrated Report), and would comply with project-specific state and Federal permit regulations and special conditions. As stated, dredged material will be tested to determine appropriate disposal methods; being classified as either HARS-suitable or HARS-unsuitable. Dredged materials will be beneficially used to the extent possible, including treatment of unsuitable materials as necessary. Therefore, the HDCI proposed project is consistent with this policy.

#### 7:7E-7.13 National defense facility use rule

This rule sets standards for the location of defense facilities in the coastal zone. The HDCI proposed project does not involve National Defense Facilities, thus this policy is not applicable.

#### 7:7E-7.14 High Rise Structures

This rule sets standards for high-rise structures in the coastal zone. High-rise structures are structures which are more than six stories or more than 60 feet in height as measured from existing preconstruction ground level. The proposed HDCI project does not involve high-rise structures, thus, this policy is not applicable.

### **2.1.6. Subchapter 8 - Resource Rules**

#### 7:7E-8.2 Marine Fish and Fisheries

This rule sets standards of acceptability so as to cause minimal interference with the reproductive



and migratory patterns of estuarine and marine species of finfish and shellfish. The HDCI proposed project is not projected to have an adverse impact on the reproductive and migratory patterns of estuarine and marine species of finfish and shellfish since the District is committed to adopting BMPs, including implementing mitigation measures such as seasonal restrictions especially protective of aquatic natural resources, such as winter flounder and migratory finfish. Therefore, the proposed HDCI project is consistent with this policy.

#### 7:7E-8.4 Water Quality

This rule sets standards for coastal development so as to limit effects on water quality. Potential impacts of deepening existing channels throughout the study area to the hydrodynamics, salinity, water temperature, dissolved oxygen, and sediment transport in the study area were evaluated using the three-dimensional numerical model of hydrodynamics and water quality developed as part of the 1999 HDP 50' Feasibility Report, for which a Record of Decision (ROD) was signed in 2002, and for which construction of that project commenced in 2004 and competed in 2014 under the strict authorities of the affected states.

Model results indicated minimal and localized changes in dissolved oxygen as a result of channel deepening from 40', 41' and 45' existing depths to 50' depth; however, these changes were and still are within the recorded seasonal variation for these parameters throughout the Harbor. Model results indicated that salinity concentrations and temperatures during channel deepening would be no worse than without channel deepening. The construction duration of the HDCI proposed project would be similar to the construction of the HDP 50' project, therefore, an assumption is supportable that no significant adverse impacts to water resources will be attributable to the implementation of the proposed HDCI project. Additional ecological modeling is planned for the PED phase of the project to confirm assumptions.

The District will abide by Special Conditions, usually included as BMPs, as and where applicable, that are protective of water quality that will be included in the CWA and CZMA (Federal Consistency Determination) certification issuance and authorization process. The HDCI proposed project would therefore be consistent with this policy.

#### 7:7E-8.5 Surface water use

This rule sets standards for coastal development so as to limit effects on surface water. The proposed consolidation of the separately authorized projects will not cause unacceptable surface water disturbances. There will be no use or consumption of surface waters, and the HDCI proposed project is therefore consistent with this policy.

#### 7:7E-8.6 Groundwater Use

This rule sets standards for coastal development so as to limit effects on groundwater supplies. The proposed consolidation of the separately authorized projects will not place a demand on groundwater supplies nor will construction activities associated with the proposed navigation channel improvements impact area groundwater. The HDCI proposed project is therefore consistent with this policy.

#### 7:7E-8.7 Stormwater management

This rule sets standards for coastal development so as to limit effects of stormwater runoff. No land-based work is associated with the HDCI proposed project of the proposed project. Therefore, this policy is not applicable.

7:7E-8.8      Vegetation

This rule sets standards for coastal development to protect vegetation. The proposed HDCI project will not influence any vegetated areas, and therefore the proposed HDCI project is consistent with this policy.

7:7E-8.9      (Reserved) NOT APPLICABLE

7:7E-8.10     Air quality

This rule sets standards for coastal development with requirements that projects meet applicable air quality standards. The General Conformity Rule (GCR) of the Clean Air Act Amendment (CAA) of 1990 (40 CFR 193) went into effect as of January 31, 1994. The GCR requires Federal Actions, including providing funds or issuing permits, not interfere with states' efforts to attain or maintain ambient air quality standards in accordance with EPA-approved State Implementation Plans (SIPs). All Federal Actions must comply with the GCR unless otherwise exempt. GCR only applies to actions that emit one or more criteria pollutants in areas that do not meet CAA standards for one or more pollutant (nonattainment area) or have just recently come within the standard (maintenance area).

The HDCI study area is located within the New York Northern New Jersey Connecticut Long Island (NYNJCTLI) nonattainment area (NAA) which is also referred to as the New York New Jersey Long Island nonattainment area and thus falls within the jurisdiction of both state's SIPs. The region is currently designated as a severe nonattainment area for ozone and a maintenance area for carbon monoxide (CO). The GCR is triggered when, in severe ozone nonattainment areas, emissions exceed 50 tons per year. This quantity also applies to amounts of ozone precursors, oxides of nitrogen (NOx) and volatile organic carbons (VOCs). The GCR applies to The HDCI proposed project because the project area is within the NYNJCTLI and The HDCI proposed project is not exempt. Appendix E of the Integrated Reports EA contains the HDCI draft SOC.

HDCI construction implementation emission estimates predict proposed project NOx emissions would exceed the GCR trigger level for severe ozone nonattainment areas during each year of construction. The mitigation plan for reaching Conformity with the CAA for the HDCI proposed project is presented in the Harbor Air Management Plan (HAMP), which was developed in collaboration with the Regional Air Team (RAT), on which NJDEP plays an active role. The HAMP is a combination of actions, as outlined in the Statement of Conformity (SOC) for the HDP 50' project that was finalized and agreed to by the States and EPA in April 2002. The result of implementing the HAMP will be no net emission increase during any year of the HDCI proposed project; and an overall decrease in NOx levels both during and after construction, providing long-term air quality benefits. Therefore, the HDCI proposed project is consistent with this policy.

#### 7:7E-8.11 Public Access to the Waterfront

This rule requires that coastal development adjacent to the waterfront provide perpendicular and linear access to the waterfront to the extent practicable, including both visual and physical access. The HDCI proposed project will not affect public access to the waterfront, therefore this policy is not applicable.

#### 7:7E-8.12 Scenic Resources and Design

This rule sets standards for new coastal development to be visually compatible with its surroundings. The HDCI proposed project does not involve coastal development, therefore this policy is not applicable.

#### 7:7E-8.13 Buffers and Compatibility of Uses

This rule sets standards for adequate buffers between uses found to be incompatible. This Policy is not applicable to the HDCI proposed project.

#### 7:7E-8.14 Traffic

This rule sets standards for coastal development so as not to disturb traffic systems. The HDCI proposed project will not affect existing traffic systems, and therefore this policy is not applicable.

#### 7:7E-8.15 through 8.20 (Reserved) NOT APPLICABLE

#### 7:7E-8.21 Subsurface sewage disposal systems

This rule sets standards for subsurface sewage disposal systems in the coastal zone. The HDCI proposed project does not involve subsurface sewage disposal, therefore this policy is not applicable.

#### 7:7E-8.22 Solid and hazardous waste

This rule requires that coastal development conforms to all applicable State and Federal regulations, standards and guidelines for the handling and disposal of solid and hazardous wastes. Solid waste includes any garbage, refuse, sludge or other waste material that is "disposed of" by being discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water so that it may enter the environment. Solid waste becomes a hazardous waste when it exhibits any of the characteristics which are specified in 40 CFR 261 (e.g., ignitibility, corrosivity, reactivity, and toxicity). Solid waste does not include certain agricultural wastes, recyclable materials, or materials approved for beneficial use or categorically approved for beneficial use.

The Study Area is heavily urban and, as discussed in Appendix G, there are several contaminated sites located in the vicinity. These sites are primarily located on land and outside of the HDCI project boundary except for a portion of one Federal and State listed Superfund Site identified as the Diamond Alkali Superfund Site (DASS), Newark Bay Operable Unit, originating from the DASS manufacturing plant formerly located in Newark, New Jersey. Remedial investigation on the DASS Newark Bay Operable Unit is ongoing at this time. The District will continue to

coordinate with the USEPA and NJDEP in order to not interfere with ongoing investigation and remediation efforts occurring in the Newark Bay Study Area. It is not anticipated that any other federal or state listed contaminated site will affect or be affected by the project.

This project does not involve solid and hazardous waste since dredged material is not regulated (it is exempt) under the same rules as land-based solid and/or hazardous waste products. All dredged material will be tested under dredge material placement criteria to be used beneficially and in compliance with all Federal, state and local regulations.

The HDCI proposed project is therefore consistent with this policy.

## **2.2. Findings of the Coastal Zone Consistency Evaluation**

This coastal zone consistency evaluation considered the implementation of the proposed HDCI project and evaluates the project's consistency with the applicable Coastal Zone Management Rules. Based on this evaluation, the proposed HDCI project is consistent with all applicable policies.

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